

The original documents are located in Box 54, folder “9/3/76 S3435 Privacy Protection Study Commission” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

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APPROVED
SEP 3 - 1976

89/3/76

THE WHITE HOUSE
WASHINGTON
September 1, 1976

ACTION

Posted
9/3/76
Archives
9/3/76

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *[Signature]*
SUBJECT: S. 3435 - Privacy Protection Study
Commission

Attached for your consideration is S. 3435, sponsored by Senator Ribicoff.

The enrolled bill would increase the appropriation authorization for the Privacy Protection Study Commission from \$1,500,000 to \$2,000,000 and remove the current fiscal year expenditure limitation of \$750,000 from the Commission's enabling legislation.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 3435 at Tab B.



SEP 5 1976



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 31 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3435 - Privacy Protection Study
Commission
Sponsor - Sen. Ribicoff (D) Connecticut

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To increase the appropriation authorization for the Commission and remove the fiscal year limitation on its expenditures.

Agency Recommendations

Office of Management and Budget	Approval
Privacy Protection Study Commission	Approval

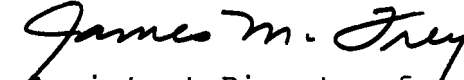
Discussion

S. 3435, in substance the same as legislation proposed by the Privacy Protection Study Commission, increases the appropriation authorization for the Commission from \$1,500,000 to \$2,000,000 and removes the current fiscal year expenditure limitation of \$750,000 from the Commission's enabling legislation.

The Privacy Protection Study Commission was established in Section 5 of the Privacy Act of 1974 to (1) study the procedures used by data banks and information systems of governmental and private organizations to ensure the protection of personal information and (2) make recommendations to the President and the Congress on the extent to which the Privacy Act should be applied to organizations to which it does not now apply. The life of the Commission officially began on June 10, 1975 with the appointment of its seventh member, and it will terminate 30 days after submission of its final report on June 10, 1977.

A total of \$1,000,000 has been appropriated for fiscal year 1976 and the transition quarter for the expenses of the Commission, including \$250,000 in the Second Supplemental Appropriations Act, 1976. Because 1976 and the transition quarter are considered technically to be one fiscal year, the annual limitation of \$750,000 has been exceeded by the supplemental amount of \$250,000. Without this enrolled bill, therefore, the supplemental appropriation is not available for use during the remainder of the transition quarter.

In addition, \$750,000 has been appropriated for 1977; this amount plus the \$1,000,000 appropriated for 1976 and the transition quarter exceed by \$250,000 the overall appropriation authorization of \$1,500,000. By increasing the total appropriation authorization by \$500,000, S. 3435 also provides an authorization margin of \$250,000 in the event additional funds should be needed during 1977 for completion of the Commission's work.


Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 31

Time: 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: ~~September~~ 1

Time: 500pm

SUBJECT:

S. 3435 - Privacy Protection Study Commission

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

PRIVACY PROTECTION STUDY COMMISSION

2120 L Street, NW.
Washington, D.C. 20506

David F. Linowes, Chairman
Willis H. Ware, Vice Chairman
William O. Bailey
William B. Dickinson
Hon. Barry M. Goldwater, Jr.
Hon. Edward I. Koch
Robert J. Tennesen

August 26, 1976

Carole W. Parsons
Executive Director
Ronald L. Plesser
General Counsel

The Honorable James T. Lynn
Director
Office of Management and Budget
Room 252, Old Executive Office Building
Washington, D. C. 20503

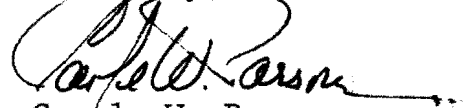
Dear Mr. Lynn:

This is in response to your request for views and recommendations on the enrolled bill S. 3435.

The Privacy Protection Study Commission is most anxious for the President to approve this legislation which is essential to the timely completion of the Commission's program. Its immediate effect will be to free up the \$250,000 FY '76 supplemental appropriated for the Commission last spring which we have been unable to use because of the fiscal-year expenditure limitation that S. 3435 would remove.

The Commission Chairman testified in support of S. 3435 before the House Subcommittee on Government Information and Individual Rights on June 9, 1976 and the Commission submitted written testimony to the Senate Committee on Government Operations which reported the bill on May 13. Both sets of testimony, which details the reasons why the legislation is so important to the Commission, are attached. We will, of course, be pleased to furnish your office with any additional information you think necessary.

Sincerely,



Carole W. Parsons
Executive Director



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 31

Time: 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 1

Time: 500pm

SUBJECT:

S. 3435 - Privacy Protection Study Commission

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus 9/1/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

WASHINGTON

September 2, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *m-l*
SUBJECT: S.3435 - Privacy Protection Study Commission

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 31 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3435 - Privacy Protection Study
Commission
Sponsor - Sen. Ribicoff (D) Connecticut

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To increase the appropriation authorization for the Commission and remove the fiscal year limitation on its expenditures.

Agency Recommendations

Office of Management and Budget	Approval
Privacy Protection Study Commission	Approval

Discussion

S. 3435, in substance the same as legislation proposed by the Privacy Protection Study Commission, increases the appropriation authorization for the Commission from \$1,500,000 to \$2,000,000 and removes the current fiscal year expenditure limitation of \$750,000 from the Commission's enabling legislation.

The Privacy Protection Study Commission was established in Section 5 of the Privacy Act of 1974 to (1) study the procedures used by data banks and information systems of governmental and private organizations to ensure the protection of personal information and (2) make recommendations to the President and the Congress on the extent to which the Privacy Act should be applied to organizations to which it does not now apply. The life of the Commission officially began on June 10, 1975 with the appointment of its seventh member, and it will terminate 30 days after submission of its final report on June 10, 1977.

INCREASING AN AUTHORIZATION OF APPROPRIATIONS FOR THE PRIVACY PROTECTION STUDY COMMISSION AND TO REMOVE THE FISCAL YEAR EXPENDITURE LIMITATION

MAY 13, 1976.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Government Operations, submitted the following

REPORT

[To accompany S. 3435]

The Committee on Government Operations (S. 3435) to which considered an original bill to increase an authorization of appropriations for the Privacy Protection Study Commission and to remove the fiscal year expenditure limitation, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to remove the fiscal year expenditure limitation of Section 9 of P.L. 93-579. This change will permit the Privacy Protection Study Commission to obligate its funds, at a rate necessary to initiate research studies and hold hearings which will form the basis of its recommendations to the President and the Congress. Secondly, the bill will authorize an increase by \$500,000 for an appropriation from \$1,500,000 to \$2,000,000 to carry out the provisions of Section 5 of P.L. 93-579 for fiscal year 1975.

COMMITTEE CONSIDERATION

An original bill was introduced at the Committee's mark-up on May 11, and unanimously ordered to be reported by voice vote, which would remove the fiscal year expenditure limitation of the Privacy Protection Study Commission, created by P.L. 93-579, and increase the authorization of the Commission by \$500,000. Under the provisions of Section 5 the Commission was authorized to be appropriated for fiscal years 1975, 1976 and 1977 a total of \$1.5 million with the *proviso* that no more than \$750,000 may be expended by the Commission in any one fiscal year. Because of the fiscal year expenditure limitation, which is not consistent with the authorization

of most short-term Commissions, the Commission has been deprived of certain funding for the fiscal year 1976 and potentially for the fiscal year 1977 transition period. The change would permit the Commission to obligate its funds at a rate necessary to initiate research studies and hold hearings.

The other aspect of the bill is to increase by \$500,000 the total authorization for the Commission for the rest of its life in fiscal years 1975, 1976 and 1977.

BACKGROUND

The Privacy Protection Study Commission was created by Section 5 of the Privacy Act of 1974 (P.L. 93-579). The Commission has seven members: three appointed by the President; two appointed by the President of the Senate; and two appointed by the Speaker of the House of Representatives.

The life of the Commission began officially on June 10, 1975, when the seventh member was appointed. The Commission's final report is due on June 10, 1977; 30 days thereafter the Commission will cease to exist.

The Commission has three large tasks to perform:

(1) To make a study of the data banks, automated data processing programs, and information systems of governmental, regional and private organizations, in order to determine the standards and procedures now in force for the protection of personal information;

(2) To make recommendations to the President and the Congress on the extent, if any, to which the principles and requirements of the Privacy Act of 1974 should be applied to organizations other than agencies of the Federal Executive Branch—through legislation, administrative action, or voluntary adoption; and

(3) To report on such other legislative recommendations as the Commission may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

As part of the study called for in (1) above, the Commission is also required to report on five specifically enumerated information policy issues:

Whether a person engaged in interstate commerce who maintains a mailing list should be required to remove the name and address of any individual who does not want to be on the list;

Whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other Federal agencies and to agencies of State government;

Whether an individual who has been harmed as a consequence of a willful or intentional violation of the Privacy Act of 1974 should be able to sue the Federal Government for general damages;

Whether—and if yes, in what way—the standards for security and confidentiality of records that the Privacy Act requires Federal agencies to adopt should be applied when a record is disclosed to a person other than an agency; and

Whether, and to what extent, governmental and private information systems affect Federal-State relations and the principle of separation of powers.

Finally, in any study the Commission undertakes, it is required to:

(1) Determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study, as well as the extent to which they are consistent with the rights of privacy, due process, and other guarantees in the Constitution; and

(2) To the maximum extent practicable, to collect and use findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study.

The Commission, in sum, is required to undertake a comprehensive study of governmental and private-sector information policies and practices that affect the collection, use, and dissemination of recorded information about individuals; to document accurately and in detail what those policies and practices are; to take account of debate, research, statutes, regulations, judicial interpretations, and policy determinations at all levels of government and in the private sector; and to be prepared to comment from time to time, and in a balanced manner, on a broad range of controversial information policy issues.

At its February 13, 1976, meeting, the Privacy Protection Study Commission unanimously voted to submit a FY '76 supplemental budget request in the amount of \$380,781, and to seek a total authorization for FY '75, '76 and '77 of \$2 million, or \$500,000 more than originally authorized.

Subsequently, on March 23, a formal request for a supplemental appropriation for fiscal year 1976 in the amount of \$250,000 for the Commission was submitted by President Gerald Ford to the President of the Senate. (Appendix A includes correspondence relating to the request for the \$250,000 supplemental appropriation.) The appropriation was approved on May 12, 1976, as part of H.R. 13172, Second Supplemental Appropriations Act, 1976, making supplemental appropriations for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, with a *proviso* which states that the appropriation is only available upon the enactment of authorizing legislation. The measure introduced in the Government Operations Committee is intended to provide the necessary authorization for the appropriation and to increase the authorization by an additional \$250,000.

By increasing the total authorization from \$1,500,000 to \$2,000,000 for the Commission, the \$250,000 appropriation requested by the Administration and approved by the full Senate on May 12 is thus authorized and authority is provided for an additional \$250,000 authorization.

The Commission is required to undertake a comprehensive study of governmental and private-sector information policies and practices that affect the collection, use and dissemination of recorded information about individuals and to document accurately and in detail what those policies and practices are. The Commission has 14 major areas of inquiry, most of which were mandated by the Privacy Act, and it has documented the necessity of the additional \$500,000 authorization to allow it to complete its work prior to its expiration in July of 1977.

(Appendix B contains an abstract of information submitted by the Commission to the Government Operations Committee regarding

its request for additional authorization and an additional Background Memorandum.)

(Appendix C contains correspondence relating to the submission of the formal request by the Commission and referred to the Government Operations Committee regarding the change of fiscal year expenditure limitation and the requested increase in authorization.)

APPENDIX A

PRIVACY PROTECTION STUDY COMMISSION,
Washington, D.C., March 10, 1976.

Hon. JAMES T. LYNN,
*Director, Office of Management and Budget,
Executive Office of the President, Washington, D.C.*

DEAR MR. LYNN: Pursuant to Section 5 of P.L. 93-579, I hereby formally request OMB support for a Fiscal Year 1976 *supplemental appropriation* for the Privacy Protection Study Commission in the amount of \$381,000. Background material explaining the rationale for this request, and the corollary need for a change in the authorizing language of Section 9 of P.L. 93-579, has already been submitted to you under separate cover.

The attention of the Office of Management and Budget to this matter has been and will be appreciated.

Sincerely,

DAVID F. LINOWES,
Chairman.

[Estimate No. 19; 94th Cong., 2d sess.]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 23, 1976.

The PRESIDENT,
The White House.

SIR: I have the honor to submit for your consideration a proposed supplemental appropriation in the amount of \$250,000 for fiscal year 1976 for the Privacy Protection Study Commission, as follows:

PRIVACY PROTECTION STUDY COMMISSION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$250,000, to remain available until expended: *Provided, That this appropriation shall be available only upon enactment of authorizing legislation.*

This supplemental will provide the Commission with the funding required to assure that there is an adequate data base for formulating recommendations to the President and the Congress regarding the extent to which the provisions of the Privacy Act of 1974 (P.L. 93-579) should be made applicable to non-Federal levels of government and the private sector.

I have carefully reviewed this budget request and I am satisfied that it is necessary at this time. I recommend, therefore, that this proposal be transmitted to the Congress.

Respectfully,

JAMES T. LYNN,
Director.

THE WHITE HOUSE,
Washington, D.C., March 23, 1976.

The PRESIDENT OF THE SENATE.

SIR: I ask the Congress to consider a proposed supplemental appropriation for the fiscal year 1976 in the amount of \$250,000 for the Privacy Protection Study Commission.

The details of this proposal are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur in his comments and observations.

Respectfully,

GERALD R. FORD.

Enclosure.

OFFICE OF THE VICE PRESIDENT,
Washington, March 29, 1976.

Hon. DAVID F. LINOWES,
*Chairman, Privacy Protection Study Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: This will serve as notification of the receipt and appropriate referral of your letter dated March 10. The letter, submitted pursuant to Section 5(a)(5)(A) of the Privacy Act of 1974, transmitted a request for a supplemental appropriation for Fiscal Year 1976 in the amount of \$381,000.

The letter was received in this office on March 15 and was referred to the Committee on Appropriations on March 17.

Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

H. SPOFFORD CANFIELD,
*Administrative Assistant
to The President of the Senate.*

SUPPLEMENTAL APPROPRIATION FOR THE PRIVACY
PROTECTION STUDY COMMISSION

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSED SUPPLEMENTAL APPROPRIATION FOR THE FISCAL
YEAR 1976 IN THE AMOUNT OF \$250,000 FOR THE PRIVACY PRO-
TECTION STUDY COMMISSION

MARCH 24, 1976.—Referred to the Committee on Appropriations and ordered
to be printed

THE WHITE HOUSE,
Washington, March 23, 1976.

The PRESIDENT OF THE SENATE.

Sir: I ask the Congress to consider a proposed supplemental ap-
propriation for the fiscal year 1976 in the amount of \$250,000 for the
Privacy Protection Study Commission.

The details of this proposal are set forth in the enclosed letter from
the Director of the Office of Management and Budget. I concur in
his comments and observations.

Respectfully,

GERALD R. FORD.

Enclosure.

[Estimate No. 19; 94th Cong., 2d sess.]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 23, 1976.

The PRESIDENT
The White House

Sir: I have the honor to submit for your consideration a proposed
supplemental appropriation in the amount of \$250,000 for fiscal year
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PRIVACY PROTECTION STUDY COMMISSION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$250,000,
to remain available until expended: *Provided, That this appro-
priation shall be available only upon enactment of authorizing
legislation.*

This supplemental will provide the Commission with the funding
required to assure that there is an adequate data base for formulating
recommendations to the President and the Congress regarding the ex-
tent to which the provisions of the Privacy Act of 1974 (P.L. 93-579)
should be made applicable to non-Federal levels of government and
the private sector.

I have carefully reviewed this budget request and I am satisfied that
it is necessary at this time. I recommend, therefore, that this pro-
posal be transmitted to the Congress.

Respectfully,

JAMES T. LYNN, *Director.*

APPENDIX B

ABSTRACT OF INFORMATION SUBMITTED BY THE COMMISSION TO THE
GOVERNMENT OPERATIONS COMMITTEE

I. Introduction

The Commission has built the capacity to move ahead at at least
double its current rate of progress and that capacity can be exploited
and grow if the necessary additional funds are forthcoming. However,
at the present time, the Commission is authorized to seek a total
appropriation of \$1.5 million, with the proviso that no more than
\$750,000 may be expended in any one fiscal year. This arrangement is
debilitating for several reasons. In the first place, the total sum
authorized is too small for the task the Commission must perform.
Second, because of the fiscal year expenditure limitation, the Com-
mission has so far been deprived of funding for the FY '76-FY '77
Transition Period. This means that instead of having to spread its
first \$750,000 over 12 months, it has had to stretch that sum out over
15 months. This would put a severe strain on any organization,
but in the case of the Commission, which has a small budget to begin
with, it could prove fatal. Whole segments of the task that the Congress
laid out for the Commission in the enabling legislation may have to
be abandoned simply because the money is not there.

Third, and perhaps most important, the Commission is a research
organization with a finite lifespan. Quality research always demands
lead time, and this is especially true when, as in the Commission's
case, budgetary constraints require that much of the research be
performed by outsiders who can only give part-time attention to their
assigned projects. In the Commission's case, moreover, the need for
larger sums at the beginning (rather than a small amount at the
beginning and a lot at the end as currently provided) is even more
acute, because the Commission will cease to exist three-quarters of
the way through its second fiscal year.

To meet its statutorily defined schedule, the Commission's fact-gathering and analytical work must be 80 percent complete by the end of January, 1977. Hence, if the money for substantial segments of the Commission's program does not become available until October 1, 1976, herculean efforts will be needed to keep the research product from being degraded simply because important parts could not be started soon enough. Indeed, if the current authorization pattern is not changed, it may be impossible to avoid a product of lesser quality than would otherwise be the case, and that in itself would be wasteful.

To avoid this array of clearly avoidable problems, the Commission seeks support to increase the Commission's total FY '76-FY '77 authorization from \$1.5 million to \$2 million; and removal of the mentioned fiscal year expenditure limitation so the Commission could use a Fiscal '76 supplemental appropriation.

What the Commission would be able to accomplish if these steps were taken is explained below. The Commission feels that the justification therein provided is persuasive and hopes that those whose support it seeks will agree.

II. The Commission Program

As currently planned, the Commission's program focuses on three dimensions of the privacy protection problem:

- (1) Record-keeping policies and practices;
- (2) Policy issues that cut across a range of personal data record-keeping activities; and
- (3) Trends that will influence the uses that organizations make of recorded information about individuals.

A. *Record Keeping Policies and Practices.*—At its September 1975 meeting, its first with staff, the Commission recognized that with so short a tenure and so limited a budget, it would be necessary to establish priorities early and to avoid making investments in studies or other advisory activities that are not absolutely essential to the fulfillment of its statutory mandate. Accordingly, at its October, 1975 meeting, the Commission identified as priority subjects of inquiry the privacy-related record-keeping policies and practices of the following types of organizations:

- Mailing List Compilers and Direct Mail Marketers.¹
- Credit-Card Issuers.
- Depository and Lending Institutions.
- Reservation Services.
- Insurance Underwriters.
- Public Assistance and Social Service Agencies.
- Housing Assistance Institutions (Mortgage Guarantee and Rent Subsidy).
- Statistical Agencies and Research Organizations.
- Primary Health-Care Providers and Third-Party Payers.
- Consumer-Reporting Agencies.
- Internal Revenue Service and Related State/Local Tax Authorities.¹
- Educational Institutions.
- Employers, Labor Unions, and Employment and Personnel Services.
- Federal Agencies Subject to the Privacy Act of 1974.

¹ Inquiry specifically required by sec. 5(c)(2)(B) of Public Law 93-579.

These 14 priority inquiries are the foundation stones of the Commission's program as currently planned, and are the areas in which the Commission plans to hold the majority of its public hearings. Key questions to be asked in regard to each are: (1) whether existing statutes and regulations (both Federal and State) already adequately protect the individual from known or foreseeable privacy abuses; (2) whether the principles and requirements of the Privacy Act of 1974 should be preferred to whatever laws or policies now apply; and (3) whether there are developments on the horizon which portend major shifts in the way in which information about individuals is now collected, used, and disseminated.

Wherever possible the Commission will examine and evaluate the effectiveness of recently enacted Federal and State privacy protection statutes, such as the Fair Credit Reporting Act; the Family Educational Rights and Privacy Act; the Fair Credit Billing Act; and the Fair Credit Reporting and Fair Information Practices statutes of States such as California, Maryland, Illinois, Tennessee, Minnesota, Arkansas, New Hampshire, and Utah. Care will also be taken to assure that the public record created by these inquiries will be as complete and accurate as possible, so as to provide a sound base for future governmental and private-sector deliberation and action.

Most of the 14 priority inquiries respond to suggestions the Congress made to the Commission in Section 5 of P.L. 93-579, and particularly Section 5(c)(2). The exceptions are public assistance, social services, housing, and Federal agencies subject to the Privacy Act of 1974. However, public assistance, social services, and housing programs comprise a substantial slice of the world of Federal-State information systems on which Section 5(c)(3)(B) requires the Commission to report. And as to the Privacy Act evaluation project, it almost goes without saying that the Commission could not responsibly recommend whether the principles and requirements of the Act should be applied outside the Federal government without first understanding and evaluating the Act's strengths and weaknesses in those situations where it now does apply.

B. *Cross-Cutting Policy Issues.*—One of the first actions of the Commission was to create a Subcommittee on Privacy and Freedom of Information, chaired by Commissioner Robert Tennesen of Minnesota. This was done primarily to keep the important privacy/freedom of information relationship in the forefront of the Commission's deliberations. However, it also served to underscore the need to identify information policy issues that will arise repeatedly in the Commission's inquiry, and that in the name of both economy and consistency should be isolated for special examination. At the present time, the Commission has identified 15 such issues which it proposes to address to some extent in its hearings, but mainly by bringing together small groups of policy makers and experts from various parts of the country who will contribute, through workshops and invited papers, to the development of the Commission's final recommendations.

The cross-cutting policy issues thus far identified can be roughly grouped into three categories:

(1) *Common Practices and Standards.*—This category would include the required report on how Federal agency records should be treated when they are disclosed to persons not subject to the Privacy Act of 1974; the question of whether an individual should be able to sue a Federal agency for general damages if he is harmed by a Privacy Act violation; the need for a strengthened policy on the use of standard universal identifiers, such as the Social Security number; and a systematic analysis of the relevance criteria that different types of record-keeping organizations use to decide when personal information should be recorded and to whom it should be disclosed;

(2) *Compliance Mechanisms.*—This would include a comparative analysis of Federal and State privacy protection statutes; of the mechanisms used in other Federal and State statutes that seek objectives analogous to those of an omnibus Privacy Act modeled on the Federal one but applicable at all levels of government and in the private sector; an analysis of the potential impact on State and local public-record statutes and policies of an all-encompassing Federal privacy law; an analysis of First Amendment problems that may be posed by the application of certain privacy protection requirements in the private sector; and an examination of the incentives and costs associated with voluntary efforts by private organizations, including some major corporations, to bring their record-keeping practices into conformity with the principles and requirements of the Federal Act.

(3) *Impact on Other Social Policy Objectives.*—This would include the required study of the impact of information systems on Federal-State relations and on the principle of separation of powers; and also an examination of the impact on government-private sector relationships that particular privacy protection requirements or arrangements may have.

The Commission's study of these cross-cutting issues can have a significant impact on the way privacy protection issues are dealt with in the future. It can help to cement connections between privacy protection and other information policy concerns, and, by enlisting the help of policy makers and outside experts from various parts of the country, it can also enlarge the universe of those who are prepared to deal with the privacy issue in an informed and judicious manner.

C. *Trend Assessments.*—To perform its tasks well, the Commission must be able to relate today's record-keeping applications of computer and telecommunications technology to those that are just below the horizon. This will involve not only an understanding of what applications are possible but also of the likelihood that they will actually be made. The Commission need not take a position on the results of its technology assessment project, but it does need to have the results available before it issues its final report.

The Commission's work could also profit from a well-designed probe of public attitudes toward the protection of personal privacy, and particularly the attitudes of people who have attempted to avail themselves of rights guaranteed them by extant privacy protection statutes. At the moment, this is not a priority item in the Commission's program simply because of the expense of doing a reputable study. However, it is a project the Commission would be disposed to undertake if the necessary funds were available.

It would also be advisable to undertake a few empirical case studies of the way records about an individual are actually used by organizations with whom the individual comes in contact, and the Commission is in a position to undertake such a study if it is able to afford it.

Finally, the Commission currently has two exploratory studies on its agenda—one on the privacy implications of cable television and the other on "privacy and the poor." Although the latter will surely be developed in the context of the Commission's hearings on public assistance and social services record keeping, the cable television project is another that will be undertaken on a "funds permitting" basis.

IV. Components of the supplemental request

The Commission program is composed of a variety of fact-gathering and analytical tasks. As much as possible, it aims to provide a forum for the expression of individual and organizational views, experiences, and opinions, and for the creation of a detailed and hitherto non-existent record to which others may also refer.

To fulfill these objectives, the Commission meets regularly on the second Thursday and Friday of every month and, in addition, has launched an ambitious program of public hearings. At the present time, the Commission plans to hold at least one two-day public hearing each month until November 1976, with four sets of hearings scheduled in July and August. This schedule, if met, will enable the Commission to complete its basic information-gathering activity by December 31, 1976. However, money permitting, the Commission also plans to hold several "validation" hearings on its draft final recommendations between February and April 1977.

Where the Commission has so far been stymied in its efforts to reach out for information, advice, and analysis, is in its work on the cross-cutting information policy issues and the trend assessments and exploratory studies. These constitute the analytical backbone of the Commission's program, but the Commission's budget is currently too small to permit the vigorous effort that is needed. Indeed, at the present time thought is being given to dropping some of the hearing projects focussed on State and local government problems because the Commission finances and staff are spread so thin, and money is needed for the impoverished analytical projects.

If funded, the program budget would give the Commission the minimum resources necessary to carry out its program within the statutorily defined time period.

To date, a project plan has been prepared for each of the Policies & Practices inquiries and candidates have been identified for all of the vacant staff assignments in the Policies & Practices Program. Almost all of the work under "Contracted Services" in that program budget has also been initiated, knowing, however, that it will have to be sharply curtailed if additional funds do not become available soon.

In the Cross-Cutting Issues Program, assignments to core staff have been made as indicated in the program budget, but there is no money for the outside principal investigators, workshop participants, and commissioned papers. In the Trend Assessments & Exploratory Studies Program, planning is nearly complete on all projects save two, but again, there is no money for execution. All positions in the Core Staff & Administrative Budget are currently filled except for the two Project secretaries.

The sums allocated for Travel, Rent & Communications, etc. assume the resources necessary to carry out other aspects of the projected program. The travel budget allows for the intensive preparatory work with hearing witnesses that has so far made the Commission hearings unusually successful. The Printing and Publication allotment would allow publication of at least three Commission reports in the spring of 1976—on mailing lists, taxpayer confidentiality, and the Commission's annual report. Without that allotment, only \$5,000 would be available to cover all three reports, thereby, in effect, making formal publication impossible. On the average, the transcript for each day of a Commission hearing or meeting costs \$500. Nine two-day meetings and 14 two-day hearings are provided for. No money is requested in either the 1976 or 1977 projections for the publication of hearing proceedings, although there appears to be a considerable demand for copies of the hearing transcripts.

Although the sums indicated in each of the budget categories are adequate, they are by no means generous. Rather, they reflect the fact that the Commission has reached a point where it knows where it is going, how to get there, who can help, and what resources are necessary.

In the final analysis the trade-off for the Commission is between time and money. As indicated earlier, the Commission believes that the job can be done within the allotted time if the money is available when it can be used to best effect. Additional support now, in the amount requested, will make an enormous difference in the quality of the final work product. Too little support will either force the Commission to deal superficially with important issues or to abandon large segments of its program.

ADDITIONAL INFORMATION SUBMITTED BY PRIVACY PROTECTION STUDY COMMISSION

MAY 1976.

Background memorandum on requested authorization increase

1. Commission formally requested and OMB has approved increase in total authorization from \$1.5 to 2M which reflects the Commission's total supplemental need.

2. Commission requested supplemental appropriation for FY-76 of \$381,000 with the understanding that we would also ask for an FY-77 supplemental appropriation of \$94,000. The President has submitted on OMB's recommendation a supplemental appropriation for \$250,000.

3. Three budget charts are enclosed which show the differences in levels of funding by program for FY-76, FY-77, and the total two-year program. What these figures mean in terms of the Commission's programs is as follows:

(a) Without any supplement:

(1) In our fact finding Practices Assessment Program, we would not be able to conduct hearings in FY-76 on the four public sector areas (Public Assistance and Social Services, Public Housing, Education, Research and Statistics); nor would we be able to initiate field work in FY-76 on our assessment of Federal agency implementation of the Privacy Act.

(2) Our cross-cutting program in FY-76 would be limited to the development of project plans and only one workshop limited to one of our 15 issues.

(3) Our trend assessment program would be almost entirely eliminated.

(b) The FY-76 \$250,000 supplement would allow us to:

(1) prepare the public sector hearings in FY-76 (\$40,000) initiate and complete most of the field work on the Privacy Act Implementation assessment so that we can hold good hearings in November (\$25,000), and also conduct needed follow-up research on our private sector and medical records hearings (\$34,000).

(2) Allow the conduct of the planned number of workshops on the cross-cutting issues (\$93,000).

(3) Allow initiation of the technology trend assessment project (\$24,000).

(4) Cover Commission compensation, travel costs, and court-reporting costs for the public-sector hearings (\$30,000).

(c) The additional \$131,000 supplement (requested but not yet approved for FY-76) would allow us:

(1) to improve significantly the quality of the Privacy Act Implementation Assessment Project by taking careful account of the reports and recommendations of the Senate and House inquiries into the record-keeping activities associated with exempted systems of records and by additional legal research (\$22,000) and to get some editorial assistance for our reports (\$6,000).

(2) to expand the technology trend assessment project to include specific record-keeping applications (\$10,000) and to conduct 4 exploratory studies on record-keeping areas for which the Commission does not have study projects (cable TV, licensing, telephone records, special privacy protection for the dependent poor) (\$12,000).

(3) to provide additional direct support costs for all Commission projects in the form of additional Commission meetings for deliberation and report review (\$20,000), report costs for interim reports on specific areas (\$15,000); and additional staff and consultant travel for hearings preparation and workshop participation.

(4) to provide administrative support costs generated by the \$250,000 supplemental (space, office equipment, communications and supplies) and personnel benefits (\$35,000).

(d) The FY-77 \$94,000 supplement would allow us to:

(1) expand the trend assessment studies through greater expert participation in their review and validation and to initiate several specific case studies of very likely or potentially dangerous developments (\$23,000).

(2) Increase the utility of the policy issue workshops by increasing Commission member and staff participation (\$16,000).

(3) Increase the level of Commission draft report review and deliberation through additional meetings between January and April (\$10,000).

(4) Increase the allocation for report production and printing and provide a small sum not now available for transcript reproduction (\$40,000).

FISCAL YEAR 1976

Program	No supplement	Additional requested in \$250,000 supplement	Total \$250,000 supplement	Additional requested in \$381,781 supplement	Total \$382,781 supplement
Practices assessment program.....	\$91,745	\$98,982	\$190,727	\$28,009	\$218,736
Cross-cutting program.....	22,700	97,599	120,299	0	120,299
Trend assessment program.....	6,000	24,000	30,000	20,000	50,000
Administrative program ¹	629,555	29,419	658,974	82,772	741,746
Total.....	² 750,000	250,000	1,000,000	130,781	1,130,781

¹ Includes core staff and administrative budget (management, legal, and clerical staff in support of all programs, Commission compensation and travel, rent, communications, materials, supplies, and GSA support services, and some professional staff for practices assessment program).

² \$748,000 actually appropriated.

FISCAL YEAR 1977

Program	No supplement	Additional requested in \$94,000 supplement	Total \$94,000
Practices assessment.....	126,116	0	126,116
Crosscutting program.....	89,693	0	89,693
Trend assessment program.....	20,000	23,000	43,000
Administrative program.....	514,191	171,192	585,383
Total.....	750,000	94,192	844,192

¹ Includes: \$40,000 for reports publication and transcript reproduction costs; \$10,000 for Commission report review meetings; \$21,000 for Commission and staff participation in the crosscutting program workshop.

FISCAL YEAR 1976-77

Program	No supplement	Additional requested \$250,000 supplement	Total \$250,000	Additional requested \$475,000 supplement	Total \$475,000 supplement
Practices assessment program.....	\$217,861	\$98,982	\$316,843	\$28,009	\$344,852
Problem assessment program.....	112,393	97,599	209,992	0	209,992
Trend assessment program.....	26,000	24,000	50,000	43,000	93,000
Administrative program.....	1,143,746	29,419	1,173,165	153,964	1,327,129
Total.....	1,500,000	250,000	1,750,000	224,973	1,974,973

APPENDIX C

PRIVACY PROTECTION STUDY COMMISSION,
Washington, D.C., March 17, 1976.

HON. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for your consideration is a draft amendment to Section 9 of the Privacy Act of 1974, P.L. 93-579.

The purpose of this amendment is twofold. First, the amendment will remove the restrictive fiscal year expenditure limitation of Section 9. This change will permit the Privacy Protection Study Commission to obligate its funds at a rate necessary to initiate research studies and hold hearings which will form the basis of its recommendations to the President and the Congress. Second, the amendment will authorize appropriations of \$2 million to carry out the provisions of

Section 5 of the Act for fiscal years 1976, the period July 1, 1976 to September 30, 1976, and 1977. The history of the Commission to date has demonstrated that the current authorization of \$1.5 million is inadequate to allow the Commission to perform fully all of the tasks mandated in its statute.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAVID F. LINOWES,
Chairman.

Enclosure.

"SECTION 9. There is authorized to be appropriated, without fiscal year limitations, the sum of \$2,000,000 to carry out the provisions of Section 5 of this Act for the period beginning on July 1, 1975 and ending on September 30, 1977."

OFFICE OF THE VICE PRESIDENT,
Washington, March 29, 1976.

HON. DAVID F. LINOWES,
Chairman, Privacy Protection Study Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: This will serve as notification of the receipt and appropriate referral of your letter dated March 17. The letter transmitted a draft amendment to Section 9 of the Privacy Act of 1974, P.L. 93-579.

The letter was received in this office on March 17 and was referred to the Committee on Government Operations on March 17.

Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

H. SPOFFORD CANFIELD,
Administrative Assistant
to The President of the Senate.

○

AUTHORIZATION OF APPROPRIATIONS FOR THE PRIVACY PROTECTION STUDY COMMISSION

August 10, 1976.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,
submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany S. 3435]

The Committee on Government Operations, to whom was referred the bill (S. 3435) to increase an authorization of appropriations for the Privacy Protection Study Commission, and to remove the fiscal year expenditure limitation, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the bill is to increase the authorization for the Privacy Protection Study Commission from \$1,500,000 to \$2,000,000, and to remove the provision of its enabling legislation which prohibits it from spending more than \$750,000 in a single fiscal year.

BACKGROUND OF THE LEGISLATION

The Privacy Act of 1974 (Public Law 93-579) sought to accomplish three basic reforms with respect to records maintained by Federal agencies: first, to require that all systems of records be publicly announced; second, to permit every American to have access to records about him maintained by Federal agencies and to secure correction of any inaccuracies in such records; and third, to limit the disclosure of such records without the consent of the subject.

The Privacy Protection Study Commission was created by section 5 of the Privacy Act. The Commission has seven members: three appointed by the President; two appointed by the President of the Senate; and two appointed by the Speaker.

The life of the Commission began officially on June 10, 1975, when the seventh member was appointed. The Commission's final report is

due on June 10, 1977; 30 days thereafter the Commission will cease to exist.

The Commission has two principal tasks to perform:

(1) To make a study of the data banks, automated data processing programs, and information systems of governmental, regional and private organizations, in order to determine the standards and procedures now in force for the protection of personal information; and

(2) To make recommendations to the President and the Congress on the extent, if any, to which the principles and requirements of the Privacy Act of 1974 should be applied to such organizations—through legislation, administrative action, or voluntary adoption.

As part of the study called for in (1) above, the Commission is also required to report on five specifically enumerated information policy issues:

Whether a person engaged in interstate commerce who maintains a mailing list should be required to remove the name and address of any individual who does not want to be on the list;

Whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other Federal agencies and to agencies of State government;

Whether an individual who has been harmed as a consequence of a willful or intentional violation of the Privacy Act of 1974 should be able to sue the Federal Government for general damages;

Whether, and if so, how, the standards for security and confidentiality of records that the Privacy Act requires Federal agencies to adopt should be applied when a record is disclosed to a person other than an agency; and

Whether, and to what extent, governmental and private information systems affect Federal-State relations and the principle of separation of powers.

Finally, in any study the Commission undertakes, it is required to:

(1) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study, as well as the extent to which they are consistent with the rights of privacy, due process, and other guarantees in the Constitution; and

(2) to the maximum extent practicable, collect and use findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study.

The Commission, in sum, is required to undertake a comprehensive study of information policies and practices that affect the collection, use, and dissemination of recorded information about individuals; to document accurately and in detail what those policies and practices are; to take account of debate, research, statutes, regulations, judicial interpretations, and policy determinations at all levels of government and in the private sector; and to be prepared to comment from time

to time, and in a balanced manner, on a broad range of controversial information policy issues.

The Privacy Act authorizes the sum of \$1,500,000 for the work of the Commission. It also places a limit of \$750,000 upon the amount the Commission may expend in any one fiscal year. With respect to the fiscal year expenditure limitation, the Office of Management and Budget has ruled that Fiscal Year 1976 and the Transition Quarter (July 1, 1976-September 30, 1976) constitute a single fiscal year, thus limiting expenditures by the Commission under the existing law to \$750,000 for this 15-month period.

At its February 13, 1976, meeting, the Commission unanimously voted to submit a fiscal year 1976 supplemental budget request in the amount of \$380,781, and to seek a total authorization for fiscal year 1975, 1976, and 1977 of \$2 million, or \$500,000 more than originally authorized.

Subsequently, on March 23, a formal request for a supplemental appropriation for fiscal year 1976 in the amount of \$250,000 for the Commission was submitted by the President. The appropriation was enacted on June 1, 1976, as part of H.R. 13172, Second Supplemental Appropriations Act, 1976, making supplemental appropriations for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, with a proviso which states that the appropriation shall be available only upon the enactment of authorizing legislation.

S. 3435, as passed by the Senate, removes the fiscal year expenditure limitation. It also increases the Commission's authorization by \$500,000 to \$2,000,000, of which \$250,000 represents the sum appropriated in the Second Supplemental Appropriation Act, 1976 and \$250,000 is available for future appropriation.

Your committee has carefully considered the testimony and written evidence submitted on behalf of the Commission's request. The committee commends the Commission for the outstanding work it has done thus far, and recommends that the fiscal year expenditure limitation be removed and that the authorization for the Commission be increased by \$500,000 to \$2,000,000. In establishing the Commission, the Congress intended that it make the most efficient use possible of its limited funds and life, and that, to this end, it take care not to duplicate the work of congressional committees or of other study commissions. In recommending passage of this legislation, the committee emphatically reiterates that intent.

HEARING

The Government Information and Individual Rights Subcommittee held a hearing on S. 3435 on June 9, 1976, at which testimony was heard from David F. Linowes, Chairman of the Commission, and other Commission representatives.

COMMITTEE VOTE

At a meeting of the full Committee on Government Operations on August 3, 1976, a quorum being present, S. 3435, as amended, was approved and ordered reported by voice vote.

STATEMENT PURSUANT TO CLAUSE 7(a) OF RULE XIII

The committee estimates that the cost of carrying out this legislation in Fiscal Year 1976 will be zero, in the Transition Quarter (July 1, 1976–September 30, 1976) zero, and in Fiscal Year 1977 \$500,000. Since the life of the Commission cannot extend beyond Fiscal Year 1977, no costs will be incurred in subsequent fiscal years.

Other than the request of the Commission for a \$500,000 increase in its authorization, no Government agency has submitted any estimate of such costs to the committee.

STATEMENT PURSUANT TO CLAUSE 2(1) (3) (A) OF RULE XI

No oversight findings or recommendations have been made with regard to this measure.

STATEMENT PURSUANT TO CLAUSE 2(1) (3) (C) OF RULE XI

The estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 24, 1976.

HON. JACK BROOKS,
Chairman, Committee on Government Operations, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 3435, Amendment to the Privacy Act of 1974.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE, June 24, 1976.

COST ESTIMATE

1. Bill Number: S. 3435.
2. Bill Title: Amendment to the Privacy Act of 1974.
3. Purpose of Bill:

This proposed legislation increases the authorization to the Privacy Protection Study Commission from \$1.5 million to \$2.0 million. In addition, it removes the Commission's present yearly expenditure limitation of \$750,000, thus allowing the Commission to incur obligations as required.

4. Cost Estimate:

(In thousands of dollars)

	Fiscal year—					
	1976	Transition quarter	1977	1978	1979	1980
Authorization level.....	500					
Costs.....			500			

5. Basis for Estimate:

Although the bill authorizes appropriations of \$2 million for the Commission, only \$500 thousand represents additional authorization (\$1.5 million was authorized in Section 9 of Public Law 93-579). Given the present rate of spending, most of the existing authorization will be exhausted prior to fiscal year 1977. Consequently, the \$500 thousand additional authorization in this bill is assumed to spent totally in fiscal year 1977.

6. Estimate Comparison: None.

7. Previous CBO Estimate: None.

8. Estimated Prepared By: Arleen Fain Gilliam (225-9676).

9. Estimate Approved By:

C. G. NUCKELS
(For James L. Blum,
Assistant Director for Budget Analysis).

STATEMENT PURSUANT TO CLAUSE 2(1) (4) OF RULE XI

The enactment of this bill into law is not expected to have any inflationary impact on prices or costs in the operation of the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 9 OF PUBLIC LAW 93-579

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes

* * * * *

SEC. 9. There is authorized to be appropriated [to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year], without fiscal year limitation only to such extent or in such amounts as are provided in appropriation Acts, the sum of \$2,000,000 to carry out the provisions of section 5 of this Act for the period beginning July 1, 1975, and ending on September 30, 1977.

○

**AUTHORIZATION OF APPROPRIATIONS FOR THE
PRIVACY PROTECTION STUDY COMMISSION**

**HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES**

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 13681

TO AMEND THE PRIVACY ACT OF 1974

H.R. 13682

TO AMEND THE PRIVACY ACT OF 1974

AND

S. 3435

**TO INCREASE AN AUTHORIZATION OF APPROPRIATIONS
FOR THE PRIVACY PROTECTION STUDY COMMISSION,
AND TO REMOVE THE FISCAL YEAR EXPENDITURE
LIMITATION**

JUNE 9, 1976

Printed for the use of the Committee on Government Operations



U.S. GOVERNMENT PRINTING OFFICE

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(II)

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(III)

Subcommittee will be in order.

We meet this morning to hear testimony on three bills—H.R. 13681, H.R. 13682, and S. 3435—relating to the authorization of appropriations for the Privacy Protection Study Commission created under the Privacy Act of 1974.

Without objection, the text of these measures will be included in the record at the conclusion of my opening remarks, along with the text of the Privacy Act.

The Privacy Act of 1974 was born in this subcommittee. Its substantive provisions sought to accomplish three basic reforms with respect to records maintained by Federal agencies: first, to require that all systems of records be publicly announced; second, to permit every American to have access to records about him maintained by Federal agencies and to secure correction or expungement of any inaccuracies in such records; and third, to limit the disclosure of such records without the consent of the subject.

The Privacy Act was signed into law on December 31, 1974, and took effect on September 27, 1975. Since its enactment this subcommittee has been very active in overseeing the promulgation of implementing regulations and the general administration of the act. Problems have begun to appear here and there, and we hope in the not too distant future to deal with some of them legislatively if they cannot be cleared up administratively.

The Privacy Act also established the Privacy Protection Study Commission and gave it two basic responsibilities: first, to study public and private information systems in order to determine the standards and procedures in force for the protection of personal

(I)

**AUTHORIZATION OF APPROPRIATIONS FOR THE
PRIVACY PROTECTION STUDY COMMISSION**

WEDNESDAY, JUNE 9, 1976

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 2247, Rayburn House Office Building, Hon. Bella S. Abzug (chairwoman of the subcommittee) presiding.

Present: Representatives Bella S. Abzug and Clarence J. Brown.

Also present: Eric L. Hirschhorn, counsel; Anita W. Wiesman, clerk; and Thomas H. Sullivan, minority professional staff, Committee on Government Operations.

Ms. ABZUG. The Government Information and Individual Rights Subcommittee will be in order.

We meet this morning to hear testimony on three bills—H.R. 13681, H.R. 13682, and S. 3435—relating to the authorization of appropriations for the Privacy Protection Study Commission created under the Privacy Act of 1974.

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The Privacy Act also established the Privacy Protection Study Commission and gave it two basic responsibilities: first, to study public and private information systems in order to determine the standards and procedures in force for the protection of personal

information; and second, to recommend to Congress and the President the extent to which the substantive aspects of the Privacy Act should be applied to the private sector.

The Commission was also specifically directed to study such matters as exclusion from mailing lists, limitation of the dissemination of tax information by the Internal Revenue Service, whether damages should be available when the Federal Government violates the Privacy Act, and what security standards should be applied when a personal record is disclosed to a person or entity not directly covered by the act. The legislation also enumerated various other areas of study open to the Commission.

The Commission has thus far held a number of hearings in pursuit of its studies, at one of which I had the pleasure of testifying on the recordkeeping practices of credit card issuers. It has also begun a number of projects not involving hearings.

Section 9 of the Privacy Act authorizes the sum of \$1,500,000 for the work of the Commission. It also places a limit of \$750,000 upon the amount the Commission may expend in any 1 fiscal year.

The Commission has asked that the authorization be increased by \$500,000 to \$2 million, and that the fiscal year expenditure limitation be repealed. S. 3435 and H.R. 13682 would accomplish both of these, while H.R. 13681 would only remove the fiscal year expenditure limitation.

[The bills and Public Law 93-579 follow:]

The Privacy Act of 1974 was born in this subcommittee. Its substantive provisions sought to accomplish three basic reforms with respect to records maintained by Federal agencies: first, to require that all systems of records be publicly announced; second, to permit every American to have access to records about him maintained by Federal agencies and to secure correction or expungement of any inaccuracies in such records; and third, to limit the disclosure of such records without the consent of the subject.

The Privacy Act was signed into law on December 31, 1974, and took effect on September 27, 1975. Since its enactment this subcommittee has been very active in overseeing the promulgation of implementing regulations and the general administration of the act. Problems have begun to appear here and there, and we hope in the not too distant future to deal with some of them legislatively if they cannot be cleared up administratively.

The Privacy Act also established the Privacy Protection Study Commission and gave it two basic responsibilities: first, to study public and private information systems in order to determine the standards and procedures in force for the protection of personal

H. R. 13681

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1976

Ms. ABZUG (by request) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 9 of the Privacy Act of 1974 (88 Stat. 1910)
- 4 is amended by striking out “, except that not more than
- 5 \$750,000 may be expended during any such fiscal year”.

I

Passed the Senate May 19, 1976.

Attest:

FRANCIS R. VALEO

Secretary

94TH CONGRESS
2D SESSION

H. R. 13682

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1976

Ms. ABZUG (by request) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That section 9 of the Privacy Act of 1974 is amended to
 4 read as follows:
 5 "SEC. 9. There is authorized to be appropriated, without
 6 fiscal year limitation only to such extent or in such amounts
 7 as are provided in appropriation Acts, the sum of \$2,000,000
 8 to carry out the provisions of section 5 of this Act for the
 9 period beginning July 1, 1975, and ending on September 30,
 10 1977."

I

94TH CONGRESS
2D SESSION

S. 3435

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1976

Referred to the Committee on Government Operations

AN ACT

To increase an authorization of appropriations for the Privacy Protection Study Commission, and to remove the fiscal year expenditure limitation.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the provision of law referred to in the note immedi-
 4 ately preceding section 553 of title 5, United States Code,
 5 is amended to read as follows:
 6 "SEC. 9. There is authorized to be appropriated, with-
 7 out fiscal year limitation only to such extent or in such
 8 amounts as are provided in appropriation Acts, the sum of
 9 \$2,000,000 to carry out the provisions of section 5 of this
 10 Act for the period beginning July 1, 1975, and ending on
 11 September 30, 1977."

Passed the Senate May 19, 1976.

Attest: FRANCIS R. VALEO,
Secretary.

I



Public Law 93-579
93rd Congress, S. 3418
December 31, 1974

An Act

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

Sec. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

Privacy Act
of 1974,
5 USC 552a
note.
Congressional
findings,
5 USC 552a
note.

Statement of
purpose.

88 STAT. 1896
88 STAT. 1897

Pub. Law 93-579 - 2 - December 31, 1974

88 STAT. 1897

5 USC 552a.

"§ 552a. Records maintained on individuals

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (c)(4)(D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which

13 USC 8.

maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

"(11) pursuant to the order of a court of competent jurisdiction.

"(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

"(2) permit the individual to request amendment of a record pertaining to him and—

"(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either—

"(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason

Personal
review.

Amendment
request.

for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

Review.

"(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

Notation of
dispute.

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

"(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

Publication
in Federal
Register.

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(I) the categories of sources of records in the system;

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

"(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified

Rules of
conduct.

Confidentiality
of records.

Publication
in Federal
Register.

5 USC 553.

in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

Fees.

Publication
in Federal
Register.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency

"(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d) (1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of

Jurisdiction.

Amendment
of record.

Injunction.

any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (c) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

"(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through

Damages.

5 USC 553.

(F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I) and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552 (b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services pursuant to section 3056 of title 18;

"(4) required by statute to be maintained and used solely as statistical records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the

5 USC 553.

5 USC 552.

18 USC 3056.

Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or
 "(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

"(iii) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

"(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

"(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such

5 USC 553.

44 USC 3103.

Publication
in Federal
Register.Notice to
Congress and
OMB.Report to
Speaker of
the House
and Presi-
dent of the
Senate.

5 USC 552.

5 USC prec.
500.Privacy Pro-
tection Study
Commission.
Establishment.
5 USC 552a
note.
Membership.

Vacancies.

proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

"(p) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

"(q) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

Sec. 5. (a)(1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission.

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c) (1) In the course of conducting the study required under subsection (b) (1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) (A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

Budget requests.

Legislative recommendations.

Study.

Ante, p. 1897.

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

(iv) whether and how the standards for security and confidentiality of records required under section 552a (c) (10) of such title should be applied when a record is disclosed to a person other than an agency.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e) (1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Com-

Ante, p. 1897.

Religious organizations, exception.

Guidelines for study.

mission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) (A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a (a) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

88 STAT. 1908

Reports,
transmittal
to Commission.
Ante, p. 1897.

5 USC 5101,
5331.

5 USC 5332
note.

Rules and
regulations.

88 STAT. 1909

Compensation.

(f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

Per diem.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

5 USC 5332
note.Travel ex-
penses.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

Report to
President
and Congress.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

Penalties.

(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

5 USC 552a
note.

SEC. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Ante, p. 1897.

SEC. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

5 USC 552a
note.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

December 31, 1974 - 15 - Pub. Law 93-579

Sec. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

Sec. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year.

Approved December 31, 1974.

88 STAT. 1910
Effective date.
5 USC 552a.
note.

Appropriation.
5 USC 552a
note.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1416 accompanying H.R. 16373 (Comm. on Government Operations).

SENATE REPORT No. 93-1183 (Comm. on Government Operations).
CONGRESSIONAL RECORD, Vol. 120 (1974):

Nov. 21, considered and passed Senate.

Dec. 11, considered and passed House, amended, in lieu of H.R. 16373.

Dec. 17, Senate concurred in House amendment with amendments.

Dec. 18, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 1:
Jan. 1, Presidential statement.

Ms. ABZUG. Our witness today will be David F. Linowes, Chairman of the Privacy Protection Study Commission. Mr. Linowes will be accompanied by Vice Chairman Willis Ware; Carole Parsons, Executive Director of the Commission; Ronald Plessler, General Counsel of the Commission; and Louis Higgs, Deputy Executive Director of the Commission.

It is a pleasure to have you with us.

If you wish, you may summarize your statement orally and we will include the entire statement in the record.

STATEMENT OF DAVID F. LINOWES, CHAIRMAN OF THE PRIVACY PROTECTION STUDY COMMISSION; ACCOMPANIED BY WILLIS WARE, COMMISSIONER; CAROLE PARSONS, EXECUTIVE DIRECTOR; LOUIS HIGGS, DEPUTY EXECUTIVE DIRECTOR; AND RONALD PLESSER, GENERAL COUNSEL

Mr. LINOWES. We submitted a complete statement of some 19 or 20 pages which we would like to have inserted in the record.

Ms. ABZUG. Without objection, the statement will be inserted.

Mr. LINOWES. I have abbreviated that to some nine and a half pages which, with your permission, I think perhaps I would like to read.

Ms. ABZUG. Please proceed.

Mr. LINOWES. I am David F. Linowes, as you indicated, Chairman of the Privacy Protection Study Commission.

My purpose in being here today is to testify on behalf of the Commission's request for amendment of section 9 of the Privacy Act of 1974 to remove the current \$750,000 fiscal year limitation on Commission expenditures and to increase the Commission's total authorization from \$1,500,000 to \$2 million, as you earlier indicated.

I hope that as a result of my appearance today you will agree with us that the adoption of these measures is necessary if the Commission is to fulfill the formidable mandate the Congress gave it in section 5 of the Privacy Act.

I would like to speak first to the matter of the fiscal year expenditure limitation. Section 9 of the Privacy Act prohibits the Commission from expending more than \$750,000 in any one fiscal year. Since the current fiscal year does not end until September 30, 1976, that means that we are prohibited from spending more than \$750,000 over a 15-month period, even though the Congress has now appropriated a total of \$1 million for the Commission in fiscal year 1976. Moreover, the fiscal year expenditure limitation has deprived us of any discretion to allocate funds from one fiscal year to another, even though our Commission's life is but 2 years.

I understand that it is not unusual for a limited-duration commission such as ours to be free to allocate the total amount of its authorized funds during the course of its life, and we also have found no legislative history, formal or informal, which indicates that the Congress wanted to deprive the Commission of the ability to do so. We, therefore, hope that you will agree that the fiscal year limitation in section 9 should be eliminated.

Section 9 of the Privacy Act also places a total authorization limit of \$1.5 million on the Commission. This simply is not enough to accomplish the work that Congress has set out for the Commission.

Accordingly, in addition to a deletion of the fiscal year expenditure limitation, we are seeking an increase in our authorization from the current \$1.5 million to \$2 million for the entire 2-year period. This would allow us to receive the \$250,000 fiscal year 1976 supplemental recently appropriated for us by H.R. 13172, Second Supplemental Appropriations Act of 1976, without prejudice to our \$750,000 appropriation request for fiscal year 1977.

In addition, it would allow us to request a fiscal year 1977 supplemental of approximately \$100,000 which we know we need to complete our study program, and also would provide us with funding to cover two likely items:

- (1) the need to publish an edited version of the transcripts of particular Commission hearings should Congress or others request it; and
- (2) the need to provide for additional meetings of the Commission and selected experts in March and April 1977, should that be required for the Commission to complete its deliberations.

At this point I would like to say a few words about the Commission's mandate and the program it has undertaken to fulfill that mandate. The principal charge to the Commission is to make a thoroughgoing study of the "data banks, automated data processing programs, and information systems of governmental, regional, and private organizations," and as a result of such study to recommend to the President and the Congress the extent, if any, to which the principles and requirements of the Privacy Act of 1974 should be applied to organizations to which they do not now apply.

In addition, section 5 of the Privacy Act requires the Commission to report on five specifically enumerated information policy issues and suggests further that the Commission include in its inquiry interstate transfers of information about individuals; information systems that affect individual rights other than the right to personal privacy; uses made of the social security number and other standard universal identifiers; the matching and analysis of statistical data with personal information gleaned from other, nonstatistical sources; and the personal data recordkeeping practices of organizations in the fields of medicine, insurance, education, employment, travel, hotel, and entertainment reservations, credit banking, consumer reporting, cable television, and electronic funds transfer.

The Commission early in its life identified a number of priority inquiries. These were organized into three programs: a recordkeeping practices assessment program; a crosscutting policy issues program; and a trend assessments program. A detailed description of these three programs is included in the written testimony that I have submitted to this subcommittee. Hence, I will only briefly describe them now.

The recordkeeping practices assessment program consists of 14 priority inquiries, which are the factfinding foundations of the Commission's entire program. These projects respond to specific suggestions the Congress made to our Commission in section 5 of the Privacy Act.

As you may know, the Commission has so far held public hearings in 5 of the 14 practices assessment areas. The Commission was pleased to have the distinguished chairwoman of this subcommittee as a witness at our February 1976 hearings on the recordkeeping practices of credit card issuers.

We begin a sixth round of hearings—on primary health care providers and third-party payers—in Los Angeles tomorrow at 10 a.m. These will be followed by at least 1 additional day of hearings on medical records in Washington and by hearings on credit reporting and consumer investigative agencies, also in Washington, the first week in August.

Originally, we had scheduled hearings on education records, public assistance and social services records, and records used by research and statistical agencies and organizations for this summer as well.

Now, however, because of the money shortage, we have had to slow down our preparations for these hearings to the point where unless the \$250,000 fiscal year 1976 supplemental is made available very soon, we will have to put them all off until after October 1, which means, in effect, that some of them may have to be canceled. We would regret this.

We have currently allocated approximately \$159,000—\$91,000 for staff and \$68,000 for support costs—to the recordkeeping practices assessment program during fiscal year 1976; \$129,000 of the requested \$250,000 supplemental appropriation is needed this year for this program—\$99,000 for staff and \$30,000 for support costs.

Given the \$250,000 supplement, the Commission will spend in fiscal year 1976 approximately \$288,000 total for staffing and support costs for these 14 projects. In fiscal year 1977 we expect to spend an additional \$126,000 on them for staffing and \$51,000 for hearings support costs. Thus, the total allocation for the Commission's inquiry into recordkeeping practices over the 2-year period will be approximately \$465,000.

The Commission has identified a number of crosscutting information policy issues that will arise repeatedly in its inquiry and that in the name of both economy and consistency of treatment should be isolated for special examination. It is these issues that will be explored in the context of our second program, the crosscutting policy issues program.

The program plan approved by the Commission at its January meeting organized 12 of these crosscutting issues into three categories.

The first category is "Common Practices and Standards," which will include, for example, an examination of the need for a strengthened policy on the use of standard universal identifiers, and the criteria and procedures that should be applied in determining when Government agencies should be given access to records about individuals held by third parties.

The second category is entitled "Compliance Mechanisms." It includes a comparative analysis of Federal and State fair information practices statutes and their respective implementation problems. Also included in this category is an examination of the incentives and costs associated with efforts by private organizations, including some major corporations, to bring their recordkeeping practices into conformity with the requirements of recent fair information practices legislation.

The third category of our crosscutting issues program is called "Impact on Other Social Policy Objectives." This category includes the required study of the impact of information systems on Federal-State relations and on the principle of separation of powers. Also included here is an examination of conflicts between the Federal Privacy and Freedom of Information Acts.

These 12 projects will be managed by current members of our research and legal staffs, but the bulk of the work will be done by teams of outside experts and several part-time professionals who will be retained on a consulting basis.

Because of the priority placed on the practices assessment projects and the partial dependence of the crosscutting analytical projects on the results they produce, we have only allocated \$23,000 from our current fiscal year 1976 budget for the planning of these projects.

In order to initiate each of these projects in fiscal year 1976, we need \$97,000 more than the \$23,000 currently allocated to the program. With the \$250,000 supplemental, in other words, the Commission would spend approximately \$120,000 for these 12 projects in fiscal year 1976.

In our fiscal year 1977 budget request, we allocated \$90,000 for completion of these projects. Out of the \$100,000 we project we will need as a fiscal year 1977 supplemental, we would allocate an additional \$16,000. Thus, the total investment for the analysis of these major policy issues over the 2-year period will be approximately \$226,000.

Finally, the Commission recognized early that its recommendations must take into account future trends in recordkeeping practices, and particularly trends in the application of new technologies to personal data recordkeeping. This was a point the distinguished chairwoman made when she was good enough to testify before our Commission.

Thus, our third program is a trend assessment program. The Commission has already initiated a preliminary study aimed at projecting the state of the art in computer technology applications to the 1985-90 period.

In addition to this trend assessment project, the Commission would also like to undertake a small number of exploratory studies aimed at informing it of significant problem areas not currently on our list of priority inquiries.

The trend assessment program is currently allocated \$6,000 for initiation of the technological trend assessment study; \$24,000 of the \$250,000 supplement is needed to continue work on the technological trend assessment study and to initiate four of the small exploratory studies.

In fiscal year 1977 we have allocated \$20,000 to complete the technological trend assessment study, and out of the anticipated fiscal year 1977 supplemental request of \$100,000, we would allocate an additional \$23,000 for the initiation of a study of the attitudes and experiences of people who have attempted to avail themselves of the rights guaranteed them by extant fair information practices statutes.

Thus, the Commission's total effort for this program is budgeted at \$73,000.

The Commission's total program is clearly an ambitious one. In our view, however, it is the minimum necessary to fulfill our statutory mandate. And we are anxious to be permitted to so proceed without being forced to consider cutting back these plans.

To briefly recapitulate, in fiscal year 1976, given the \$250,000 supplemental appropriation, the Commission will initiate and conduct 14 factfinding projects, 12 policy-issue inquiries, and 5 background studies. We propose expending some \$438,000 that is directly attrib-

utable to these projects. Our administrative costs for the operation of the Commission and support of these programs add up to \$374,000.

In addition, the startup and program planning costs for the period June-December 1975—that is, prior to the first of January 1976—were \$188,000.

In fiscal year 1977, assuming approval of the Commission's currently outstanding appropriation request of \$750,000, we will complete the factfinding projects, issues analysis projects, and background studies just described. We plan to expand \$287,000 for the completion of these activities. An additional \$463,000 is earmarked for maintaining the core staff capability necessary to complete these projects, to synthesize the results and to assist the Commission in making its decisions, and to prepare and reproduce its final report to the Congress and the President.

The projected \$100,000 fiscal year 1977 supplemental appropriation request would provide \$39,000 for the three programs, as described above, and an additional \$61,000 for production of reports on specific topics in addition to the final report.

In sum, we clearly project the need for an additional \$350,000 to conduct our program as described. However, our fiscal year 1977 budget, even including the anticipated \$100,000 supplemental request, contains no funds for editing and publishing the transcripts of the Commission's public hearings.

They are already much in demand, and the cost of reproducing them on request must be borne by the Commission on what amounts to a nonreimbursable basis.

Nor does our fiscal year 1977 budget include funds for additional meetings of the Commission and experts during the February-April 1977 period. These could well be required for the Commission to complete its deliberations. It is for these items that we are requesting a margin of \$150,000 which brings our total authorization request up to \$2 million, or \$500,000 more than section 9 currently provides.

Madam Chairwoman and members of the subcommittee, this concludes my presentation of the facts that support the Privacy Commission's request for removal of the fiscal year limitation on Commission expenditures and for an increase in the Commission's authorization ceiling to \$2 million. I am confident that the Commission has built the capacity to do its job well, and on time, if the necessary resources are made available to us.

Needless to say, I and the Commission staff members present will be pleased to answer any questions you may have.

Ms. ABZUG. Thank you very much for your testimony.

Have other study commissions published their hearings?

Mr. LINOWES. We have transcripts which have been made available, yes. Have other commissions? I misunderstood your question.

To my knowledge, I have been aware of other study commissions. I cannot name which ones. Perhaps our Executive Director would be better informed on that.

Miss PARSONS. It is done from time to time but not always, certainly. The only reason that we foresee this as something which might well be something we would want to do is that there has been quite a bit of interest expressed in having copies of our transcripts already.

Ms. ABZUG. From whom? From what sources?

Miss PARSONS. Of the requests we have had, about half have come from Members of the Congress and their staffs and the rest are members of the general public.

Counsel tells me that the Wiretap Commission recently published its hearings.

Ms. ABZUG. Would you please supply for the record what commissions have published their hearings, if you have that.

Mr. PLESSER. Within 2 years?

Ms. ABZUG. Supply that for the record.

[The information follows:]

PRIVACY PROTECTION STUDY COMMISSION

2120 L Street NW.
Washington, D.C. 20506

David F. Linowes, Chairman
Willis H. Ware, Vice Chairman
William O. Bailey
William B. Dickinson
Hon. Barry M. Goldwater, Jr.
Hon. Edward I. Koch
Robert J. Tennesen

June 21, 1976

Carole W. Parsons
Executive Director
Ronald L. Plesser
General Counsel

The Honorable Bella S. Abzug
Subcommittee on Government Information
and Individual Rights
Room B-349C Rayburn Building
Washington, D. C. 20515

Dear Congresswoman Abzug:

During the June 9, 1976 Subcommittee hearing on the Privacy Commission's request for amendment of its authorizing legislation, you asked me to supply for the record the names of other independent commissions whose hearing transcripts have been published.

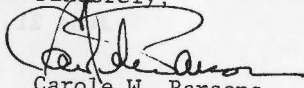
Upon consultation with the Library of Congress, the Privacy Commission staff was told that in the last ten years it has been unusual for independent Commissions to publish the transcripts of their hearings, largely because the material that would thereby have been available was not deemed of sufficient Congressional or public interest. Notable exceptions have been the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance and the U.S. Commission on Population Growth and the American Future. The former recently published two volumes of hearing testimony totalling 1664 pages; the latter published a portion of its hearing record in 1972.

The rationale for publishing the hearing transcripts of the Privacy Protection Study Commission lies in their uniqueness --the insurance and medical records hearings being but two examples, in the wide interest the hearings have generated, and in the expressed hope of the Congressional sponsors of the Privacy Act of 1974 that the Commission will be able to "assist the Executive Branch and the Congress. . .as well as representatives of State and local government and the private sector

who are attempting to deal with this important problem." (Cong. Rec., December 17, 1974, p. S21816; December 18, 1974, p. H12243).

I trust that you will consider this information responsive to your inquiry and thank you again for your attention to the Commission's work.

Sincerely,


Carole W. Parsons
Executive Director

cc: Mr. Eric L. Hirschhorn
Mr. David F. Linowes

Mr. LINOWES. The hearings which we are conducting now probing the private sector to my knowledge is the first time such an investigation has been undertaken. We feel the record we are developing can be extremely valuable, not just for this Commission but to Congress as well. That is one of the reasons we would like to urge they be published.

Ms. ABZUG. How much will that cost?

Mr. LINOWES. We have alloted some \$61,000 for that, I believe.

Miss PARSONS. Our estimate of the cost of editing and printing the hearing transcripts for six of the Commission's hearings is approximately \$116,000.

Ms. ABZUG. What are the five background studies you say you have made? What are the background studies which your Commission is planning to engage in?

Mr. LINOWES. The five to which you refer are in the trend assessments program—where will technology be in the next 10 years, and what will the society's privacy expectations be? They are in those general areas, and constitute the smallest portion of our budget.

Ms. ABZUG. In which of the studies do you contemplate covering the question of the general collection of data? One of our major problems in the privacy area is that we do not deal with the problem until after data has been collected.

What if anything, is your Commission doing in that particular area?

Mr. LINOWES. Madam Chairwoman, that gets to the very substance of the overall investigations which cut across most of our subject areas. We probe it with each industry group and in each hearing.

We know we must be consistent in any findings we come up with. Limiting the collection of data is one of the most important safeguards we can recommend. We are aware of that. If you do not have it, we have no problem. Destruction of data after it has served its purpose is a very, very important and simple safeguard.

Therefore, we are digging in depth into these precise points with each of our investigations which will culminate in our final report and recommendations hopefully covering the entire scope of the problem.

Ms. ABZUG. Have there been any requests by Federal agencies for assistance in complying with the substantive requirements of the Privacy Act? Have you been asked to render any kind of assistance and, if so, by what agencies?

Mr. LINOWES. Madam Chairwoman, as you know, OMB is charged with interpreting the Privacy Act. We have a peripheral sort of charge built into the act, never too clearly identified.

I know there have been informal discussions and overtures made to us.

Perhaps our Executive Director can answer more specifically if that is the nature of response you prefer.

Miss PARSONS. We have had some informal inquiries. You asked who in particular. Early, when we were first getting started, we had a request from HEW for advice on certain provisions of the act. I will say quite frankly that we have not felt ourselves in a position to render any advice on the interpretation of the act, in part because we are not yet far enough along in our assessment of agency implementation of the act.

Mr. LINOWES. Perhaps I should add there, Madam Chairwoman, that we have staff assigned to look into the implementation of the act. We view that as part of our mandate. Our mandate is so tremendously broad, and that is one of the facets, and it has been singled out for study. However, we have nothing of significance to report at this time.

Mr. PLESSER. Throughout the course of our activity we have met with Federal agencies to try to understand how they are implementing the act. Whenever you get into that kind of discussion, they always ask questions back as to what the Privacy Act means and our interpretation of it.

What Miss Parsons was saying is that we have had many informal discussions with Government agencies, discussing some of the problems of interpretation of the Privacy Act.

We have not issued any formal opinions of the Commission in relation to those discussions, however.

Ms. ABZUG. Have you issued any reports as yet?

Mr. LINOWES. This is an opportune time for the question. We are issuing our first report on the Internal Revenue Service. That will be issued later today.

We have some embargoed copies available presently.

Our annual report, which is also required by the act, will be submitted within the next day or two to the Congress and the President. That is the extent thus far of formal reports.

We have made available at different times, and to your staff as well, summaries of our credit card hearings and the types of things that are presently in-house.

As you know, this type of function is a research function and is the type of thing where the product comes out at the end. As we complete these units, such as on Internal Revenue Service, we come forward with them.

Ms. ABZUG. How much did that report cost to get out?

Mr. HIGGS. Printing costs or cost of research that went into it? Are you talking about just printing the report or total cost?

Ms. ABZUG. The total cost.

Mr. HIGGS. The average is about \$33,000 per project. That is what they average. That includes staff, hearing cost, support cost, preparation of the report, printing of the final report, and so on.

Ms. ABZUG. How many of those do you plan to get out?

Mr. LINOWES. The act specifically asks us to render recommendations on certain items, one of which is the Internal Revenue Service; further, we have the mailing list industry.

Frankly, the funding problem is one of our major concerns and it is the reason I am afraid I cannot be much more specific. If we knew just what our funding would be, we could be more direct in identifying other specific areas for particular coverage.

We are fully aware of the need to transmit the results of our deliberations to Congress and the President as early as possible. We feel this function in which we are engaged is one which requires and deserves prompt attention.

Ms. ABZUG. What are you doing with respect to analyzing the relationship between the Privacy Act and the Freedom of Information Act?

Mr. LINOWES. The first commission subcommittee appointed by the Chair was a subcommittee to address itself to that question. State Senator Tennesen is chairman of the subcommittee and Mr. Dickinson, recently retired managing editor of the Philadelphia Bulletin, is also a member of it.

There has been extensive staff work done. Perhaps our General Counsel can address himself to that in further detail.

Mr. PLESSER. We have had some initial discussions. We had some press people come into talk to the Commission to give their point of view. In January, we had representatives of the press organizations. We like to view it not as a conflict but as a reading together. We think they can coexist very easily.

We are in the process of working out an analysis of the two statutes together. *Rose v. Department of the Air Force*, the recent Supreme Court case, makes it a little bit easier to read the two statutes together. The issue is of great concern to us, not only in terms of the Federal sector but in looking at the State and local sectors to be sure that whatever is done from a privacy point of view does not infringe on freedom of information questions.

Our staff is working with Senator Tennesen's subcommittee to formalize the position which will guide our work in all activities.

Ms. ABZUG. I have a problem with all of this. I think that the directions in the statute as to the functions of your Commission are too vast. What I am concerned about, frankly, is the ability of this Commission to concentrate in areas where others are not concentrating and to fulfill the responsibility which was intended by the Congress.

It is not quite my view—I want you to be aware of this—that money should be spent by your Commission in the area you just discussed.

I may be wrong, but I am trying to figure out the major area of concentration which I think your Commission should be involved in and what the money should be spent for, what it was intended this money be spent for.

As a general proposition—this is my view and my interpretation of how this originally evolved, and I grant that the language in the statute is quite broad, so that you could be going into many different things—I think your major concentration, your major contribution has to be in the entire area of the private sector. There are grave questions as to what is really happening there and how we can deal with the question of the data bank and related issues which affect and impinge so deeply upon the privacy of individuals.

In my judgment, that is the area that the Privacy Act does not cover. That was the real reason, in my opinion, the Privacy Commission was set up, to deal with the substantive questions which involve the entire vast area which the Privacy Act itself did not cover.

That is what I want to see you concentrate on. I think that the Congress has the responsibility to see that you hew to that line.

Mr. PLESSER. I would like to assure you—

Ms. ABZUG. Talk to me about that.

Mr. PLESSER. No. 1, I agree with you. If I had to give you an estimate of how my time is spent over the past 9 months, I would say 99 percent of my time has been spent running our hearings, which have been primarily on the private sector with the exception of the one

hearing we have had on Federal tax return confidentiality, which was mandated by the statute.

Ms. ABZUG. If I may interrupt, we have in the Congress a lot of committees, not only my own here, which are dealing with some of the problems concerning governmental invasions of privacy and technology development. We are not requiring this Commission to duplicate that area. I just want to make that very clear to you.

I was a little surprised that you have gone into a couple of areas which might be duplicative, even though you might well make a more significant contribution. I am not commenting on that, however. I am sure your work has been fine. However, you should try hard to make your contribution in the area that governmental or congressional committees are not now going into, namely, in the private sector.

I interrupted you. Please proceed.

Mr. LINOWES. I just want to stress that we completely endorse the statement you have just made in terms of the private sector. The evidence of that is the hearings we have been having—on the banking industry, credit cards, employment policies, mailing lists.

Yet, we cannot put our heads in the sand. We see peripherally these different elements pulling at us.

As Mr. Plesser indicated, there is no question that the issue of freedom of information versus privacy has taken an insignificant share, if you can even identify a share, of the budget. It has been something which has been carried by Mr. Plesser as General Counsel and hearings officer almost on an offtime basis as a labor of love more than anything else.

We share the view that the important contribution we can make to this very intensive 2-year effort is mainly, because no one else is there, frankly, in the private sector and peripherally in the public sector.

Ms. ABZUG. One of the problems you have in dealing with this statute, as I said before, is that it contains a lot of direction as to the scope of the Commission. Some of it was thrown in there because we in the Congress did not agree as to how some of these things should be resolved. This is, however, the statute we finally adopted.

The language of the statute is permissive in a number of areas, and I would not get into those areas if I were you, at least not as a major field of concentration.

If you are going to get this additional funding, I would like your Commission to come up with some concrete proposals. There are many different things that the Commission has had suggested for its studies and you can get too diverse.

In my opinion, many of these things are permissive and I would try not to get into those areas.

Mr. LINOWES. One observation in reference to that to show you how these things interrelate. There is considerable concern, both in Congress and on the part of the public, with regard to the use of the social security number as a universal identifier. You can say that is a public sector issue.

However, we have to probe each private-sector group to see what they are making of that social security number.

That is one of these crosscutting areas which we feel for efficiency purposes we are best advised to handle as an entity unto itself, using as input data and material we have accumulated as a result of expert testimony from private-sector witnesses.

Frankly, I also believe the social security number or any other universal identifier is a very important issue, but we find these overlapping constantly.

Another area of overlap is that we are being bombarded, I use that term advisedly, with urgings by the private sector to inject ourselves on a priority basis into the problems of privacy legislation now being considered by the many States. Over 36 States are considering it. The private sector is concerned about the problem of trying to comply with 50 different statutes dealing with privacy.

Here again it is a public sector issue, but the private sector is very anxious to participate and even suggest ways in which we can recommend legislation in order to preempt that area.

Therefore, we are very much attuned to the emphasis which you suggest, and we are certainly addressing ourselves to that.

Necessarily, however, on the periphery there are these other elements to which we have to pay attention.

Ms. ABZUG. This subject comes up because I feel you could probably, if you followed each of the areas of inquiry which the statute suggests, use a lot more money than you are requesting.

It is true that the use of the social security number is an issue of grave concern, and a lot is going on in that area. I suppose you can say that the reason you have to go into it, too, is because the social security number is a vehicle through which information is frequently transmitted in the private sector.

Mr. LINOWES. That is right.

Ms. ABZUG. However, I think there are areas there—again, this is in the permissive area—where you should carefully consider what you should go into in terms of analysis and study.

Even if you get the increase in appropriations, you still have a rather limited life as well as a limited budget, and you should bring in many important recommendations and conduct important hearings and studies.

Mr. LINOWES. Madam Chairwoman, we value your opinion and advice in this regard. We shall certainly give it the kind of important emphasis which I personally feel it deserves.

I suspect if we had more time for dialog, you would be equally convinced that we are giving our entire project the kind of emphasis that you are describing, that which you would like to see us give.

Ms. ABZUG. Have you done any work with respect to the standards for security and confidentiality of records when a record is disclosed to a person other than an agency to determine what extent Government and private information can affect Federal-State relations and the principle of separation of powers?

Mr. LINOWES. I do not believe we have gotten to that. Perhaps our Executive Director can be more helpful in indicating what that status is.

Miss PARSONS. These are two subjects on which the Commission is required to report to the President and Congress.

We are just beginning work on the standards which should apply when a record covered by the Privacy Act is disclosed in the manner you describe.

The reason we have delayed—I hate to keep coming back to this—is that we have had to postpone hiring the person we knew was capable of doing that for us, because we knew we couldn't afford to have him on board last winter. He has come on board within the past 3 weeks, and we will be working on that.

As to the Federal-State relations and the separation of powers question, again the money for doing that project is in the \$250,000 supplemental. To follow up again on the discussion regarding the relationship in our program between public sector and private sector issues, the Federal-State issue and separation of powers issue are directly related to the recordkeeping practices hearing we have scheduled on public assistance and social service agencies; for example, where the question of the ability of States to manage programs with a reasonable degree of autonomy when the Federal Government is paying the money and writing the ground rules as to their information systems is a central question.

Mr. PLESSER. I would like to add that we have been doing a lot of preparatory work in terms of getting information, for example, in our insurance hearing, where a great deal of emphasis was placed on the role of the State insurance commissioner in controlling the use and maintenance of information by insurance companies operating in the States.

That kind of factual analysis is very important for us to get into. We have done this in the banking area and all other areas; that is, to try to analyze the nature of Federal control as well as the nature of State control in order to come to some resolution of this question which then will be treated as a crosscutting project.

Ms. ABZUG. There has been some indication that there have been questionable transfers of records between Federal and State agencies. I think a number of committees have gone into this peripherally, but the question of Federal-State transfer of records has come up in many centers of the country. Again I was trying to analyze the areas you have been going into and whether that should be an area of concentration. I imagine it depends upon your staff. How many do you have on your staff?

Mr. LINOWES. We have some 23 now. Some come and go. The general range is about 25.

Have you a more precise figure?

Miss PARSONS. We have 21 full-time people and 3 temporary and part-time people. Our ceiling is 25 permanent employees; that is, permanent for the duration of the Commission.

Mr. LINOWES. If I may bring to your attention—we have addressed ourselves precisely to the question of sharing of information with the States insofar as information in the files of the Internal Revenue Service is concerned, and have recommended limitations on some of that transmission of information. That is in this report.

Ms. ABZUG. You do not get too many administrative requests, then? I want to be sure, should the committee agree you should have additional funding, that we maximize what the Commission is doing. You do not get that many requests for involvement in administrative discussions and other forms of assistance requests?

Miss PARSONS. No; but we also do not encourage them.

Ms. ABZUG. I think you are quite wise. That can take a great deal of time. In the last analysis, some of the applications of the problems in the Privacy Act as well as the Freedom of Information Act are subjects with which committees of Congress, such as ours and our counterpart in the Senate, have been dealing, and we have had quite a few problems. We have attempted to resolve them administratively.

We have had many meetings, and there may be considerable duplication in that area. We have to resolve them, because they have been affecting the functioning of both Congress and the development of legislation specifically on privacy and other areas which we may be interested in. We have also had a considerable number of problems with agencies seeking to utilize their various authorization committees to provide them with ways around the Privacy Act and Freedom of Information Act.

Mr. HIRSCHHORN. Getting back to a discussion of your examination of the Privacy Act, on page 9 of your statement, you say that you require \$27,000 more than the \$12,000 now allocated for the Privacy Act assessment project.

Can you explain what the project covers now and what you expect to add with the additional \$27,000?

Mr. LINOWES. Perhaps our Executive Director, Miss Parsons, can cover the specifications as to what is included in that \$27,000.

Miss PARSONS. The \$12,000 is for compensation for the project manager. The \$27,000 is to provide the project with assistance in analyzing the 8,000 system notices that have been published, the several hundred sets of regulations that have been promulgated, the reports agencies are required to file with us as well as with the OMB and Congress, and to permit us to do case studies of the actual implementation of the act and implementation problems.

We feel it is important for us to understand what the implementation problems have been and where implementation has been easy even though it was originally anticipated to have been very difficult, as a check on the testimony and commentaries provided to us by organizations which are not now subject to the Privacy Act, as to how they may or may not be able to comply with the act's requirements.

Mr. HIRSCHHORN. I realize that you are going into it because it helps to educate you as to what the problems might be in the private sector. Given your tight budget, I wonder how deeply you should go into this.

Mr. HIGGS. How are you going to say anything about the applicability in another world unless you know how it has worked in this world?

Mr. HIRSCHHORN. I am not quarreling with that. It is just that it is easy to find yourself wandering off base.

Mr. PLESSER. We are conscious of the dangers of duplication. We are not looking at it as an oversight task; that is, to see whether the agencies are doing their jobs, which I understand congressional committees are doing. Our job is to determine whether the requirements of the Privacy Act should be applied to the private sector and State and local governments.

In order to do that, we have to understand firsthand how the Privacy Act is working and what some of the difficulties in regard to definitions and general and specific approaches are, so we can try

not to make the same mistakes in whatever recommendations we make.

Even though it may sound similar, our approaches are somewhat different and we are cognizant that other activities are going on which we do not want to duplicate.

Mr. HIRSCHHORN. You mentioned that there was congressional demand for copies of your hearings. Has there been significant demand outside Congress?

Mr. PLESSER. There has been significant demand. It is hard for us to know the complete degree of demand because many of those requests go directly to the reporting companies.

We have a lot and we can get you documentation on that.

We have had two letters from a Senator and a Congressman requesting easier access for the Federal depository libraries. They have said they were not getting a neat published transcript at a reasonable cost and that the duplication cost is too high. We have been getting those kinds of requests.

Mr. LINOWES. I personally have been approached on many occasions, largely from the private sector, by executives of companies, anxious for copies of our reports. I am aware there is a very strong demand for these. My personal experience is that there is demand for material coming out of our hearings.

Miss PARSONS. Although we are permitted by law to charge for the copies of the transcript, that money, were we to charge for it, would not be returnable to us. It goes back into the General Fund of the Treasury. In effect, it is a cost out of our budget which we cannot recover.

Mr. HIRSCHHORN. In the case of the private sector, have you been charging for the copies? Have they been referred to the reporting companies?

Mr. LINOWES. Referred to the reporting companies. They have been coming out of different directions. That has been one of the problems.

Mr. PLESSER. It depends. If a company has participated as a witness in our hearings, we would tend not to charge. If they have not appeared as a witness, we tend to charge.

I might say at this point as a matter of administrative convenience we send a copy of the transcript of the witness's particular testimony for them to edit, so we have in our files at this point, not from the Commissioners but from the witnesses, edited versions of their testimony. This is a common practice of congressional committees as well.

Mr. HIRSCHHORN. Assuming there is a substantial demand from the private sector for the transcripts of hearings, and also assuming that as your reports come out and publicity is given to these reports, that demand will increase, has any thought been given to the possibility of private publication?

Miss PARSONS. You mean some private organization wanting to publish them at no cost to us?

Mr. HIRSCHHORN. Yes.

Miss PARSONS. We have not looked into that. One reason I have not done so is that even were we to do that, I expect there would be an editorial cost which would have to be borne by us. I cannot pick that cost up right now.

Mr. PLESSER. I think there would also be at least a quasi-legal problem in copyright. A private corporation might then get a copyright and make redistribution difficult. That would discourage us from having that done, although that is just an off-the-cuff response. We have not thought about it.

Mr. HIRSCHHORN. Certainly there have been private publications of a lot of reports of study commissions. I would not imagine that they are copyrighted.

Mr. PLESSER. I will check it.

Mr. HIGGS. Those would not be a public record. Hearings are a public record. I think there would be some problem of copyrighting those.

Mr. PLESSER. We can look into that.

Mr. HIRSCHHORN. The Second Supplemental Appropriation Act gives you \$250,000, is that correct?

Mr. LINOWES. Yes.

Mr. HIRSCHHORN. You were already cut to some degree by the Appropriations Committee, although it is your hope to get that back?

Mr. LINOWES. From the \$381,000 to the \$250,000; that is correct.

Mr. HIRSCHHORN. If you should receive less than the amount you are seeking, do you plan to cut across the board or to drop particular areas entirely?

Mr. LINOWES. We have developed schedules. We have in place highly effective planning and program administration at the staff level. Therefore, we have identified where we would have to drop out and where we would continue. That is more or less clearly defined.

If you would like something more specific, our Deputy Executive Director and Executive Director can address themselves to the question.

Miss PARSONS. You are talking now about the consequences of no increase whatsoever in the authorization. Is that correct?

Mr. HIRSCHHORN. Not really, but what if it is less than the full \$500,000?

Miss PARSONS. If we were to have nothing more than is currently authorized for us, we would have to dispense with all of our public sector projects; delay any reporting on the private sector projects until January, simply because we would not have the money for the followup work which needs to be done in order to get out a report in that area; and eliminate all the crosscutting projects except the three mandated studies which we are just now beginning. When I speak of mandated studies, I refer to the IRS, general damages question, disclosure to organizations not covered by the Privacy Act, and the Federal-State relations and separation of powers issues.

We have worked on two of those. We have a report in one area. Three are left. We would be reduced to doing only those and none of the other crosscutting projects.

In the trend assessments area, the only project we would be able to do is the technology projection study this year.

In addition, next year, while we could do a few truncated crosscutting issue projects, we would have to cut them down in scale considerably, which, given the fact the Commission goes out of existence in July and its report is due in June, is dangerous if one is concerned about the quality of the work.

We would have no trend assessment projects next year at all and we would be limited to one final report with only enough money to have a printing of 2,000 copies. That is, if we had no increase whatsoever.

Mr. HIRSCHHORN. If there is an increase of some amount, but less than \$500,000, are there specific projects you would drop, or would you cut across the board?

Miss PARSONS. It is difficult to talk about that without knowing the figure. Once we knew the figure, we could then begin to prune and redistribute.

I feel very strongly, and I would like to say this for the record, that while I appreciate the concern about the scope of the mandate of the Commission and the dangers which lie in trying to do all the things that are suggested in the act, I would point out, first of all, that we are not doing all the things suggested in the act.

Next, I really feel we can accomplish the program we have laid out if the money is available to us. I do not think we are biting off more than we can chew.

Mr. HIRSCHHORN. Do you see any time problem which might lead to a request for an extension of the life of the Commission?

Miss PARSONS. I do not see it at the moment. I would, however, like to say for the record that the amount of time we have had to wait for a determination as to the cash flow situation, if you will, which particularly concerns the fiscal year expenditure limitation, is putting us in a position where there will come a point before very long where if the money is not available we will either have to kill projects or think about having a longer time in which to complete them.

I think that would be sad. Were we to have an extension of time, we would incur additional overhead costs for that additional period. The whole project then would wind up costing more than if the money were available at the beginning.

Mr. LINOWES. The Commission itself realizes how urgently Congress needs and is awaiting some of our findings and recommendations. That was one of the reasons we put tremendous pressure on to get the Internal Revenue Service report out.

Therefore, we are making every effort and we expect to be able to abide by the 2-year tenure limitation. We feel it is appropriate for a commission of this type to call a halt within a reasonable time and submit its findings.

It would be tremendously regrettable if the period runs and we find ourselves with, say, 30 percent of our input in the pipeline and sitting there without any product because we did not have adequate budgeting in order to get that out into a usable form.

This is the reason we are devoting so much time to urging that this subcommittee and others recognize the urgency of making it possible for us to proceed in an expeditious way.

Mr. HIRSCHHORN. There was some testimony earlier, I think from Mr. Linowes, about the 36 or so different State laws in this area and your involvement with those. Are you making a full study of those laws or are you just considering them as they may come up in your recordkeeping practices hearings?

Mr. LINOWES. It is interesting how we decided to give this priority. It came as a result of an address I gave to some senior policymaking executives on consumer credit. During the question period, almost every one in the room was concerned and alarmed about what was happening at the State level, because we shared Congresswoman Abzug's feeling we should give strong priority to the private sector. We viewed this aspect as part of the public sector.

We found there were at least 36 States and more being added. Therefore, we have moved our analysis forward. The problem is under rather intensive study by staff today. If you want something more specific on where we stand on that currently, I would like to suggest that Miss Parsons address herself to it.

Mr. HIRSCHHORN. Would you please do so, Miss Parsons?

Miss PARSONS. When you speak of the 36 States, you are speaking about a number of States in which there is so-called privacy and fair information practice legislation pending. That raises the question of the need, alleged, by many, for preemptive Federal legislation if there were to be a fair information practice law applying to the private sector.

I will ask Mr. Plessner to speak to the work of our Office of the General Counsel with regard to identifying these statutes and other recordkeeping statutes in the States which affect the handling of personal information in the private and public sectors.

I will also point out that we view at the moment the question of the need for preemptive legislation as a question on which we wish to gather information and informed comment and judgment.

Two areas in particular that we would like to look at are credit reporting and education, because in the credit area there is not only one Federal statute, the Fair Credit Reporting Act, but also a number of State credit-reporting acts.

It appears that the Federal and State laws are working together reasonably well, but we wish to explore that and find out the facts.

Also in the education area, where we have the Buckley amendment, there are a number of State laws governing the recordkeeping practices of educational institutions.

Knowing that those are the facts of the situation, one has to approach the preemptive legislation question on its merits, even though it seems reasonable in the abstract to suggest that a law ought to be preemptive.

Mr. PLESSER. In addition to looking at the pending legislation, and analyzing the situation in five or six States where such legislation is of an omnibus nature, we are just at the point of completing a 50-State analysis of statutes, laws, regulations, and attorneys general opinions affecting the control of private sector information by State government. All this has taken us about 2 months to complete. We have had three or four law students from area schools assisting us under the guidance of my office.

We feel that upon completion of this analysis, not only will we know about omnibus statutes, but also about many other statutes, such as freedom of information statutes in particular States. We need a comprehensive view of statutes and laws which affect privacy and access to records but which may not be labeled privacy legislation.

Ten or twenty years ago a lot of things were passed which were not called privacy legislation, so it is a necessary task which will be useful to us in analyzing all of our projects.

Mr. LINOWES. With your permission, I would appreciate it if we can excuse our General Counsel, Mr. Plessner. He has to make a flight to Los Angeles.

We have hearings starting tomorrow morning at 10 o'clock and it is important for him to get there this evening.

With your permission, we would like to excuse him to get right to the airport.

Mr. HIRSCHHORN. I am sure the chairwoman does not object.

In the area of banking, have you found yourselves getting into the question of electronic funds transfer?

Mr. LINOWES. Very much so. As a matter of fact, even though there is an electronic funds transfer commission, we find there is considerable overlap. Again, we found important industry spokesmen in the banking industry concerned that there not be an electronic transfer vehicle owned and controlled by the Government.

We are concerned as a commission because the centralization of information through electronic fund transfer technology places a tremendous amount of individually identifiable information under the control of very few people and very few organizations.

Thus far it appears that there is a threat of real concern. The technology is not yet in place, of course. There are many dimensions to it and we do not want to overlap what other specific committees are doing in this area.

During our hearings on banking we probed the question extensively. The banking project itself is now being digested and synthesized by staff. I do not know that we are quite set yet as to where the voids are. However, we are aware that it is a critical matter.

We are further aware, at least I have become aware not only in banking but in other areas, that some of the outstanding experts in the private sector are themselves not fully cognizant of the implications of what electronic fund transfer will create in terms of making it vulnerable to abuse.

I think I would like to have Miss Parsons add to that. She has been working closely with some of these elements as well.

Miss PARSONS. I would like to point out that the Electronic Funds Transfer Commission, which is also a 2-year commission, with a total authorization of \$2 million for that one study, has nine tasks mandated in its statute, one of which is the privacy and security safeguards which should be applied in an electronic funds environment. The Executive Director of the Commission said publicly about 3 weeks ago that they have ceded to the Privacy Commission for the time being the work which his Commission would otherwise have done had we not existed on the privacy aspects of their mandate because they do not want to overlap with us.

We did not ask them to do that. They themselves, looking at their own task and the amount of money they had, figured it was a good idea to have us carry the ball.

We are delighted, of course, because it is an issue that grows out of what we are doing in the consumer-credit area, but it is an additional charge on our budget.

Mr. HIRSCHHORN. Well, my next question was going to be whether you are avoiding duplicating each other's work, but you have already answered it.

Mr. LINOWES. Not only with that Commission. We have been working extremely closely, and the staff is very knowledgeable on this, with every effort being conducted, and the term "every" is appropriate, in both the private and public sectors in these various areas. A major effort is being made by staff not to overlap and to build upon what does exist.

As you may know, there is something less than an overwhelming supply of literature and background here.

Ms. ABZUG. I have given some consideration to your testimony. I have only one further question.

Did you supply for the record the number of persons on your staff and salaries and categories for each? I do not believe it is in any of the testimony.

Miss PARSONS. We would be happy to do so. In our testimony on our appropriations there are figures there on the average. The average staff grade is 10.6 with an average salary of \$19,000.

Ms. ABZUG. Very well.

I shall leave the record open to propound additional questions in writing to the chairman, on my behalf as well as on behalf of other members of the committee who could not be here today. This would be prior to our marking up these bills. The record will remain open for that purpose.

[The information follows:]

PRIVACY PROTECTION STUDY COMMISSION
2120 L Street, NW.
Washington, D.C. 20506

David F. Linowes, Chairman
Willis H. Ware, Vice Chairman
William O. Bailey
William B. Dickinson
Hon. Barry M. Goldwater, Jr.
Hon. Edward I. Koch
Robert J. Tennesen

June 11, 1976

Carole W. Parsons
Executive Director
Ronald L. Plessner
General Counsel

The Honorable Bella S. Abzug
Chairperson
Subcommittee on Government
Information and Individual Rights
B-349C Rayburn House Office Bldg.
Washington, D. C. 20515

Dear Congresswoman Abzug:

During the appearance of the Chairman of the Privacy Protection Study Commission before your Subcommittee on June 9, you requested that information regarding the number and compensation of Commission staff be submitted for the record of the hearing. I am enclosing the requested information.

You also asked us to submit for the record a list of temporary Federal commissions that have published transcripts of hearings. We are currently compiling such a list, and will transmit it to you as soon as it is completed.

Thank you for your consideration.

Sincerely,

Carole W. Parsons^{5/13}

Carole W. Parsons
Executive Director

Enclosure

June 11, 1976

PRIVACY PROTECTION STUDY COMMISSION
STAFF POSITIONS

Permanent Positions:

Executive Director	GS 18/1
Deputy Executive Director	GS 17/1
General Counsel	GS 17/1
Public Information Officer	GS 15/1
Staff Attorney	GS 12/2
Staff Attorney	GS 12/1
Program Manager	GS 15/3
Program Manager	GS 15/3
Program Manager	GS 14/1
Executive Assistant (Chairman)	GS 11/3
Special Assistant (Executive Director)	GS 10/1
Administrative Assistant (Executive Director)	GS 10/1
Legal Intern	GS 7/1
Librarian	GS 5/1
Secretary (General Counsel)	GS 9/1
Secretary (Deputy Director)	GS 8/1
Secretary	GS 7/1
Secretary	GS 5/1
Secretary	GS 4/1
Secretary	GS 4/1
Secretary	GS 3/1

Temporary Positions:

Legal Intern	GS 5/6
Research Associate	GS 9/1
Research Assistant	GS 6/8

Ms. ABZUG. We confront two questions. One is the question of increasing the funding under this authorization. The other is to permit expenditures of more than \$750,000 during any fiscal year.

Which is more important?

Mr. LINOWES. They are both critically important. Taking first things first, we are already into June. There is a little bit of awkwardness in the very creation of this act because the Government was then on a fiscal year ending in June. When we came into being the fiscal year ended at the end of September. We suddenly found ourselves with a 12-month budget to be spread over 15 months. It could almost be interpreted as a situation which developed because of something over which we had no control.

Funding, on the other hand, the increase in the authorization, we consider especially critical. We went into some detail with your competent counsel earlier explaining what we would have to drop if we did not have this funding.

Ms. ABZUG. Yes.

Mr. LINOWES. I pointed out it would be regrettable if we did have to drop some of these things because we already have in-house a lot of the data which we could build on to produce an end product. Our work will be for naught if it winds up in the files.

From the point of view of effectiveness and efficiency, it would be helpful if we could have the authorization increase.

I am trying not to give you a priority but to indicate both.

Miss PARSONS. While simple removal of the fiscal year expenditure limitation would permit us to have the \$250,000 supplemental right away, that would really just postpone the day of reckoning.

Indeed, the day of reckoning might come soon because our 1977 appropriation request in the amount of \$750,000 is likely to be taken up on the floor before the end of the month, I am told.

If we were to get the fiscal year limitation removed, that is, be able to have the \$250,000, our appropriation for next year would have to be cut down to \$500,000 before the end of this month.

As I say, it just postpones the problem. It does not really resolve it.

Ms. ABZUG. All right. We shall make this record available to members of the subcommittee prior to markup. If any of the other members have questions, they will get them to you promptly.

Thank you very much for coming this morning. It has been a pleasure listening to you and we wish you success.

Mr. LINOWES. Thank you very much, Madam Chairwoman.

Ms. ABZUG. The subcommittee is now adjourned.

[Mr. Linowes' prepared statement follows:]

**PREPARED STATEMENT OF DAVID F. LINOWES, CHAIRMAN OF THE
PRIVACY PROTECTION STUDY COMMISSION**

Madame Chairwoman and Members of the Subcommittee:

I am David F. Linowes, Chairman of the Privacy Protection Study Commission. My purpose in being here today is to testify on behalf of the Commission's request for amendment of Section 9 of the Privacy Act of 1974 to remove the current \$750,000 fiscal-year limitation on Commission expenditures, and to increase the Commission's total authorization from \$1,500,000 to \$2,000,000. I hope that as a result of my appearance today you will agree with us that the adoption of these measures is necessary if the Commission is to fulfill the formidable mandate the Congress gave it in Section 5 of the Privacy Act of 1974.

Removal of Fiscal-Year Expenditure Limitation

I would like to speak first to the matter of the fiscal-year expenditure limitation. Section 9 of the Privacy Act prohibits the Commission from expending more than \$750,000 in any one fiscal year. Since the current fiscal year does not end until September 30, 1976, that means that we are prohibited from spending more than \$750,000 over a 15-month period, even though the Congress has now appropriated a total of \$1,000,000 for the Commission in FY '76. Moreover, the fiscal-year expenditure limitation has deprived us of any discretion to allocate funds from one fiscal year to another, even though our Commission's life is but a mere two years. I understand that

it is not unusual for a limited duration commission such as ours to be free to allocate the total amount of its authorized funds during the course of its life and we also have found no legislative history--formal or informal--which indicates that the Congress wanted to deprive the Commission of the ability to do so. We, therefore, hope that you will agree that the fiscal-year limitation in Section 9 should be eliminated.

Increase in Total Authorization

Section 9 of the Privacy Act places a total authorization limit of \$1.5 million on the Commission. This simply is not enough to accomplish the work that Congress has set out for the Commission. Accordingly, we are seeking an increase in our authorization from the current \$1.5 million to \$2 million for the entire two-year period. This would allow us to receive the \$250,000 FY '76 supplemental recently appropriated for us without prejudice to our \$750,000 appropriation request for FY '77. In addition, it would allow us to request an FY '77 supplemental of approximately \$100,000 which we know we need to complete our study program, and also provide us with a small margin of funding to cover two contingencies: (1) the need to publish an edited version of the transcripts of particular Commission hearings should Congress or others request it; and (2) the need to provide for additional meetings of the Commission and selected experts in March and April, 1977 should that be required for the Commission to complete its deliberations.

Before giving details on how we plan to spend the additional monies we are seeking, allow me to explain briefly our appropriation

status.

At its February 13, 1976 meeting the Commission unanimously voted to request an FY '76 supplemental appropriation in the amount of \$380,781, to seek an FY '77 supplemental appropriation in the amount of \$94,191, and to seek the authorization change that is the subject of this hearing. These requests were formally submitted to the Office of Management and Budget and the Congress on March 10, 1976. Thereafter, on March 23, 1976, the President submitted to the President of the Senate his second FY '76 supplemental budget request, which included \$250,000 for the Commission. This additional sum was approved on May 21, 1976, as part of H.R. 13172, Second Supplemental Appropriations Act, 1976, with the proviso that it shall only be available to the Commission upon the enactment of authorizing legislation.

The \$250,000 approved supplemental was \$131,000 less than the Commission had originally requested. We believe that we can operate with that sum for the remainder of FY '76. However, the Commission will need supplemental funds of approximately \$100,000 for FY '77 in order to complete its study program. The FY '76 supplemental and the needed FY '77 supplemental will together place the Commission budget at \$350,000 over the current authorization ceiling. This was contemplated by OMB as recognized in their support of our requested authorization increase to \$2 million. We hope to convince you that these additional funds are crucial.

The Commission's Mandate

The principal charge to the Commission is to make a thoroughgoing study of the "data banks, automated data processing programs, and information systems of governmental, regional, and private organizations," and as a result of such study to recommend to the President and the Congress the extent, if any, to which the principles and requirements of the Privacy Act of 1974 should be applied to organizations to which they do not now apply.

In addition, Section 5 of the Privacy Act requires the Commission to inquire into and report on

- Whether an individual should have a right in law to have his name removed from a mailing list he (or she) does not want to be on;
- Whether the Internal Revenue Service should be prohibited from disclosing individually identifiable data to other Federal agencies and agencies of State government;
- Whether Federal agencies should be liable for general damages if they willfully or intentionally violate the Privacy Act of 1974;
- Whether and how the security and confidentiality requirements of the Privacy Act should be applied when a record is disclosed to an individual or organization that is not subject to the Act; and

- Whether and to what extent, if any, information systems affect Federal-State relations and the separation of powers.

The Congress also expressly authorized the Commission to include in its inquiry interstate transfers of information about individuals; information systems that affect individual rights other than the right to personal privacy; uses made of the Social Security number and other standard universal identifiers; the matching and analysis of statistical data with personal information gleaned from other, non-statistical sources; and the personal-data record-keeping practices of organizations in the fields of medicine, insurance, education, employment, travel, hotel, and entertainment reservations, credit, banking, consumer reporting, cable television, and electronic funds transfer.

Furthermore, in carrying out studies in any of these areas, the Commission is required not only to document the standards and procedures now in force for the protection of personal information but also

- to determine what laws, Executive Orders, regulations, directives, and judicial decisions govern the activities under study;
- to assess the extent to which those legal foundations are consistent with "the rights of privacy, due process of law, and other guarantees in the Constitution;" and
- to collect and utilize, to the maximum extent possible, the findings, reports, studies, hearing transcripts and recommendations of executive, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study.

The Commission's Program

The Commission very early in its life identified a number of priority inquiries. These were organized into three programs: (i) a Record-Keeping Practices Assessment Program, which is comprised of 14 projects designed to document and assess the record-keeping practices of specific types of organizations; (ii) a Cross-Cutting Policy Issues Program which is comprised of 12 projects that isolate for special attention and analysis issues which arise repeatedly in the practices assessment projects; and (iii) a Trend Assessments Program which attempts to assess new record-keeping developments that may affect recommendations the Commission makes.

Record-Keeping Practices Program

This program examines the personal-data record-keeping policies and practices of the following types of organizations:

- Mailing List Compilers and Direct Mail Marketers*;
- Credit-Card Issuers;
- Depository and Lending Institutions;
- Reservation Services;
- Insurance Underwriters;
- Primary Health-Care Providers and Third-Party Payers;
- Consumer-Reporting Agencies;
- Internal Revenue Service and Related State and Local Taxing Authorities*;

* Inquiry specifically required by Section 5(c)(2)(B) of P.L. 93-579.

- Educational Institutions;
- Public Assistance and Social Services Agencies;
- Housing Assistance Institutions (mortgage guarantee and rent subsidy);
- Statistical Agencies and Research Organizations;
- Employers, Labor Unions, and Employment and Personnel Services;
- Federal Agencies Subject to the Privacy Act of 1974.

These 14 priority inquiries are the fact-finding foundations of the Commission's entire program as currently planned, and are the areas in which the Commission plans to hold the majority of its public hearings. Most of these projects respond to suggestions the Congress made to the Commission in Section 5 of the Privacy Act, and particularly Section 5(c)(2). The exceptions are public assistance, social services, housing, and Federal agencies subject to the Privacy Act of 1974. However, public assistance, social services, and housing programs comprise a substantial slice of the world of Federal-State information systems on which Section 5(c)(3)(B) requires the Commission to report. And, as to the Privacy Act assessment project, it almost goes without saying that the Commission could not recommend extension of the Act's principles and requirements without first understanding how the Act and its implementation could be improved where it already applies.

As you know, the Commission has so far held public hearings in five of the 14 practices assessment areas and will begin a

sixth round--on primary health-care providers and third-party payers--in Los Angeles tomorrow. These will be followed by at least one additional day of hearings on medical records in Washington and by hearings on credit-reporting and consumer-investigative agencies, also in Washington, the first week in August. Originally, we had scheduled hearings on education records, public assistance and social services records, and records used by research and statistical agencies and organizations for this summer as well. Now, however, because of the money shortage, we have had to slow down our preparations for these hearings to the point where unless the \$250,000 FY '76 supplemental is made available very soon, we will have to put them all off until after October 1, which means, in effect, that some of them will have to be cancelled altogether.

I should note in this regard that the legislative history of Sections 5 and 9 of the Privacy Act demonstrate the Congress' interest in having the Commission's inquiry be as much as possible a matter of public record. Hence, we decided at the outset that our hearings must be a research tool as well as a forum for exchanging views on issues. This means, however, that each hearing requires a minimum of three to four months full-time staff preparation followed by at least that many months of effort in follow-up research and analysis of findings.

The Subcommittee should know that these 14 practices assessment projects are being carried out by a research staff

composed of the Deputy Director and five full-time project managers who work in conjunction with the General Counsel and two lawyers to implement our research-hearings strategy. They are supported by four part-time research assistants.

We have currently allocated approximately \$91,000 to the staffing of this program during FY '76. \$99,000 of the requested \$250,000 supplemental appropriation is needed this year for additional staffing of this program. We need:

- \$30,000 for consulting services and research assistance necessary to prepare the hearings we want to hold this summer and fall on public assistance, social services, public housing, education and research and statistics;
- \$32,000 for follow-up research on the banking, insurance, medical records and consumer reporting hearings;
- \$10,000 for the extensive field work needed to prepare the employment and personnel records hearings scheduled to be held in October;
- \$27,000 additional for the Privacy Act Assessment Project, which is currently funded at only \$12,000.

In addition, we have allocated as support costs directly attributable to hearings preparation and the actual conduct of hearings, including Commissioners' compensation and travel, staff travel, some witness travel, and court-reporting and

transcription costs approximately \$68,000. We need to supplement this budget by \$30,000 to conduct the public-sector hearings and prepare for the employment and personnel and Privacy Act Assessment hearings to be held in FY '77.

Given the \$250,000 supplement, the Commission will spend in FY '76 approximately \$288,000 total for staffing and support costs for these 14 projects. In FY '77 we expect to spend an additional \$126,000 on them for staffing and \$51,000 on directly attributable hearings support costs. Thus, the total allocation for the Commission's inquiry into record-keeping practices over the two-year period will be approximately \$465,000.

Cross-Cutting Policy Issues Program

The Commission has identified a number of cross-cutting information policy issues that will arise repeatedly in its inquiry and that in the name of both economy and consistency of treatment should be isolated for special examination.

The Program Plan approved by the Commission at its January meeting organized these cross-cutting issues into three categories:

- (1) Common Practices and Standards: This category includes the two required reports on:
 - how Federal agency records should be treated when they are disclosed to persons not subject to the Privacy Act of 1974; and
 - whether an individual should be able to sue a Federal agency for general damages if he is

harmed by a Privacy Act violation.

Also included are reports on, respectively:

- the need for a strengthened policy on the use of standard universal identifiers, such as the Social Security number; and
- the criteria and procedures that should be applied in determining when government agencies should be given access to records about individuals held by third parties.

(2) Compliance Mechanisms: This category includes:

- a comparative analysis of Federal and State fair information practices statutes and their respective implementation problems;
- a comparative analysis of the mechanisms used in other Federal and State statutes that seek objectives analogous to those of an omnibus Fair Information Practices Act modeled on the Privacy Act but applicable at all levels of government and in the private sector;
- an analysis of the potential impact on State and local public-record statutes and policies of an all encompassing Federal fair information practices law;
- an analysis of First Amendment problems that may be posed by the application of certain

fair information practice principles and requirements in the private sector; and

- an examination of the incentives and costs associated with efforts by private organizations, including some major corporations, to bring their record-keeping practices into conformity with the principles and requirements of recently proposed or enacted fair information practices legislation.

(3) Impact on Other Social Policy Objectives: This category includes:

- the required study of the impact of information systems on Federal-State relations and on the principle of separation of powers; and
- an examination of real and alleged conflicts between the Federal Privacy and Freedom of Information Acts with a view to resolving sources of conflict in both.

The strategy for these analytical projects is to enlist the help of policy makers and other legal, academic, and practitioner experts through papers and seminars that will assure that the Commission clearly understands the issues involved in each, thereby contributing significantly to the Commission's final recommendations.

These 12 projects will be managed by current members of our research and legal staffs, but the bulk of the work will

be done by teams of outside experts and several part-time professionals who will be retained on a consulting basis. Because of the priority placed on the fact-finding projects and the partial dependence of the cross-cutting analytical projects on the results they produce, we have only allocated \$22,700 from our current FY '76 budget for these projects.

Some planning work on the cross-cutting projects has been completed, which will allow us to proceed ahead expeditiously if the FY '76 supplemental is made available soon. In order to initiate each of these projects in FY '76, we need \$97,000 more than the \$23,000 currently allocated to the program. This additional sum will be used for commissioned papers and workshops (with an average per project expenditure of \$8,000). With the \$250,000 supplemental, in other words, the Commission would spend approximately \$120,000 for these 12 projects in FY '76.

In our FY '77 budget request, we allocated \$90,000 for completion of these projects. Out of the \$100,000 we project we will need as an FY '77 supplemental, we would allocate an additional \$16,000. Thus, the total investment for the analysis of these major policy issues over the two-year period will be approximately \$226,000.

Trend Assessment Program

The Commission recognized early that its recommendations must take into account future trends in record-keeping practices,

and particularly trends in the application of new technologies to personal-data record-keeping. With the assistance of the National Science Foundation, the Commission has initiated a preliminary study aimed at projecting the state of the art in computer technology applications to the 1985-90 period. If fully funded, this study will consist of two parts. One will involve a review and evaluation of the basic technological capabilities likely to be available commercially by 1990; the other an examination of the possible applications of these capabilities to record-keeping in view of the anticipated social, economic, and political forces that will affect the demand for them, and an assessment of the degree to which these potential applications will or can affect the protection of personal privacy. As part of this program, the Commission also has a small agenda of exploratory studies aimed at informing it of significant problem areas not currently on our list of priority inquiries.

The Trend Assessment Program is currently allocated \$6,000 for initiation of the technological trend assessment studies. \$24,000 of the \$250,000 supplement is needed to complete the first part of the technological trend assessment study and to initiate four of the small exploratory studies.

In FY '77 we have allocated \$20,000 to initiate the second part of the technological trend assessment study and out of the anticipated FY '77 supplemental request of \$100,000 would allocate \$23,000 for the initiation of a study of the attitudes

and experiences of people who have attempted to avail themselves of the rights guaranteed them by extant fair information practices statutes.

Thus, the Commission's total effort for this program will be \$73,000.

The Commission's total program is clearly an ambitious one. In our view, however, it is the minimum necessary to fulfill our statutory mandate and, as I indicated earlier, we are anxious to proceed.

If I may briefly recapitulate for you, then. In FY '76, given the \$250,000 supplemental appropriation, the Commission will initiate and conduct 14 fact-finding projects, 12 policy-issue inquiries, and five background studies. We propose expending some \$438,000 that is directly attributable to these projects. Our administrative costs* for the operation of the Commission and support of these programs add up to \$374,000. In addition, the start-up and program planning costs for the period June-December, 1975, i.e., prior to the first of January, 1976, were \$188,000 (see Table I, attached).

In FY '77, assuming approval of the Commission's currently outstanding appropriation request of \$750,000, we will complete

* These include professional staff--the Executive Director, Deputy Director, General Counsel, Administrative Officer, and Public Information Officer; clerical staff; space; communications; materials; supplies; and administrative services, etc.

the fact-finding projects, issues analysis projects, and background studies just described. This will entail the conduct of six additional public hearings and a dozen seminars. We plan to expend \$287,000 for the completion of these activities. An additional \$463,000 is earmarked for: (1) the administrative support needed to complete these projects; (2) maintaining the core staff capability necessary to synthesize the results and assist the Commission in making its deliberations and decisions; and (3) preparing and producing the Commission's final report to the Congress and the President.

The projected \$100,000 FY '77 supplemental appropriation request would provide \$39,000 for the three programs, as described above; and an additional \$61,000 to increase our reports preparation and reproduction allotment so that we can submit reports on specific topics in addition to the final report (see Table II).

In sum, we clearly project the need for an additional \$350,000 to conduct our entire program as described above. However, as I mentioned at the beginning, our FY '77 budget, even including the anticipated \$100,000 supplemental request, contains no funds for editing and publishing the transcripts of the Commission's public hearings, even though they are already much in demand and the cost of reproducing them on request must be borne by the Commission on what amounts to a non-reimbursable basis. Nor does our FY '77 budget include

funds for additional meetings of the Commission and experts during the February-April, 1977 period which would well be required for the Commission to complete its deliberations. Therefore, we are requesting a margin of \$150,000 which brings our total authorization request up to \$2 million, or \$500,000 more than Section 9 currently provides.

Madame Chairwoman and members of the Subcommittee, this concludes my presentation of the facts that support the Privacy Commission's request for removal of the fiscal year limitation on Commission expenditures and for an increase in the Commission's authorization ceiling to \$2 million. I am confident that the Commission has built the capacity to do its job well, and on time, if the necessary resources are made available to us.

Needless to say, I and the Commission staff members present will be pleased to answer any questions you may have.

[Whereupon, at 10:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To increase an authorization of appropriations for the Privacy Protection Study Commission, and to remove the fiscal year expenditure limitation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of law referred to in the note immediately preceding section 553 of title 5, United States Code, is amended to read as follows:

“SEC. 9. There is authorized to be appropriated, without fiscal year limitation only to such extent or in such amounts as are provided in appropriation Acts, the sum of \$2,000,000 to carry out the provisions of section 5 of this Act for the period beginning July 1, 1975, and ending on September 30, 1977.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*