



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

บรรณานุกรม

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ภาคผนวก ก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

**CONVENTION
FOR THE PROTECTION OF INDIVIDUALS WITH REGARD
TO AUTOMATIC PROCESSING OF PERSONAL DATA**

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,

Have agreed as follows:

CHAPTER I

General Provisions

ARTICLE 1

Object and purpose

The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection").

ARTICLE 2

Definitions

For the purposes of this convention:

- (a) "personal data" means any information relating to an identified or identifiable individual ("data subject");
- (b) "automated data file" means any set of data undergoing automatic processing;
- (c) "automatic processing" includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination;

- (d) "controller of the file" means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.

ARTICLE 3

Scope

1. The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:

(a) that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;

(b) that it will also apply this convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;

(c) that it will also apply this convention to personal data files which are not processed automatically.

3. Any State which has extended the scope of this convention by any of the declarations provided for in sub-paragraph 2(b) or (c) above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.

4. Any Party which has excluded certain categories of automated personal data files by a declaration provided for in sub-paragraph 2(a) above may not claim the application of this convention to such categories by a Party which has not excluded them.

5. Likewise, a Party which has not made one or other of the extensions provided for in sub-paragraphs 2(b) and (c) above may not claim the application of this convention on these points with respect to a Party which has made such extensions.

6. The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance,

approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.

CHAPTER II

Basic Principles for Data Protection

ARTICLE 4

Duties of the Parties

1. Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.
2. These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.

ARTICLE 5

Quality of data

Personal data undergoing automatic processing shall be:

- (a) obtained and processed fairly and lawfully;
- (b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- (c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
- (d) accurate and, where necessary, kept up to date;
- (e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

ARTICLE 6

Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

ARTICLE 7

Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

ARTICLE 8

Additional safeguards for the data subject

Any person shall be enabled:

- (a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;
- (b) to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;
- (c) to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this convention;
- (d) to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs *b* and *c* of this article is not complied with.

ARTICLE 9

Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

- (a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;
- (b) protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs (b), (c) and (d), may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of data subjects.

ARTICLE 10

Sanctions and remedies

Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.

ARTICLE 11

Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this convention.

CHAPTER III

Transborder Data Flows

ARTICLE 12

Transborder flows of personal data and domestic law

1. The following provisions shall apply to the transfer across national borders, by whatever medium, of personal data undergoing automatic processing or collected with a view to their being automatically processed.

2. A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.

3. Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:

- (a) insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;
- (b) when the transfer is made from its territory to the territory of a non-Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.

CHAPTER IV

Mutual Assistance

ARTICLE 13

Co-operation between Parties

1. The Parties agree to render each other mutual assistance in order to implement this convention.

2. For that purpose:

- (a) each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;

- (b) each Party which has designated more than one authority shall specify in its communication referred to in the previous subparagraph the competence of each authority.
3. An authority designated by a Party shall at the request of an authority designated by another Party:
- (a) furnish information on its law and administrative practice in the field of data protection;
 - (b) take, in conformity with its domestic law and for the sole purpose of protection of privacy, all appropriate measures for furnishing factual information relating to specific automatic processing carried out in its territory, with the exception however of the personal data being processed.

ARTICLE 14

Assistance to data subjects resident abroad

1. Each Party shall assist any person resident abroad to exercise the rights conferred by its domestic law giving effect to the principles set out in Article 8 of this convention.
2. When such a person resides in the territory of another Party he shall be given the option of submitting his request through the intermediary of the authority designated by that Party.
3. The request for assistance shall contain all the necessary particulars, relating *inter alia* to:
 - (a) the name, address and any other relevant particulars identifying the person making the request;
 - (b) the automated personal data file to which the request pertains, or its controller;
 - (c) the purpose of the request.

ARTICLE 15

Safeguards concerning assistance rendered by designated authorities

1. An authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2. Each Party shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.
3. In no case may a designated authority be allowed to make under Article 14, paragraph 2, a request for assistance on behalf of a data subject resident abroad, of its own accord and without the express consent of the person concerned.

ARTICLE 16

Refusal of requests for assistance

A designated authority to which a request for assistance is addressed under Articles 13 or 14 of this convention may not refuse to comply with it unless:

- (a) the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;
- (b) the request does not comply with the provisions of this convention;
- (c) compliance with the request would be incompatible with the sovereignty, security or public policy (*ordre public*) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.

ARTICLE 17

Costs and procedures of assistance

1. Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects abroad under Article 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the authority making the request for assistance.

2. The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.

3. Other details concerning the assistance relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.

CHAPTER V

Consultative Committee

ARTICLE 18

Composition of the committee

1. A Consultative Committee shall be set up after the entry into force of this convention.

2. Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the convention shall have the right to be represented on the committee by an observer.

3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the convention to be represented by an observer at a given meeting.

ARTICLE 19

Functions of the committee

The Consultative Committee:

- (a) may make proposals with a view to facilitating or improving the application of the convention;
- (b) may make proposals for amendment of this convention in accordance with Article 21;
- (c) shall formulate its opinion on any proposal for amendment of this convention which is referred to it in accordance with Article 21, paragraph 3;
- (d) may, at the request of a Party, express an opinion on any question concerning the application of this convention.

ARTICLE 20

Procedure

1. The Consultative Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.
2. A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.
3. After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the convention.
4. Subject to the provisions of this convention, the Consultative Committee shall draw up its own Rules of Procedure.

CHAPTER VI

Amendments

ARTICLE 21

Amendments

1. Amendments to this convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Consultative Committee.
2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to this convention in accordance with the provisions of Article 23.

3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultative Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

4. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.

5. The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 of this article shall be forwarded to the Parties for acceptance.

6. Any amendment approved in accordance with paragraph 4 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

CHAPTER VII

Final Clauses

ARTICLE 22

Entry into force

1. This convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the convention in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 23

Accession by non-member States

1. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this convention by a decision taken by the majority provided for in Article 20(d) of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.

2. In respect of any acceding State, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

ARTICLE 24

Territorial clause

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to any other territory specified in the declaration. In respect of such territory the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

ARTICLE 25

Reservations

No reservation may be made in respect of the provisions of this convention.

ARTICLE 26

Denunciation

1. Any Party may at any time denounce this convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

ARTICLE 27

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this convention of:

(a) any signature;

- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this convention in accordance with Articles 22, 23 and 24;
- (d) any other act, notification or communication relating to this convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 28th day of January 1981, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

SIGNATURES

<i>State</i>	<i>Date of signature</i>
Austria	} 28 Jan. 1981
Denmark	
France*	
Germany, Federal Republic of*... ..	
Luxembourg	} 13 Mar. 1981
Norway	
Portugal	14 May 1981
Sweden	} 28 Jan. 1981
Turkey	
United Kingdom*	14 May 1981

* FRANCE

On signing the Convention the Government of the French Republic made the following declaration:

"The Government of the French Republic declares that in Article 9, paragraph 2(a) it interprets the phrase "Sécurité de l'Etat" as meaning "Sûreté de l'Etat" and the phrase "Sûreté publique" as meaning "Sécurité publique".

* GERMANY, FEDERAL REPUBLIC OF

On signing the Convention the Government of the Federal Republic of Germany made the following declaration:

"On the occasion of this signature of the Convention for the protection of individuals with regard to automatic processing of personal data, I have the honour to declare on behalf of the Federal Republic of Germany that the Federal Republic of Germany, following upon the examination which it has commenced will, if necessary, when depositing its instrument of ratification, make declarations of interpretation with regard to specific provisions of the Convention and in particular Article 8 and Article 12, paragraphs 2 and 3".

* UNITED KINGDOM

On signing the Convention the Government of the United Kingdom made the following statement:

"The Government of the United Kingdom of Great Britain and Northern Ireland may wish to make formal declarations at the time of ratification, in particular in accordance with the provisions of Article 3 of the Convention".



ภาคผนวก ข

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ELIZABETH II



Data Protection Act 1984

1984 CHAPTER 35

An Act to regulate the use of automatically processed information relating to individuals and the provision of services in respect of such information.

[12th July 1984]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

1.—(1) The following provisions shall have effect for the interpretation of this Act.

Definition of
"data" and
related
expressions.

(2) "Data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose.

(3) "Personal data" means data consisting of information which relates to a living individual who can be identified from that information (or from that and other information in the possession of the data user), including any expression of opinion about the individual but not any indication of the intentions of the data user in respect of that individual.

(4) "Data subject" means an individual who is the subject of personal data.

PART I

(5) "Data user" means a person who holds data, and a person "holds" data if—

- (a) the data form part of a collection of data processed or intended to be processed by or on behalf of that person as mentioned in subsection (2) above; and
- (b) that person (either alone or jointly or in common with other persons) controls the contents and use of the data comprised in the collection; and
- (c) the data are in the form in which they have been or are intended to be processed as mentioned in paragraph (a) above or (though not for the time being in that form) in a form into which they have been converted after being so processed and with a view to being further so processed on a subsequent occasion.

(6) A person carries on a "computer bureau" if he provides other persons with services in respect of data, and a person provides such services if—

- (a) as agent for other persons he causes data held by them to be processed as mentioned in subsection (2) above; or
- (b) he allows other persons the use of equipment in his possession for the processing as mentioned in that subsection of data held by them.

(7) "Processing", in relation to data, means amending, augmenting, deleting or re-arranging the data or extracting the information constituting the data and, in the case of personal data, means performing any of those operations by reference to the data subject.

(8) Subsection (7) above shall not be construed as applying to any operation performed only for the purpose of preparing the text of documents.

(9) "Disclosing", in relation to data, includes disclosing information extracted from the data; and where the identification of the individual who is the subject of personal data depends partly on the information constituting the data and partly on other information in the possession of the data user, the data shall not be regarded as disclosed or transferred unless the other information is also disclosed or transferred.

The data protection principles.

2.—(1) Subject to subsection (3) below, references in this Act to the data protection principles are to the principles set out in Part I of Schedule 1 to this Act; and those principles shall be interpreted in accordance with Part II of that Schedule.

(2) The first seven principles apply to personal data held by data users and the eighth applies both to such data and to per-

sonal data in respect of which services are provided by persons carrying on computer bureaux.

PART I

(3) The Secretary of State may by order modify or supplement those principles for the purpose of providing additional safeguards in relation to personal data consisting of information as to—

- (a) the racial origin of the data subject ;
- (b) his political opinions or religious or other beliefs ;
- (c) his physical or mental health or his sexual life ; or
- (d) his criminal convictions ;

and references in this Act to the data protection principles include, except where the context otherwise requires, references to any modified or additional principle having effect by virtue of an order under this subsection.

(4) An order under subsection (3) above may modify a principle either by modifying the principle itself or by modifying its interpretation ; and where an order under that subsection modifies a principle or provides for an additional principle it may contain provisions for the interpretation of the modified or additional principle.

(5) An order under subsection (3) above modifying the third data protection principle may, to such extent as the Secretary of State thinks appropriate, exclude or modify in relation to that principle any exemption from the non-disclosure provisions which is contained in Part IV of this Act ; and the exemptions from those provisions contained in that Part shall accordingly have effect subject to any order made by virtue of this subsection.

(6) An order under subsection (3) above may make different provision in relation to data consisting of information of different descriptions.

3.—(1) For the purposes of this Act there shall be—

- (a) an officer known as the Data Protection Registrar (in this Act referred to as " the Registrar ") ; and
- (b) a tribunal known as the Data Protection Tribunal (in this Act referred to as " the Tribunal ").

The Registrar and the Tribunal.

(2) The Registrar shall be appointed by Her Majesty by Letters Patent.

(3) The Tribunal shall consist of—

- (a) a chairman appointed by the Lord Chancellor after consultation with the Lord Advocate ;
- (b) such number of deputy chairmen appointed as aforesaid as the Lord Chancellor may determine ; and

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(c) such number of other members appointed by the Secretary of State as he may determine.

(4) The members of the Tribunal appointed under subsection (3)(a) and (b) above shall be barristers, advocates or solicitors, in each case of not less than seven years' standing.

(5) The members of the Tribunal appointed under subsection (3)(c) above shall be—

- (a) persons to represent the interests of data users ; and
- (b) persons to represent the interests of data subjects.

(6) Schedule 2 to this Act shall have effect in relation to the Registrar and the Tribunal.

PART II

REGISTRATION AND SUPERVISION OF DATA USERS AND COMPUTER BUREAUX

Registration

Registration
of data users
and computer
bureaux.

4.—(1) The Registrar shall maintain a register of data users who hold, and of persons carrying on computer bureaux who provide services in respect of, personal data and shall make an entry in the register in pursuance of each application for registration accepted by him under this Part of this Act.

(2) Each entry shall state whether it is in respect of a data user, of a person carrying on a computer bureau or of a data user who also carries on such a bureau.

(3) Subject to the provisions of this section, an entry in respect of a data user shall consist of the following particulars—

- (a) the name and address of the data user ;
- (b) a description of the personal data to be held by him and of the purpose or purposes for which the data are to be held or used ;
- (c) a description of the source or sources from which he intends or may wish to obtain the data or the information to be contained in the data ;
- (d) a description of any person or persons to whom he intends or may wish to disclose the data ;
- (e) the names or a description of any countries or territories outside the United Kingdom to which he intends or may wish directly or indirectly to transfer the data ; and
- (f) one or more addresses for the receipt of requests from data subjects for access to the data.

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(4) Subject to the provisions of this section, an entry in respect of a person carrying on a computer bureau shall consist of that person's name and address.

(5) Subject to the provisions of this section, an entry in respect of a data user who also carries on a computer bureau shall consist of his name and address and, as respects the personal data to be held by him, the particulars specified in subsection (3)(b) to (f) above.

(6) In the case of a registered company the address referred to in subsections (3)(a), (4) and (5) above is that of its registered office, and the particulars to be included in the entry shall include the company's number in the register of companies.

(7) In the case of a person (other than a registered company) carrying on a business the address referred to in subsections (3)(a), (4) and (5) above is that of his principal place of business.

(8) The Secretary of State may by order vary the particulars to be included in entries made in the register.

5.—(1) A person shall not hold personal data unless an entry in respect of that person as a data user, or as a data user who also carries on a computer bureau, is for the time being contained in the register. Prohibition of unregistered holding etc. of personal data.

(2) A person in respect of whom such an entry is contained in the register shall not—

- (a) hold personal data of any description other than that specified in the entry;
- (b) hold any such data, or use any such data held by him, for any purpose other than the purpose or purposes described in the entry;
- (c) obtain such data, or information to be contained in such data, to be held by him from any source which is not described in the entry;
- (d) disclose such data held by him to any person who is not described in the entry; or
- (e) directly or indirectly transfer such data held by him to any country or territory outside the United Kingdom other than one named or described in the entry.

(3) A servant or agent of a person to whom subsection (2) above applies shall, as respects personal data held by that person, be subject to the same restrictions on the use, disclosure or transfer of the data as those to which that person is subject under paragraphs (b), (d) and (e) of that subsection and, as respects personal data to be held by that person, to the same restrictions as those to which he is subject under paragraph (c) of that subsection.

PART II

(4) A person shall not, in carrying on a computer bureau, provide services in respect of personal data unless an entry in respect of that person as a person carrying on such a bureau, or as a data user who also carries on such a bureau, is for the time being contained in the register.

(5) Any person who contravenes subsection (1) above or knowingly or recklessly contravenes any of the other provisions of this section shall be guilty of an offence.

Applications for registration and for amendment of registered particulars.

6.—(1) A person applying for registration shall state whether he wishes to be registered as a data user, as a person carrying on a computer bureau or as a data user who also carries on such a bureau, and shall furnish the Registrar, in such form as he may require, with the particulars required to be included in the entry to be made in pursuance of the application.

(2) Where a person intends to hold personal data for two or more purposes he may make separate applications for registration in respect of any of those purposes.

(3) A registered person may at any time apply to the Registrar for the alteration of any particulars included in the entry or entries relating to that person.

(4) Where the alteration would consist of the addition of a purpose for which personal data are to be held, the person may, instead of making an application under subsection (3) above, make a fresh application for registration in respect of the additional purpose.

(5) A registered person shall make an application under subsection (3) above whenever necessary for ensuring that the entry or entries relating to that person contain his current address; and any person who fails to comply with this subsection shall be guilty of an offence.

(6) Any person who, in connection with an application for registration or for the alteration of registered particulars, knowingly or recklessly furnishes the Registrar with information which is false or misleading in a material respect shall be guilty of an offence.

(7) Every application for registration shall be accompanied by the prescribed fee, and every application for the alteration of registered particulars shall be accompanied by such fee, if any, as may be prescribed.

(8) Any application for registration or for the alteration of registered particulars may be withdrawn by notice in writing to the Registrar at any time before the applicant receives a notification in respect of the application under section 7(1) below.

7.—(1) Subject to the provisions of this section, the Registrar shall as soon as practicable and in any case within the period of six months after receiving an application for registration or for the alteration of registered particulars notify the applicant in writing whether his application has been accepted or refused; and where the Registrar notifies an applicant that his application has been accepted the notification shall contain a statement of—

PART II
Acceptance
and refusal of
applications.

- (a) the particulars entered in the register, or the alteration made, in pursuance of the application; and
- (b) the date on which the particulars were entered or the alteration was made.

(2) The Registrar shall not refuse an application made in accordance with section 6 above unless—

- (a) he considers that the particulars proposed for registration or, as the case may be, the particulars that would result from the proposed alteration, will not give sufficient information as to the matters to which they relate; or
- (b) he is satisfied that the applicant is likely to contravene any of the data protection principles; or
- (c) he considers that the information available to him is insufficient to satisfy him that the applicant is unlikely to contravene any of those principles.

(3) Subsection (2)(a) above shall not be construed as precluding the acceptance by the Registrar of particulars expressed in general terms in cases where that is appropriate, and the Registrar shall accept particulars expressed in such terms in any case in which he is satisfied that more specific particulars would be likely to prejudice the purpose or purposes for which the data are to be held.

(4) Where the Registrar refuses an application under this section he shall give his reasons and inform the applicant of the rights of appeal conferred by section 13 below.

(5) If in any case it appears to the Registrar that an application needs more consideration than can be given to it in the period mentioned in subsection (1) above he shall as soon as practicable and in any case before the end of that period notify the applicant in writing to that effect; and in that event no notification need be given under that subsection until after the end of that period.

(6) Subject to subsection (8) below, a person who has made an application in accordance with section 6 above shall—

- (a) until he receives a notification in respect of it under subsection (1) above or the application is withdrawn; and

PART II

(b) if he receives a notification under that subsection of the refusal of his application, until the end of the period within which an appeal can be brought against the refusal and, if an appeal is brought, until the determination or withdrawal of the appeal,

be treated for the purposes of section 5 above as if his application had been accepted and the particulars contained in it had been entered in the register or, as the case may be, the alteration requested in the application had been made on the date on which the application was made.

(7) If by reason of special circumstances the Registrar considers that a refusal notified by him to an applicant under subsection (1) above should take effect as a matter of urgency he may include a statement to that effect in the notification of the refusal; and in that event subsection (6)(b) above shall have effect as if for the words from "the period" onwards there were substituted the words "the period of seven days beginning with the date on which that notification is received".

(8) Subsection (6) above shall not apply to an application made by any person if in the previous two years—

- (a) an application by that person has been refused under this section; or
- (b) all or any of the particulars constituting an entry contained in the register in respect of that person have been removed in pursuance of a de-registration notice;

but in the case of any such application subsection (1) above shall apply as if for the reference to six months there were substituted a reference to two months and, where the Registrar gives a notification under subsection (5) above in respect of any such application, subsection (6) above shall apply to it as if for the reference to the date on which the application was made there were substituted a reference to the date on which that notification is received.

(9) For the purposes of subsection (6) above an application shall be treated as made or withdrawn—

- (a) if the application or notice of withdrawal is sent by registered post or the recorded delivery service, on the date on which it is received for dispatch by the Post Office;
- (b) in any other case, on the date on which it is received by the Registrar;

and for the purposes of subsection (8)(a) above an application shall not be treated as having been refused so long as an appeal against the refusal can be brought, while such an appeal is pending or if such an appeal has been allowed.

8.—(1) No entry shall be retained in the register after the expiration of the initial period of registration except in pursuance of a renewal application made to the Registrar in accordance with this section. PART II
Duration and
renewal of
registration.

(2) Subject to subsection (3) below, the initial period of registration and the period for which an entry is to be retained in pursuance of a renewal application ("the renewal period") shall be such period (not being less than three years) as may be prescribed beginning with the date on which the entry in question was made or, as the case may be, the date on which that entry would fall to be removed if the renewal application had not been made.

(3) The person making an application for registration or a renewal application may in his application specify as the initial period of registration or, as the case may be, as the renewal period, a period shorter than that prescribed, being a period consisting of one or more complete years.

(4) Where the Registrar notifies an applicant for registration that his application has been accepted the notification shall include a statement of the date when the initial period of registration will expire.

(5) Every renewal application shall be accompanied by the prescribed fee, and no such application shall be made except in the period of six months ending with the expiration of—

- (a) the initial period of registration; or
- (b) if there have been one or more previous renewal applications, the current renewal period.

(6) Any renewal application may be sent by post, and the Registrar shall acknowledge its receipt and notify the applicant in writing of the date until which the entry in question will be retained in the register in pursuance of the application.

(7) Without prejudice to the foregoing provisions of this section, the Registrar may at any time remove an entry from the register at the request of the person to whom the entry relates.

9.—(1) The Registrar shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge. Inspection etc.
of registered
particulars.

(2) The Registrar shall, on payment of such fee, if any, as may be prescribed, supply any member of the public with a duly certified copy in writing of the particulars contained in the entry made in the register in pursuance of any application for registration.

8.—(1) No entry shall be retained in the register after the expiration of the initial period of registration except in pursuance of a renewal application made to the Registrar in accordance with this section. PART II
Duration and
renewal of
registration.

(2) Subject to subsection (3) below, the initial period of registration and the period for which an entry is to be retained in pursuance of a renewal application ("the renewal period") shall be such period (not being less than three years) as may be prescribed beginning with the date on which the entry in question was made or, as the case may be, the date on which that entry would fall to be removed if the renewal application had not been made.

(3) The person making an application for registration or a renewal application may in his application specify as the initial period of registration or, as the case may be, as the renewal period, a period shorter than that prescribed, being a period consisting of one or more complete years.

(4) Where the Registrar notifies an applicant for registration that his application has been accepted the notification shall include a statement of the date when the initial period of registration will expire.

(5) Every renewal application shall be accompanied by the prescribed fee, and no such application shall be made except in the period of six months ending with the expiration of—

(a) the initial period of registration; or

(b) if there have been one or more previous renewal applications, the current renewal period.

(6) Any renewal application may be sent by post, and the Registrar shall acknowledge its receipt and notify the applicant in writing of the date until which the entry in question will be retained in the register in pursuance of the application.

(7) Without prejudice to the foregoing provisions of this section, the Registrar may at any time remove an entry from the register at the request of the person to whom the entry relates.

9.—(1) The Registrar shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge. Inspection etc.
of registered
particulars.

(2) The Registrar shall, on payment of such fee, if any, as may be prescribed, supply any member of the public with a duly certified copy in writing of the particulars contained in the entry made in the register in pursuance of any application for registration.

(7) If by reason of special circumstances the Registrar considers that the steps required by an enforcement notice should be taken as a matter of urgency he may include a statement to that effect in the notice; and in that event subsection (6) above shall not apply but the notice shall not require the steps to be taken before the end of the period of seven days beginning with the date on which the notice is served.

(8) The Registrar may cancel an enforcement notice by written notification to the person on whom it was served.

(9) Any person who fails to comply with an enforcement notice shall be guilty of an offence; but it shall be a defence for a person charged with an offence under this subsection to prove that he exercised all due diligence to comply with the notice in question.

11.—(1) If the Registrar is satisfied that a registered person De-
has contravened or is contravening any of the data protection registration
principles he may— notices.

(a) serve him with a notice ("a de-registration notice") stating that he proposes, at the expiration of such period as is specified in the notice, to remove from the register all or any of the particulars constituting the entry or any of the entries contained in the register in respect of that person; and

(b) subject to the provisions of this section, remove those particulars from the register at the expiration of that period.

(2) In deciding whether to serve a de-registration notice the Registrar shall consider whether the contravention has caused or is likely to cause any person damage or distress, and the Registrar shall not serve such a notice unless he is satisfied that compliance with the principle or principles in question cannot be adequately secured by the service of an enforcement notice.

(3) A de-registration notice shall contain—

(a) a statement of the principle or principles which the Registrar is satisfied have been or are being contravened and his reasons for reaching that conclusion and deciding that compliance cannot be adequately secured by the service of an enforcement notice; and

(b) particulars of the rights of appeal conferred by section 13 below.

(4) Subject to subsection (5) below, the period specified in a de-registration notice pursuant to subsection (1)(a) above shall not expire before the end of the period within which an appeal

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can be brought against the notice and, if such an appeal is brought, the particulars shall not be removed pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Registrar considers that any particulars should be removed from the register as a matter of urgency he may include a statement to that effect in the de-registration notice; and in that event subsection (4) above shall not apply but the particulars shall not be removed before the end of the period of seven days beginning with the date on which the notice is served.

(6) The Registrar may cancel a de-registration notice by written notification to the person on whom it was served.

(7) References in this section to removing any particulars include references to restricting any description which forms part of any particulars.

Transfer prohibition notices.

12.—(1) If it appears to the Registrar that—

- (a) a person registered as a data user or as a data user who also carries on a computer bureau; or
- (b) a person treated as so registered by virtue of section 7(6) above,

proposes to transfer personal data held by him to a place outside the United Kingdom, the Registrar may, if satisfied as to the matters mentioned in subsection (2) or (3) below, serve that person with a notice ("a transfer prohibition notice") prohibiting him from transferring the data either absolutely or until he has taken such steps as are specified in the notice for protecting the interests of the data subjects in question.

(2) Where the place to which the data are to be transferred is not in a State bound by the European Convention the Registrar must be satisfied that the transfer is likely to contravene, or lead to a contravention of, any of the data protection principles.

(3) Where the place to which the data are to be transferred is in a State bound by the European Convention the Registrar must be satisfied either—

- (a) that—
 - (i) the person in question intends to give instructions for the further transfer of the data to a place which is not in such a State; and
 - (ii) that the further transfer is likely to contravene, or lead to a contravention of, any of the data protection principles; or

(b) in the case of data to which an order under section 2(3) above applies, that the transfer is likely to contravene

or lead to a contravention of, any of the data protection principles as they have effect in relation to such data.

(4) In deciding whether to serve a transfer prohibition notice the Registrar shall consider whether the notice is required for preventing damage or distress to any person and shall have regard to the general desirability of facilitating the free transfer of data between the United Kingdom and other states and territories.

(5) A transfer prohibition notice shall specify the time when it is to take effect and contain—

- (a) a statement of the principle or principles which the Registrar is satisfied are likely to be contravened and his reasons for reaching that conclusion ; and
- (b) particulars of the rights of appeal conferred by section 13 below.

(6) Subject to subsection (7) below, the time specified in a transfer prohibition notice pursuant to subsection (5) above shall not be before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice shall not take effect pending the determination or withdrawal of the appeal.

(7) If by reason of special circumstances the Registrar considers that the prohibition should take effect as a matter of urgency he may include a statement to that effect in the transfer prohibition notice ; and in that event subsection (6) above shall not apply but the notice shall not take effect before the end of the period of seven days beginning with the date on which the notice is served.

(8) The Registrar may cancel a transfer prohibition notice by written notification to the person on whom it was served.

(9) No transfer prohibition notice shall prohibit the transfer of any data where the transfer of the information constituting the data is required or authorised by or under any enactment or required by any convention or other instrument imposing an international obligation on the United Kingdom.

(10) Any person who contravenes a transfer prohibition notice shall be guilty of an offence ; but it shall be a defence for a person charged with an offence under this subsection to prove that he exercised all due diligence to avoid a contravention of the notice in question.

(11) For the purposes of this section a place shall be treated as in a State bound by the European Convention if it is in any territory in respect of which the State is bound.

PART II
Rights of
appeal.

Appeals

13.—(1) A person may appeal to the Tribunal against—

- (a) any refusal by the Registrar of an application by that person for registration or for the alteration of registered particulars ;
- (b) any enforcement notice, de-registration notice or transfer prohibition notice with which that person has been served.

(2) Where a notification that an application has been refused contains a statement by the Registrar in accordance with section 7(7) above, then, whether or not the applicant appeals under paragraph (a) of subsection (1) above, he may appeal against the Registrar's decision to include that statement in the notification.

(3) Where any such notice as is mentioned in paragraph (b) of subsection (1) above contains a statement by the Registrar in accordance with section 10(7), 11(5) or 12(7) above, then, whether or not the person served with the notice appeals under that paragraph, he may appeal against the Registrar's decision to include that statement in the notice or against the effect of the inclusion of the statement as respects any part of the notice.

(4) Schedule 3 to this Act shall have effect in relation to appeals under this section and to the proceedings of the Tribunal in respect of any such appeal.

Determination
of appeals.

14.—(1) If on an appeal under section 13(1) above the Tribunal considers—

- (a) that the refusal or notice against which the appeal is brought is not in accordance with the law ; or
- (b) to the extent that the refusal or notice involved an exercise of discretion by the Registrar, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other decision or notice as could have been made or served by the Registrar ; and in any other case the Tribunal shall dismiss the appeal.

(2) The Tribunal may review any determination of fact on which the refusal or notice in question was based.

(3) On an appeal under subsection (2) of section 13 above the Tribunal may direct that the notification of the refusal shall be treated as if it did not contain any such statement as is mentioned in that subsection.

(4) On an appeal under subsection (3) of section 13 above the Tribunal may direct that the notice in question shall have effect as if it did not contain any such statement as is mentioned in that subsection or that the inclusion of the statement shall

not have effect in relation to any part of the notice and may make such modifications in the notice as may be required for giving effect to the direction.

PART II

(5) Any party to an appeal to the Tribunal may appeal from the decision of the Tribunal on a point of law to the appropriate court; and that court shall be—

- (a) the High Court of Justice in England if the address of the person who was the appellant before the Tribunal is in England or Wales;
- (b) the Court of Session if that address is in Scotland; and
- (c) the High Court of Justice in Northern Ireland if that address is in Northern Ireland.

(6) In subsection (5) above references to the address of the appellant before the Tribunal are to his address as included or proposed for inclusion in the register.

Miscellaneous and supplementary

15.—(1) Personal data in respect of which services are provided by a person carrying on a computer bureau shall not be disclosed by him without the prior authority of the person for whom those services are provided. Unauthorised disclosure by computer bureau.

(2) Subsection (1) above applies also to any servant or agent of a person carrying on a computer bureau.

(3) Any person who knowingly or recklessly contravenes this section shall be guilty of an offence.

16. Schedule 4 to this Act shall have effect for the detection of offences under this Act and contraventions of the data protection principles. Powers of entry and inspection.

17.—(1) No enactment or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Registrar or the Tribunal with any information necessary for the discharge of their functions under this Act. Disclosure of information.

(2) For the purposes of section 2 of the Official Secrets Act 1911 c. 28. 1911 (wrongful communication of information)—

- (a) the Registrar and his officers and servants;
- (b) the members of the Tribunal; and
- (c) any officers or servants of the Tribunal who are not in the service of the Crown,

shall be deemed to hold office under Her Majesty.

(3) The said section 2 shall not be construed as precluding the disclosure of information by any person mentioned in sub-

PART II

section (2)(a) or (b) above or by any officer or servant of the Tribunal where the disclosure is made for the purpose of discharging his duties under this Act or for the purpose of proceedings under or arising out of this Act, including proceedings before the Tribunal.

Service of notices.

18.—(1) Any notice or notification authorised or required by this Act to be served on or given to any person by the Registrar may—

(a) if that person is an individual, be served on him—

(i) by delivering it to him ; or

(ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business ; or

(iii) by leaving it for him at that place ;

(b) if that person is a body corporate or unincorporate, be served on that body—

(i) by sending it by post to the proper officer of the body at its principal office ; or

(ii) by addressing it to the proper officer of the body and leaving it at that office.

(2) In subsection (1)(b) above “ principal office ”, in relation to a registered company, means its registered office and “ proper officer ”, in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs.

(3) This section is without prejudice to any other lawful method of serving or giving a notice or notification.

Prosecutions and penalties.

19.—(1) No proceedings for an offence under this Act shall be instituted—

(a) in England or Wales except by the Registrar or by or with the consent of the Director of Public Prosecutions ;

(b) in Northern Ireland except by the Registrar or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) A person guilty of an offence under any provision of this Act other than section 6 or paragraph 12 of Schedule 4 shall be liable—

(a) on conviction on indictment, to a fine ; or

(b) on summary conviction, to a fine not exceeding the statutory maximum (as defined in section 74 of the Criminal Justice Act 1982).

(3) A person guilty of an offence under section 6 above or the said paragraph 12 shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale (as defined in section 75 of the said Act of 1982).

PART II

(4) Subject to subsection (5) below, the court by or before which a person is convicted of an offence under section 5, 10, 12 or 15 above may order any data material appearing to the court to be connected with the commission of the offence to be forfeited, destroyed or erased.

(5) The court shall not make an order under subsection (4) above in relation to any material where a person (other than the offender) claiming to be the owner or otherwise interested in it applies to be heard by the court unless an opportunity is given to him to show cause why the order should not be made.

20.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly. Liability of directors etc.

(2) Where the affairs of a body corporate are managed by its members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART III

RIGHTS OF DATA SUBJECTS

21.—(1) Subject to the provisions of this section, an individual shall be entitled— Right of access to personal data.

(a) to be informed by any data user whether the data held by him include personal data of which that individual is the data subject ; and

(b) to be supplied by any data user with a copy of the information constituting any such personal data held by him ;

and where any of the information referred to in paragraph (b) above is expressed in terms which are not intelligible without explanation the information shall be accompanied by an explanation of those terms.

(2) A data user shall not be obliged to supply any information under subsection (1) above except in response to a request

PART III in writing and on payment of such fee (not exceeding the prescribed maximum) as he may require; but a request for information under both paragraphs of that subsection shall be treated as a single request and a request for information under paragraph (a) shall, in the absence of any indication to the contrary, be treated as extending also to information under paragraph (b).

(3) In the case of a data user having separate entries in the register in respect of data held for different purposes a separate request must be made and a separate fee paid under this section in respect of the data to which each entry relates.

(4) A data user shall not be obliged to comply with a request under this section—

(a) unless he is supplied with such information as he may reasonably require in order to satisfy himself as to the identity of the person making the request and to locate the information which he seeks; and

(b) if he cannot comply with the request without disclosing information relating to another individual who can be identified from that information, unless he is satisfied that the other individual has consented to the disclosure of the information to the person making the request.

(5) In paragraph (b) of subsection (4) above the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that paragraph shall not be construed as excusing a data user from supplying so much of the information sought by the request as can be supplied without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(6) A data user shall comply with a request under this section within forty days of receiving the request or, if later, receiving the information referred to in paragraph (a) of subsection (4) above and, in a case where it is required, the consent referred to in paragraph (b) of that subsection.

(7) The information to be supplied pursuant to a request under this section shall be supplied by reference to the data in question at the time when the request is received except that it may take account of any amendment or deletion made between that time and the time when the information is supplied, being an amendment or deletion that would have been made regardless of the receipt of the request.

(8) If a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section

that the data user in question has failed to comply with the request in contravention of those provisions, the court may order him to comply with the request; but a court shall not make an order under this subsection if it considers that it would in all the circumstances be unreasonable to do so, whether because of the frequency with which the applicant has made requests to the data user under those provisions or for any other reason.

(9) The Secretary of State may by order provide for enabling a request under this section to be made on behalf of any individual who is incapable by reason of mental disorder of managing his own affairs.

22.—(1) An individual who is the subject of personal data held by a data user and who suffers damage by reason of the inaccuracy of the data shall be entitled to compensation from the data user for that damage and for any distress which the individual has suffered by reason of the inaccuracy. Compensation for inaccuracy.

(2) In the case of data which accurately record information received or obtained by the data user from the data subject or a third party, subsection (1) above does not apply if the following requirements have been complied with—

- (a) the data indicate that the information was received or obtained as aforesaid or the information has not been extracted from the data except in a form which includes an indication to that effect; and
- (b) if the data subject has notified the data user that he regards the information as incorrect or misleading, an indication to that effect has been included in the data or the information has not been extracted from the data except in a form which includes an indication to that effect.

(3) In proceedings brought against any person by virtue of this section it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to ensure the accuracy of the data at the material time.

(4) Data are inaccurate for the purposes of this section if incorrect or misleading as to any matter of fact.

23.—(1) An individual who is the subject of personal data held by a data user or in respect of which services are provided by a person carrying on a computer bureau and who suffers damage by reason of— Compensation for loss or unauthorised disclosure.

- (a) the loss of the data;
- (b) the destruction of the data without the authority of the data user or, as the case may be, of the person carrying on the bureau; or

PART III

(c) subject to subsection (2) below, the disclosure of the data, or access having been obtained to the data, without such authority as aforesaid,

shall be entitled to compensation from the data user or, as the case may be, the person carrying on the bureau for that damage and for any distress which the individual has suffered by reason of the loss, destruction, disclosure or access.

(2) In the case of a registered data user, subsection (1)(c) above does not apply to disclosure to, or access by, any person falling within a description specified pursuant to section 4(3)(d) above in an entry in the register relating to that data user.

(3) In proceedings brought against any person by virtue of this section it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to prevent the loss, destruction, disclosure or access in question.

Rectification
and erasure.

24.—(1) If a court is satisfied on the application of a data subject that personal data held by a data user of which the applicant is the subject are inaccurate within the meaning of section 22 above, the court may order the rectification or erasure of the data and of any data held by the data user and containing an expression of opinion which appears to the court to be based on the inaccurate data.

(2) Subsection (1) above applies whether or not the data accurately record information received or obtained by the data user from the data subject or a third party but where the data accurately record such information, then—

(a) if the requirements mentioned in section 22(2) above have been complied with, the court may, instead of making an order under subsection (1) above, make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve; and

(b) if all or any of those requirements have not been complied with, the court may, instead of making an order under that subsection, make such order as it thinks fit for securing compliance with those requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a) above.

(3) If a court is satisfied on the application of a data subject—

(a) that he has suffered damage by reason of the disclosure of personal data, or of access having been obtained to personal data, in circumstances entitling him to compensation under section 23 above; and

(b) that there is a substantial risk of further disclosure of or access to the data without such authority as is mentioned in that section,

PART III

the court may order the erasure of the data ; but, in the case of data in respect of which services were being provided by a person carrying on a computer bureau, the court shall not make such an order unless such steps as are reasonably practicable have been taken for notifying the person for whom those services were provided and giving him an opportunity to be heard.

25.—(1) The jurisdiction conferred by sections 21 and 24 above shall be exercisable by the High Court or a county court or, in Scotland, by the Court of Session or the sheriff. Jurisdiction and procedure.

(2) For the purpose of determining any question whether an applicant under subsection (8) of section 21 above is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part IV of this Act) a court may require the information constituting any data held by the data user to be made available for its own inspection but shall not, pending the determination of that question in the applicant's favour, require the information sought by the applicant to be disclosed to him or his representatives whether by discovery (or, in Scotland, recovery) or otherwise.

PART IV

EXEMPTIONS

26.—(1) References in any provision of Part II or III of this Act to personal data do not include references to data which by virtue of this Part of this Act are exempt from that provision. Preliminary

(2) In this Part of this Act "the subject access provisions" means—

(a) section 21 above ; and

(b) any provision of Part II of this Act conferring a power on the Registrar to the extent to which it is exercisable by reference to paragraph (a) of the seventh data protection principle.

(3) In this Part of this Act "the non-disclosure provisions" means—

(a) sections 5(2)(d) and 15 above ; and

(b) any provision of Part II of this Act conferring a power on the Registrar to the extent to which it is exercisable by reference to any data protection principle inconsistent with the disclosure in question.

PART IV

(4) Except as provided by this Part of this Act the subject access provisions shall apply notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

National security.

27.—(1) Personal data are exempt from the provisions of Part II of this Act and of sections 21 to 24 above if the exemption is required for the purpose of safeguarding national security.

(2) Any question whether the exemption mentioned in subsection (1) above is or at any time was required for the purpose there mentioned in respect of any personal data shall be determined by a Minister of the Crown ; and a certificate signed by a Minister of the Crown certifying that the exemption is or at any time was so required shall be conclusive evidence of that fact.

(3) Personal data which are not exempt under subsection (1) above are exempt from the non-disclosure provisions in any case in which the disclosure of the data is for the purpose of safeguarding national security.

(4) For the purposes of subsection (3) above a certificate signed by a Minister of the Crown certifying that personal data are or have been disclosed for the purpose mentioned in that subsection shall be conclusive evidence of that fact.

(5) A document purporting to be such a certificate as is mentioned in this section shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(6) The powers conferred by this section on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General or the Lord Advocate.

Crime and taxation.

28.—(1) Personal data held for any of the following purposes—

- (a) the prevention or detection of crime ;
- (b) the apprehension or prosecution of offenders ; or
- (c) the assessment or collection of any tax or duty,

are exempt from the subject access provisions in any case in which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

(2) Personal data which—

- (a) are held for the purpose of discharging statutory functions ; and
- (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in subsection (1) above,

are exempt from the subject access provisions to the same extent as personal data held for any of the purposes mentioned in that subsection.

PART IV

(3) Personal data are exempt from the non-disclosure provisions in any case in which—

- (a) the disclosure is for any of the purposes mentioned in subsection (1) above ; and
- (b) the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection ;

and in proceedings against any person for contravening a provision mentioned in section 26(3)(a) above it shall be a defence to prove that he had reasonable grounds for believing that failure to make the disclosure in question would have been likely to prejudice any of those matters.

(4) Personal data are exempt from the provisions of Part II of this Act conferring powers on the Registrar, to the extent to which they are exercisable by reference to the first data protection principle, in any case in which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in subsection (1) above.

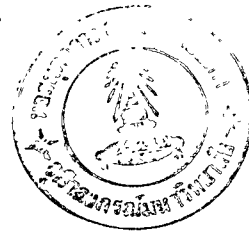
29.—(1) The Secretary of State may by order exempt from the subject access provisions, or modify those provisions in relation to, personal data consisting of information as to the physical or mental health of the data subject. Health and social work.

(2) The Secretary of State may by order exempt from the subject access provisions, or modify those provisions in relation to, personal data of such other descriptions as may be specified in the order, being information—

- (a) held by government departments or local authorities or by voluntary organisations or other bodies designated by or under the order ; and
- (b) appearing to him to be held for, or acquired in the course of, carrying out social work in relation to the data subject or other individuals ;

but the Secretary of State shall not under this subsection confer any exemption or make any modification except so far as he considers that the application to the data of those provisions (or of those provisions without modification) would be likely to prejudice the carrying out of social work.

(3) An order under this section may make different provision in relation to data consisting of information of different descriptions.



PART IV
Regulation of
financial
services etc.

30.—(1) Personal data held for the purpose of discharging statutory functions to which this section applies are exempt from the subject access provisions in any case in which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

(2) This section applies to any functions designated for the purposes of this section by an order made by the Secretary of State, being functions conferred by or under any enactment appearing to him to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or in the management of companies or to the conduct of discharged or undischarged bankrupts.

Judicial
appointments
and legal
professional
privilege.

31.—(1) Personal data held by a government department are exempt from the subject access provisions if the data consist of information which has been received from a third party and is held as information relevant to the making of judicial appointments.

(2) Personal data are exempt from the subject access provisions if the data consist of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings.

Payrolls and
accounts

32.—(1) Subject to subsection (2) below, personal data held by a data user only for one or more of the following purposes—

(a) calculating amounts payable by way of remuneration or pensions in respect of service in any employment or office or making payments of, or of sums deducted from, such remuneration or pensions; or

(b) keeping accounts relating to any business or other activity carried on by the data user or keeping records of purchases, sales or other transactions for the purpose of ensuring that the requisite payments are made by or to him in respect of those transactions or for the purpose of making financial or management forecasts to assist him in the conduct of any such business or activity,

are exempt from the provisions of Part II of this Act and of sections 21 to 24 above.

(2) It shall be a condition of the exemption of any data under this section that the data are not used for any purpose other than the purpose or purposes for which they are held and are not disclosed except as permitted by subsections (3) and (4)

below; but the exemption shall not be lost by any use or disclosure in breach of that condition if the data user shows that he had taken such care to prevent it as in all the circumstances was reasonably required.

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(3) Data held only for one or more of the purposes mentioned in subsection (1)(a) above may be disclosed—

- (a) to any person, other than the data user, by whom the remuneration or pensions in question are payable;
- (b) for the purpose of obtaining actuarial advice;
- (c) for the purpose of giving information as to the persons in any employment or office for use in medical research into the health of, or injuries suffered by, persons engaged in particular occupations or working in particular places or areas;
- (d) if the data subject (or a person acting on his behalf) has requested or consented to the disclosure of the data either generally or in the circumstances in which the disclosure in question is made; or
- (e) if the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (d) above.

(4) Data held for any of the purposes mentioned in subsection (1) above may be disclosed—

- (a) for the purpose of audit or where the disclosure is for the purpose only of giving information about the data user's financial affairs; or
- (b) in any case in which disclosure would be permitted by any other provision of this Part of this Act if subsection (2) above were included among the non-disclosure provisions.

(5) In this section "remuneration" includes remuneration in kind and "pensions" includes gratuities or similar benefits.

33.—(1) Personal data held by an individual and concerned only with the management of his personal, family or household affairs or held by him only for recreational purposes are exempt from the provisions of Part II of this Act and of sections 21 to 24 above. Domestic or other limited purposes.

(2) Subject to subsections (3) and (4) below—

- (a) personal data held by an unincorporated members' club and relating only to the members of the club; and
- (b) personal data held by a data user only for the purpose of distributing, or recording the distribution of, articles or information to the data subjects and consisting only

PART IV

of their names, addresses or other particulars necessary for effecting the distribution,

are exempt from the provisions of Part II of this Act and of sections 21 to 24 above.

(3) Neither paragraph (a) nor paragraph (b) of subsection (2) above applies to personal data relating to any data subject unless he has been asked by the club or data user whether he objects to the data relating to him being held as mentioned in that paragraph and has not objected.

(4) It shall be a condition of the exemption of any data under paragraph (b) of subsection (2) above that the data are not used for any purpose other than that for which they are held and of the exemption of any data under either paragraph of that subsection that the data are not disclosed except as permitted by subsection (5) below ; but the first exemption shall not be lost by any use, and neither exemption shall be lost by any disclosure, in breach of that condition if the data user shows that he had taken such care to prevent it as in all the circumstances was reasonably required.

(5) Data to which subsection (4) above applies may be disclosed—

(a) if the data subject (or a person acting on his behalf) has requested or consented to the disclosure of the data either generally or in the circumstances in which the disclosure in question is made ;

(b) if the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a) above ; or

(c) in any case in which disclosure would be permitted by any other provision of this Part of this Act if subsection (4) above were included among the non-disclosure provisions.

(6) Personal data held only for—

(a) preparing statistics ; or

(b) carrying out research,

are exempt from the subject access provisions ; but it shall be a condition of that exemption that the data are not used or disclosed for any other purpose and that the resulting statistics or the results of the research are not made available in a form which identifies the data subjects or any of them.

Other exemptions.

34.—(1) Personal data held by any person are exempt from the provisions of Part II of this Act and of sections 21 to 24 above if the data consist of information which that person is required by or under any enactment to make available to the

public, whether by publishing it, making it available for inspection or otherwise and whether gratuitously or on payment of a fee.

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(2) The Secretary of State may by order exempt from the subject access provisions personal data consisting of information the disclosure of which is prohibited or restricted by or under any enactment if he considers that the prohibition or restriction ought to prevail over those provisions in the interests of the data subject or of any other individual.

(3) Where all the personal data relating to a data subject held by a data user (or all such data in respect of which a data user has a separate entry in the register) consist of information in respect of which the data subject is entitled to make a request to the data user under section 158 of the Consumer Credit Act 1974 ^{1974 c. 39.} (files of credit reference agencies)—

(a) the data are exempt from the subject access provisions ;
and

(b) any request in respect of the data under section 21 above shall be treated for all purposes as if it were a request under the said section 158.

(4) Personal data are exempt from the subject access provisions if the data are kept only for the purpose of replacing other data in the event of the latter being lost, destroyed or impaired.

(5) Personal data are exempt from the non-disclosure provisions in any case in which the disclosure is—

(a) required by or under any enactment, by any rule of law or by the order of a court ; or

(b) made for the purpose of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the disclosure is a party or a witness.

(6) Personal data are exempt from the non-disclosure provisions in any case in which—

(a) the disclosure is to the data subject or a person acting on his behalf ; or

(b) the data subject or any such person has requested or consented to the particular disclosure in question ; or

(c) the disclosure is by a data user or a person carrying on a computer bureau to his servant or agent for the purpose of enabling the servant or agent to perform his functions as such ; or

(d) the person making the disclosure has reasonable grounds for believing that the disclosure falls within any of the foregoing paragraphs of this subsection.

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(7) Section 4(3)(d) above does not apply to any disclosure falling within paragraph (a), (b) or (c) of subsection (6) above; and that subsection shall apply to the restriction on disclosure in section 33(6) above as it applies to the non-disclosure provisions.

(8) Personal data are exempt from the non-disclosure provisions in any case in which the disclosure is urgently required for preventing injury or other damage to the health of any person or persons; and in proceedings against any person for contravening a provision mentioned in section 26(3)(a) above it shall be a defence to prove that he had reasonable grounds for believing that the disclosure in question was urgently required for that purpose.

(9) A person need not comply with a notice, request or order under the subject access provisions if compliance would expose him to proceedings for any offence other than an offence under this Act; and information disclosed by any person in compliance with such a notice, request or order shall not be admissible against him in proceedings for an offence under this Act.

Examina-
tion marks.

35.—(1) Section 21 above shall have effect subject to the provisions of this section in the case of personal data consisting of marks or other information held by a data user—

(a) for the purpose of determining the results of an academic, professional or other examination or of enabling the results of any such examination to be determined; or

(b) in consequence of the determination of any such results.

(2) Where the period mentioned in subsection (6) of section 21 begins before the results of the examination are announced that period shall be extended until—

(a) the end of five months from the beginning of that period; or

(b) the end of forty days after the date of the announcement,

whichever is the earlier.

(3) Where by virtue of subsection (2) above a request is complied with more than forty days after the beginning of the period mentioned in subsection (6) of section 21, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and (if different) by reference to the data as from time to time held in the period beginning when the request is received and ending when it is complied with.

(4) For the purposes of this section the results of an examination shall be treated as announced when they are first published or (if not published) when they are first made available or communicated to the candidate in question.

(5) In this section "examination" includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity.

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PART V

GENERAL

36.—(1) It shall be the duty of the Registrar so to perform his functions under this Act as to promote the observance of the data protection principles by data users and persons carrying on computer bureaux. General duties of Registrar.

(2) The Registrar may consider any complaint that any of the data protection principles or any provision of this Act has been or is being contravened and shall do so if the complaint appears to him to raise a matter of substance and to have been made without undue delay by a person directly affected; and where the Registrar considers any such complaint he shall notify the complainant of the result of his consideration and of any action which he proposes to take.

(3) The Registrar shall arrange for the dissemination in such form and manner as he considers appropriate of such information as it may appear to him expedient to give to the public about the operation of this Act and other matters within the scope of his functions under this Act and may give advice to any person as to any of those matters.

(4) It shall be the duty of the Registrar, where he considers it appropriate to do so, to encourage trade associations or other bodies representing data users to prepare, and to disseminate to their members, codes of practice for guidance in complying with the data protection principles.

(5) The Registrar shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.

37. The Registrar shall be the designated authority in the United Kingdom for the purposes of Article 13 of the European Convention; and the Secretary of State may by order make provision as to the functions to be discharged by the Registrar in that capacity. Co-operation between parties to Convention.

38.—(1) Except as provided in subsection (2) below, a government department shall be subject to the same obligations and liabilities under this Act as a private person; and for the purposes of this Act each government department shall be Application to government departments and police.

PART V treated as a person separate from any other government department and a person in the public service of the Crown shall be treated as a servant of the government department to which his responsibilities or duties relate.

(2) A government department shall not be liable to prosecution under this Act but—

- (a) sections 5(3) and 15(2) above (and, so far as relating to those provisions, sections 5(5) and 15(3) above) shall apply to any person who by virtue of this section falls to be treated as a servant of the government department in question ; and
- (b) section 6(6) above and paragraph 12 of Schedule 4 to this Act shall apply to a person in the public service of the Crown as they apply to any other person.

(3) For the purposes of this Act—

- (a) the constables under the direction and control of a chief officer of police shall be treated as his servants ; and
- (b) the members of any body of constables maintained otherwise than by a police authority shall be treated as the servants—
 - (i) of the authority or person by whom that body is maintained, and
 - (ii) in the case of any members of such a body who are under the direction and control of a chief officer, of that officer.

(4) In the application of subsection (3) above to Scotland, for the reference to a chief officer of police there shall be substituted a reference to a chief constable.

(5) In the application of subsection (3) above to Northern Ireland, for the reference to a chief officer of police there shall be substituted a reference to the Chief Constable of the Royal Ulster Constabulary and for the reference to a police authority there shall be substituted a reference to the Police Authority for Northern Ireland.

Data held,
and services
provided,
outside
the United
Kingdom.

39.—(1) Subject to the following provisions of this section, this Act does not apply to a data user in respect of data held, or to a person carrying on a computer bureau in respect of services provided, outside the United Kingdom.

(2) For the purposes of subsection (1) above—

- (a) data shall be treated as held where the data user exercises the control referred to in subsection (5)(b) of section 1 above in relation to the data ; and

(b) services shall be treated as provided where the person carrying on the computer bureau does any of the things referred to in subsection (6)(a) or (b) of that section.

(3) Where a person who is not resident in the United Kingdom—

(a) exercises the control mentioned in paragraph (a) of subsection (2) above; or

(b) does any of the things mentioned in paragraph (b) of that subsection,

through a servant or agent in the United Kingdom, this Act shall apply as if that control were exercised or, as the case may be, those things were done in the United Kingdom by the servant or agent acting on his own account and not on behalf of the person whose servant or agent he is.

(4) Where by virtue of subsection (3) above a servant or agent is treated as a data user or as a person carrying on a computer bureau he may be described for the purposes of registration by the position or office which he holds; and any such description in an entry in the register shall be treated as applying to the person for the time being holding the position or office in question.

(5) This Act does not apply to data processed wholly outside the United Kingdom unless the data are used or intended to be used in the United Kingdom.

(6) Sections 4(3)(e) and 5(2)(e) and subsection (1) of section 12 above do not apply to the transfer of data which are already outside the United Kingdom; but references in the said section 12 to a contravention of the data protection principles include references to anything that would constitute such contravention if it occurred in relation to the data when held in the United Kingdom.

40.—(1) Any power conferred by this Act to make regulations, rules or orders shall be exercisable by statutory instrument. Regulations, rules and orders.

(2) Without prejudice to sections 2(6) and 29(3) above, regulations, rules or orders under this Act may make different provision for different cases or circumstances.

(3) Before making an order under any of the foregoing provisions of this Act the Secretary of State shall consult the Registrar.

PART V

(4) No order shall be made under section 2(3), 4(8), 29, 30 or 34(2) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(5) A statutory instrument containing an order under section 21(9) or 37 above or rules under paragraph 4 of Schedule 3 to this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Regulations prescribing fees for the purposes of any provision of this Act or the period mentioned in section 8(2) above shall be laid before Parliament after being made.

(7) Regulations prescribing fees payable to the Registrar under this Act or the period mentioned in section 8(2) above shall be made after consultation with the Registrar and with the approval of the Treasury; and in making any such regulations the Secretary of State shall have regard to the desirability of securing that those fees are sufficient to offset the expenses incurred by the Registrar and the Tribunal in discharging their functions under this Act and any expenses of the Secretary of State in respect of the Tribunal.

General interpretation.

41. In addition to the provisions of sections 1 and 2 above, the following provisions shall have effect for the interpretation of this Act—

“business” includes any trade or profession;

“data equipment” means equipment for the automatic processing of data or for recording information so that it can be automatically processed;

“data material” means any document or other material used in connection with data equipment;

“a de-registration notice” means a notice under section 11 above;

“enactment” includes an enactment passed after this Act;

“an enforcement notice” means a notice under section 10 above;

“the European Convention” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28th January 1981;

- “government department” includes a Northern Ireland department and any body or authority exercising statutory functions on behalf of the Crown ;
- “prescribed” means prescribed by regulations made by the Secretary of State ;
- “the Registrar” means the Data Protection Registrar ;
- “the register”, except where the reference is to the register of companies, means the register maintained under section 4 above and (except where the reference is to a registered company, to the registered office of a company or to registered post) references to registration shall be construed accordingly ;
- “registered company” means a company registered under the enactments relating to companies for the time being in force in any part of the United Kingdom ;
- “a transfer prohibition notice” means a notice under section 12 above ;
- “the Tribunal” means the Data Protection Tribunal.

42.—(1) No application for registration shall be made until such day as the Secretary of State may by order appoint, and sections 5 and 15 above shall not apply until the end of the period of six months beginning with that day. Commencement and transitional provisions.

(2) Until the end of the period of two years beginning with the day appointed under subsection (1) above the Registrar shall not have power—

(a) to refuse an application made in accordance with section 6 above except on the ground mentioned in section 7(2)(a) above ; or

(b) to serve an enforcement notice imposing requirements to be complied with, a de-registration notice expiring, or a transfer prohibition notice imposing a prohibition taking effect, before the end of that period.

(3) Where the Registrar proposes to serve any person with an enforcement notice before the end of the period mentioned in subsection (2) above he shall, in determining the time by which the requirements of the notice are to be complied with, have regard to the probable cost to that person of complying with those requirements.

(4) Section 21 above and paragraph 1(b) of Schedule 4 to this Act shall not apply until the end of the period mentioned in subsection (2) above.

PART V

(5) Section 22 above shall not apply to damage suffered before the end of the period mentioned in subsection (1) above and in deciding whether to refuse an application or serve a notice under Part II of this Act the Registrar shall treat the provision about accuracy in the fifth data protection principle as inapplicable until the end of that period and as inapplicable thereafter to data shown to have been held by the data user in question since before the end of that period.

(6) Sections 23 and 24(3) above shall not apply to damage suffered before the end of the period of two months beginning with the date on which this Act is passed.

(7) Section 24(1) and (2) above shall not apply before the end of the period mentioned in subsection (1) above.

Short title
and extent.

43.—(1) This Act may be cited as the Data Protection Act 1984.

(2) This Act extends to Northern Ireland.

(3) Her Majesty may by Order in Council direct that this Act shall extend to any of the Channel Islands with such exceptions and modifications as may be specified in the Order.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ค

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

46692 LOI n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés (J.O. 7 janvier 1978) [Ttes Ed.].

CHAPITRE I^{er}

PRINCIPES ET DÉFINITIONS

Art. 1^{er}. -- L'informatique doit être au service de chaque citoyen. Son développement doit s'opérer dans le cadre de la coopération internationale. Elle ne doit porter atteinte ni à l'identité humaine, ni aux droits de l'homme, ni à la vie privée, ni aux libertés individuelles ou publiques.

Art. 2. -- Aucune décision de justice impliquant une appréciation sur un comportement humain ne peut avoir pour fondement un traitement automatisé d'informations donnant une définition du profil ou de la personnalité de l'intéressé.

Aucune décision administrative ou privée impliquant une appréciation sur un comportement humain ne peut avoir pour seul fondement un traitement automatisé d'informations donnant une définition du profil ou de la personnalité de l'intéressé.

Art. 3. -- Toute personne a le droit de connaître et de contester les informations et les raisonnements utilisés dans les traitements automatisés dont les résultats lui sont opposés.

Art. 4. -- Sont réputées nominatives au sens de la présente loi les informations qui permettent, sous quelque forme que ce soit, directement ou non, l'identification des personnes physiques auxquelles elles s'appliquent, que le traitement soit effectué par une personne physique ou par une personne morale.

Art. 5. -- Est dénommé traitement automatisé d'informations nominatives au sens de la présente loi tout ensemble d'opérations réalisées par des moyens automatiques, relatif à la collecte, l'enregistrement, l'élaboration, la modification, la conservation et la destruction d'informations nominatives ainsi que tout ensemble d'opérations de même nature se rapportant à l'exploitation de fichiers ou bases de données et notamment les interconnexions ou rapprochements, consultations ou communications d'informations nominatives.

CHAPITRE II

LA COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS

Art. 6. -- Une commission nationale de l'informatique et des libertés est ins-

tituée. Elle est chargée de veiller au respect des dispositions de la présente loi, notamment en informant toutes les personnes concernées de leurs droits et obligations, en se concertant avec elles et en contrôlant les applications de l'informatique aux traitements des informations nominatives. La commission dispose à cet effet d'un pouvoir réglementaire, dans les cas prévus par la présente loi.

Art. 7. -- Les crédits nécessaires à la commission nationale pour l'accomplissement de sa mission sont inscrits au budget du ministère de la justice. Les dispositions de la loi du 10 août 1922 relative au contrôle financier ne sont pas applicables à leur gestion. Les comptes de la commission sont présentés au contrôle de la Cour des comptes.

Toutefois, les frais entraînés par l'accomplissement de certaines des formalités visées aux articles 15, 16, 17 et 24 de la présente loi peuvent donner lieu à la perception de redevances.

Art. 8. -- La commission nationale de l'informatique et des libertés est une autorité administrative indépendante.

Elle est composée de dix-sept membres nommés pour cinq ans ou pour la durée de leur mandat :

— deux députés et deux sénateurs élus, respectivement par l'Assemblée nationale et par le Sénat ;

— deux membres du Conseil économique et social, élus par cette assemblée ;

— deux membres ou anciens membres du Conseil d'Etat, dont l'un d'un grade au moins égal à celui de conseiller, élus par l'assemblée générale du Conseil d'Etat ;

— deux membres ou anciens membres de la Cour de cassation, dont l'un d'un grade au moins égal à celui de conseiller, élus par l'assemblée générale de la Cour de cassation ;

— deux membres ou anciens membres de la Cour des comptes, dont l'un d'un grade au moins égal à celui de conseiller-maitre, élus par l'assemblée générale de la Cour des comptes ;

— deux personnes qualifiées pour leur connaissance des applications de l'informatique, nommées par décret sur proposition respectivement du président de l'Assemblée nationale et du président du Sénat ;

— trois personnalités désignées en raison de leur autorité et de leur compétence par décret en conseil des ministres.

La commission élit en son sein, pour cinq ans, un président et deux vice-présidents.

La commission établit son règlement intérieur.

En cas de partage des voix, celle du président est prépondérante.

Si, en cours de mandat, le président ou un membre de la commission cesse d'exercer ses fonctions, le mandat de son successeur est limité à la période restant à courir.

La qualité de membre de la commission est incompatible :

— avec celle de membre du Gouvernement ;

— avec l'exercice de fonctions ou la détention de participation dans les entreprises concourant à la fabrication de matériel utilisé en informatique ou en télécommunication ou à la fourniture de services en informatique ou en télécommunication.

La commission apprécie dans chaque cas les incompatibilités qu'elle peut opposer à ses membres.

Sauf démission, il ne peut être mis fin aux fonctions de membre qu'en cas d'empêchement constaté par la commission dans les conditions qu'elle définit.

Art. 9. — Un commissaire du Gouvernement, désigné par le Premier ministre, siège auprès de la commission.

Il peut, dans les dix jours d'une délibération, provoquer une seconde délibération.

Art. 10. — La commission dispose de services qui sont dirigés par le président ou, sur délégation, par un vice-président et placés sous son autorité.

La commission peut charger le président ou le vice-président délégué d'exercer ses attributions en ce qui concerne l'application des articles 16, 17 et 21 (4°, 5° et 6°).

Les agents de la commission nationale sont nommés par le président ou le vice-président délégué.

Art. 11. — La commission peut demander aux premiers présidents de cour d'appel ou aux présidents de tribunaux administratifs de déléguer un magistrat de leur ressort, éventuellement assisté d'experts, pour des missions d'investigation et de contrôle effectuées sous sa direction.

Art. 12. — Les membres et les agents de la commission sont astreints au secret professionnel pour les faits, actes ou renseignements dont ils ont pu avoir connaissance en raison de leurs fonctions, dans les conditions prévues à l'article 75 du code pénal et, sous réserve de ce qui est nécessaire à l'établissement du rapport annuel prévu ci-après, à l'article 378 du code pénal.

Art. 13. — Dans l'exercice de leurs attributions, les membres de la commission nationale de l'informatique et des libertés et les membres des délégations régionales ne reçoivent d'instruction d'aucune autorité.

Les informaticiens appelés, soit à donner les renseignements à la commission, soit à témoigner devant elle, sont déliés en tant que de besoin de leur obligation de discrétion.

CHAPITRE III

FORMALITÉS PRÉALABLES A LA MISE EN ŒUVRE DES TRAITEMENTS AUTOMATISÉS

Art. 14. — La commission nationale de l'informatique et des libertés veille à ce que les traitements automatisés, publiés ou privés, d'informations nominatives, soient effectués conformément aux dispositions de la présente loi.

Art. 15. — Hormis les cas où ils doivent être autorisés par la loi, les traitements automatisés d'informations nominatives opérés pour le compte de l'Etat, d'un établissement public ou d'une collectivité territoriale, ou d'une personne morale de droit privé gérant un service public, sont décidés par une loi ou par un acte réglementaire pris après avis motivé de la commission nationale de l'informatique et des libertés.

Si l'avis de la commission est défavorable, il ne peut être passé outre que par un décret pris sur avis conforme du Conseil d'Etat ou, s'agissant d'une collectivité territoriale, en vertu d'une décision de son organe délibérant approuvée par décret pris sur avis conforme du Conseil d'Etat.

Si, au terme d'un délai de deux mois renouvelable une seule fois sur décision du président, l'avis de la commission n'est pas notifié, il est réputé favorable.

Art. 16. — Les traitements automatisés d'informations nominatives effectués pour le compte de personnes autres que celles qui sont soumises aux dispositions de l'article 15 doivent, préalablement à leur mise en œuvre, faire l'objet d'une déclaration auprès de la commission nationale de l'informatique et des libertés.

Cette déclaration comporte l'engagement que le traitement satisfait aux exigences de la loi.

Dès qu'il a reçu le récépissé délivré sans délai par la commission, le demandeur peut mettre en œuvre le traitement. Il n'est exonéré d'aucune de ses responsabilités.

Art. 17. — Pour les catégories les plus courantes de traitements à caractère public ou privé, qui ne comportent manifes-

tement pas d'atteinte à la vie privée ou aux libertés, la commission nationale de l'informatique et des libertés établit et publie des normes simplifiées inspirées des caractéristiques mentionnées à l'article 19.

Pour les traitements répondant à ces normes, seule une déclaration simplifiée de conformité à l'une de ces normes est déposée auprès de la commission. Sauf décision particulière de celle-ci, le récépissé de déclaration est délivré sans délai. Dès réception de ce récépissé, le demandeur peut mettre en œuvre le traitement. Il n'est exonéré d'aucune de ses responsabilités.

Art. 18. — L'utilisation du répertoire national d'identification des personnes physiques en vue d'effectuer des traitements nominatifs est autorisée par décret en Conseil d'Etat pris après avis de la commission.

Art. 19. — La demande d'avis ou la déclaration doit préciser :

— la personne qui présente la demande et celle qui a pouvoir de décider la création du traitement ou, si elle réside à l'étranger, son représentant en France ;

— les caractéristiques, la finalité et, s'il y a lieu, la dénomination du traitement ;

— le service ou les services chargés de mettre en œuvre celui-ci ;

— le service auprès duquel s'exerce le droit d'accès défini au chapitre V ci-dessous ainsi que les mesures prises pour faciliter l'exercice de ce droit ;

— les catégories de personnes qui, à raison de leurs fonctions ou pour les besoins du service, ont directement accès aux informations enregistrées ;

— les informations nominatives traitées, leur origine et la durée de leur conservation ainsi que leurs destinataires ou catégories de destinataires habilités à recevoir communication de ces informations ;

— les rapprochements, interconnexions ou toute autre forme de mise en relation de ces informations ainsi que leur cession à des tiers ;

— les dispositions prises pour assurer la sécurité des traitements et des informations et la garantie des secrets protégés par la loi ;

— si le traitement est destiné à l'expédition d'informations nominatives entre le territoire français et l'étranger, sous quelque forme que ce soit, y compris lorsqu'il est l'objet d'opérations partiellement effectuées sur le territoire français à partir d'opérations antérieurement réalisées hors de France.

Toute modification aux mentions énumérées ci-dessus, ou toute suppression de traitement, est portée à la connaissance de la commission.

Peuvent ne pas comporter certaines des mentions énumérées ci-dessus les demandes d'avis relatives aux traitements automatisés d'informations nominatives intéressant la sûreté de l'Etat, la défense et la sécurité publique.

Art. 20. — L'acte réglementaire prévu pour les traitements régis par l'article 15 ci-dessus précise notamment :

— la dénomination et la finalité du traitement ;

— le service auprès duquel s'exerce le droit d'accès défini au chapitre V ci-dessous ;

— les catégories d'informations nominatives enregistrées ainsi que les destinataires ou catégories de destinataires habilités à recevoir communication de ces informations.

Des décrets en Conseil d'Etat peuvent disposer que les actes réglementaires relatifs à certains traitements intéressant la sûreté de l'Etat, la défense et la sécurité publique ne seront pas publiés.

Art. 21. — Pour l'exercice de sa mission de contrôle, la commission :

1° Prend des décisions individuelles ou réglementaires dans les cas prévus par la présente loi ;

2° Peut, par décision particulière, charger un ou plusieurs de ses membres ou de ses agents, assistés, le cas échéant, d'experts, de procéder, à l'égard de tout traitement, à des vérifications sur place et de se faire communiquer tous renseignements et documents utiles à sa mission ;

3° Edicte, le cas échéant, des règlements types en vue d'assurer la sécurité des systèmes ; en cas de circonstances exceptionnelles, elle peut prescrire des mesures de sécurité pouvant aller jusqu'à la destruction des supports d'informations ;

4° Adresse aux intéressés des avertissements et dénonce au parquet les infractions dont elle a connaissance, conformément à l'article 40 du code de procédure pénale ;

5° Veille à ce que les modalités de mise en œuvre du droit d'accès et de rectification indiquées dans les actes et déclarations prévus aux articles 15 et 16 n'entraînent pas le libre exercice de ce droit ;

6° Reçoit les réclamations, pétitions et plaintes ;

7° Se tient informée des activités industrielles et de services qui concourent à la mise en œuvre de l'informatique.

Les ministres, autorités publiques, dirigeants d'entreprises, publiques ou privées, responsables de groupements divers et plus généralement les détenteurs ou utilisateurs de fichiers nominatifs ne peuvent s'opposer à l'action de la commission ou de ses membres pour quelque motif que ce soit et doivent au contraire prendre toutes mesures utiles afin de faciliter sa tâche.

Art. 22. — La commission met à la disposition du public la liste des traitements qui précise pour chacun d'eux :

— la loi ou l'acte réglementaire décidant de sa création ou la date de sa déclaration ;

— sa dénomination et sa finalité ;

— le service auprès duquel est exercé le droit d'accès prévu au chapitre V ci-dessous ;

— les catégories d'informations nominatives enregistrées ainsi que les destinataires ou catégories de destinataires habilités à recevoir communication de ces informations.

Sont tenus à la disposition du public, dans les conditions fixées par décret, les décisions, avis ou recommandations de la commission dont la connaissance est utile à l'application ou à l'interprétation de la présente loi.

Art. 23. — La commission présente chaque année au Président de la République et au Parlement un rapport rendant compte de l'exécution de sa mission. Ce rapport est publié.

Ce rapport décrira notamment les procédures et méthodes de travail suivies par la commission et contiendra en annexe toutes informations sur l'organisation de la commission et de ses services, propres à faciliter les relations du public avec celle-ci.

Art. 24. — Sur proposition ou après avis de la commission, la transmission entre le territoire français et l'étranger, sous quelque forme que ce soit, d'informations nominatives faisant l'objet de traitements automatisés régis par l'article 16 ci-dessus peut être soumise à autorisation préalable ou réglementée selon des modalités fixées par décret en Conseil d'Etat, en vue d'assurer le respect des principes posés par la présente loi.

CHAPITRE IV

COLLECTE, ENREGISTREMENT ET CONSERVATION DES INFORMATIONS NOMINATIVES

Art. 25. — La collecte de données opérée par tout moyen frauduleux, déloyal ou illicite est interdite.

Art. 26. — Toute personne physique a le droit de s'opposer, pour des raisons légitimes, à ce que des informations nominatives la concernant fassent l'objet d'un traitement.

Ce droit ne s'applique pas aux traitements limitativement désignés dans l'acte réglementaire prévu à l'article 15.

Art. 27. — Les personnes auprès desquelles sont recueillies des informations nominatives doivent être informées :

— du caractère obligatoire ou facultatif des réponses ;

— des conséquences à leur égard d'un défaut de réponse ;

— des personnes physiques ou morales destinataires des informations ;

— de l'existence d'un droit d'accès et de rectification.

Lorsque de telles informations sont recueillies par voie de questionnaires, ceux-ci doivent porter mention de ces prescriptions.

Ces dispositions ne s'appliquent pas à la collecte des informations nécessaires à la constatation des infractions.

Art. 28. — Sauf dispositions législatives contraires, les informations ne doivent pas être conservées sous une forme nominative au-delà de la durée prévue à la demande d'avis ou à la déclaration, à moins que leur conservation ne soit autorisée par la commission.

Art. 29. — Toute personne ordonnant ou effectuant un traitement d'informations nominatives s'engage de ce fait, vis-à-vis des personnes concernées, à prendre toutes précautions utiles afin de préserver la sécurité des informations et notamment d'empêcher qu'elles ne soient déformées, endommagées ou communiquées à des tiers non autorisés.

Art. 30. — Sauf dispositions législatives contraires, les juridictions et autorités publiques agissant dans le cadre de leurs attributions légales ainsi que, sur avis conforme de la commission nationale, les personnes morales gérant un service public peuvent seules procéder au traitement automatisé des informations nominatives concernant les infractions, condamnations ou mesures de sûreté.

Jusqu'à la mise en œuvre du fichier des conducteurs prévu par la loi n° 70-539 du 21 juin 1970, les entreprises d'assurances sont autorisées, sous le contrôle de la commission, à traiter elles-mêmes les informations mentionnées à l'article 5 de ladite loi et concernant les personnes visées au dernier alinéa dudit article.

Art. 31. — Il est interdit de mettre ou conserver en mémoire informatisée, sauf accord exprès de l'intéressé, des données nominatives qui, directement ou indirectement, font apparaître les origines racia-

les ou les opinions politiques, philosophiques ou religieuses ou les appartenances syndicales des personnes.

Toutefois, les églises et les groupements à caractère religieux, philosophique, politique ou syndical peuvent tenir registre de leurs membres ou de leurs correspondants sous forme automatisée. Aucun contrôle ne peut être exercé, de ce chef, à leur encontre.

Pour des motifs d'intérêt public, il peut aussi être fait exception à l'interdiction ci-dessus sur proposition ou avis conforme de la commission par décret en Conseil d'Etat.

Art. 32. — L'accès du fichier électoral est ouvert dans des conditions identiques aux candidats et aux partis politiques, sous le contrôle des commissions de propagande électorale.

Art. 33. — Les dispositions des articles 24, 30 et 31 ne s'appliquent pas aux informations nominatives traitées par les organismes de la presse écrite ou audiovisuelle dans le cadre des lois qui les régissent et dans les cas où leur application aurait pour effet de limiter l'exercice de la liberté d'expression.

CHAPITRE V

EXERCICE DU DROIT D'ACCÈS

Art. 34. — Toute personne justifiant de son identité a le droit d'interroger les services ou organismes chargés de mettre en œuvre les traitements automatisés dont la liste est accessible au public en application de l'article 22 ci-dessus en vue de savoir si ces traitements portent sur des informations nominatives la concernant et, le cas échéant, d'en obtenir communication.

Art. 35. — Le titulaire du droit d'accès peut obtenir communication des informations le concernant. La communication, en langage clair, doit être conforme au contenu des enregistrements.

Une copie est délivrée au titulaire du droit d'accès qui en fait la demande contre perception d'une redevance forfaitaire variable selon la catégorie de traitement dont le montant est fixé par décision de la commission et homologué par arrêté du ministre de l'économie des finances.

Toutefois, la commission saisie contradictoirement par le responsable du fichier peut lui accorder :

— des délais de réponse ;

— l'autorisation de ne pas tenir compte de certaines demandes manifestement abusives par leur nombre, leur caractère répétitif ou systématique.

Lorsqu'il y a lieu de craindre la dissimulation ou la disparition des informations mentionnées au premier alinéa du présent article, et même avant l'exercice d'un recours juridictionnel, il peut être demandé au juge compétent que soient ordonnées toutes mesures de nature à éviter cette dissimulation ou cette disparition.

Art. 36. — Le titulaire du droit d'accès peut exiger que soient rectifiées, complétées, clarifiées, mises à jour ou effacées les informations le concernant qui sont inexactes, incomplètes, équivoques, périmées ou dont la collecte, ou l'utilisation, la communication ou la conservation est interdite.

Lorsque l'intéressé en fait la demande le service ou organisme concerné doit délivrer sans frais copie de l'enregistrement modifié.

En cas de contestation, la charge de la preuve incombe au service auprès duquel est exercé le droit d'accès sauf lorsqu'il est établi que les informations contestées ont été communiquées par la personne concernée ou avec son accord.

Lorsque le titulaire du droit d'accès obtient une modification de l'enregistrement, la redevance versée en application de l'article 35 est remboursée.

Art. 37. — Un fichier nominatif doit être complété ou corrigé même d'office lorsque l'organisme qui le tient acquiesse à la connaissance de l'inexactitude ou du caractère incomplet d'une information nominative contenue dans ce fichier.

Art. 38. — Si une information a été transmise à un tiers, sa rectification ou son annulation doit être notifiée à ce tiers, sauf dispenses accordées par la commission.

Art. 39. — En ce qui concerne les traitements intéressant la sûreté de l'Etat, la défense et la sécurité publique, la demande est adressée à la commission qui désigne l'un de ses membres appartenant ou ayant appartenu au Conseil d'Etat, à la Cour de cassation ou à la Cour des comptes pour mener toutes investigations utiles et faire procéder aux modifications nécessaires. Celui-ci peut faire assister d'un agent de la commission.

Il est notifié au requérant qu'il a été procédé aux vérifications.

Art. 40. — Lorsque l'exercice du droit d'accès s'applique à des informations à caractère médical, celles-ci ne peuvent être communiquées à l'intéressé que par l'intermédiaire d'un médecin qu'il désigne à cet effet.

CHAPITRE VI

DISPOSITIONS PÉNALES

Art. 41. — Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 2.000 à 200.000 francs, ou de l'une de ces deux peines seulement, quiconque aura procédé ou fait procéder à des traitements automatisés d'information nominative, sans qu'aient été publiés les actes réglementaires prévus à l'article 15 ou faites les déclarations prévues à l'article 16 ci-dessus.

En outre, le tribunal pourra ordonner l'insertion du jugement intégralement ou par extraits, dans un ou plusieurs journaux, et son affichage dans les conditions qu'il déterminera, aux frais du condamné.

Art. 42. — Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 20.000 francs à 2.000.000 de francs, ou de l'une de ces deux peines seulement, quiconque aura enregistré ou fait enregistrer, conserver ou fait conserver des informations nominatives en violation des dispositions des articles 25, 26 et 28 à 31.

En outre, le tribunal pourra ordonner l'insertion du jugement, intégralement ou par extraits, dans un ou plusieurs journaux, et son affichage dans les conditions qu'il déterminera, aux frais du condamné.

Art. 43. — Sera puni d'un emprisonnement de deux à six mois et d'une amende de 2.000 à 20.000 francs, ou de l'une de ces deux peines seulement, quiconque ayant recueilli, à l'occasion de leur enregistrement, de leur classement, de leur transmission ou de toute autre forme de traitement, des informations nominatives dont la divulgation aurait pour effet de porter atteinte à la réputation ou à la considération de la personne ou à l'intimité de la vie privée, aura, sans l'autorisation de l'intéressé, sciemment porté ces informations à la connaissance d'une personne qui n'a pas qualité pour les recevoir en vertu des dispositions de la présente loi ou d'autres dispositions législatives.

Sera puni d'une amende de 2.000 à 20.000 francs quiconque aura, par imprudence ou négligence, divulgué ou laissé divulguer des informations de la nature de celles mentionnées à l'alinéa précédent.

Art. 44. — Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 20.000 à 2.000.000 de francs, quiconque, étant détenteur d'informations nominatives à l'occasion de leur enregistrement, de leur classement, de leur transmission ou de toute autre forme de traitement, les aura détournées de leur finalité telle qu'elle est définie dans l'acte réglemen-

taire prévu à l'article 15 ci-dessus, ou dans les déclarations faites en application des articles 16 et 17 ou par une disposition législative.

CHAPITRE VII

DISPOSITIONS DIVERSES

Art. 45. — Les dispositions des articles 25, 27, 29, 30, 31, 32 et 33 relatifs à la collecte, l'enregistrement et la conservation des informations nominatives sont applicables aux fichiers non automatisés ou mécanographiques autres que ceux dont l'usage relève du strict exercice du droit à la vie privée.

Le premier alinéa de l'article 26 est applicable aux mêmes fichiers, à l'exception des fichiers publics désignés par un acte réglementaire.

Toute personne justifiant de son identité a le droit d'interroger les services ou organismes qui détiennent des fichiers mentionnés au premier alinéa du présent article en vue de savoir si ces fichiers contiennent des informations nominatives la concernant. Le titulaire du droit d'accès a le droit d'obtenir communication de ces informations ; il peut exiger qu'il soit fait application des trois premiers alinéas de l'article 36 de la présente loi relatifs au droit de rectification. Les dispositions des articles 37, 38, 39 et 40 sont également applicables. Un décret en Conseil d'Etat fixe les conditions d'exercice du droit d'accès et de rectification ; ce décret peut prévoir la perception de redevances pour la délivrance de copies des informations communiquées.

Le Gouvernement, sur proposition de la commission nationale de l'informatique et des libertés, peut décider, par décret en Conseil d'Etat, que les autres dispositions de la présente loi peuvent, en totalité ou en partie, s'appliquer à un fichier ou à des catégories de fichiers non automatisés ou mécanographiques qui présentent, soit par eux-mêmes, soit par la combinaison de leur emploi avec celui d'un fichier informatisé, des dangers quant à la protection des libertés.

Art. 46. — Des décrets en Conseil d'Etat fixeront les modalités d'application de la présente loi. Ils devront être pris dans un délai de six mois à compter de sa promulgation.

Ces décrets détermineront les délais dans lesquels les dispositions de la présente loi entreront en vigueur. Ces délais ne pourront excéder deux ans à compter de la promulgation de ladite loi.

Art. 47. — La présente loi est applicable à Mayotte et aux territoires d'outre-mer.

Art. 48. — A titre transitoire, les traitements régis par l'article 15 ci-dessus, et déjà créés, ne sont soumis qu'à une déclaration auprès de la commission nationale de l'informatique et des libertés dans les conditions prévues aux articles 16 et 17.

La commission peut toutefois, par décision spéciale, faire application des dispositions de l'article 15 et fixer le délai au terme duquel l'acte réglementant le traitement doit être pris.

A l'expiration d'un délai de deux ans à compter de la promulgation de la présente loi, tous les traitements régis par l'article 15 devront répondre aux prescriptions de cet article.

TRAVAUX PRÉPARATOIRES

Assemblée nationale :

Projet de loi (n° 2516) et propositions de loi (n° 1004 et 3092) ; Rapport de M. Foyer, au nom de la commission des lois (n° 3125) ; Discussion les 4 et 5 octobre 1977 ; Adoption le 5 octobre 1977.

Sénat :

Projet de loi, adopté par l'Assemblée nationale, n° 5 (1977-1978) ; Rapport de M. Jacques Thyraud, au nom de la commission des lois, n° 72 (1977-1978) ; Discussion et adoption le 17 novembre 1977.

Assemblée nationale :

Projet de loi, modifié par le Sénat (n° 3226) ; Rapport de M. Foyer, au nom de la commission des lois (n° 3352) ; Discussion et adoption le 16 décembre 1977.

Sénat :

Projet de loi, modifié par l'Assemblée nationale, n° 195 (1977-1978) ; Rapport de M. Jacques Thyraud, au nom de la commission des lois, n° 199 (1977-1978) ; Discussion et adoption le 19 décembre 1977.

Assemblée nationale :

Rapport de M. Foyer, au nom de la commission mixte paritaire (n° 3432) ; Discussion et adoption le 21 décembre 1977.

Sénat :

Rapport de M. Thyraud, au nom de la commission mixte paritaire, n° 232 (1977-1978) ; Discussion et rejet le 21 décembre 1977.

Assemblée nationale :

Projet de loi, modifié par le Sénat (n° 3384) ; Discussion et adoption le 21 décembre 1977.

Sénat :

Projet de loi, adopté par l'Assemblée nationale, n° 240 (1977-1978) ; Discussion et adoption le 21 décembre 1977.

<input type="checkbox"/>	A	DEMANDE D'AVIS
<input type="checkbox"/>	D	DECLARATION ORDINAIRE
<input type="checkbox"/>	S	DÉCLARATION SIMPLIFIÉE
<input type="checkbox"/>	M	DECLARATION DE MODIFICATION
<input type="checkbox"/>	X	DECLARATION DE SUPPRESSION

relative à un

TRAITEMENT AUTOMATISÉ D'INFORMATIONS NOMINATIVES

(APPLICATION DE LA LOI N° 78-17 DU 6 JANVIER 1978)

1 Le traitement relève-t-il à votre avis de l'article 15 de la Loi du 6-1-78 ? <table border="1"> <tr><td>OUI</td><td>1</td></tr> <tr><td>NON</td><td>2</td></tr> </table>	OUI	1	NON	2	2 N° SIREN _____ Code APE _____	3 N° d'enregistrement du traitement : • affecté par la CNIL en cas de déclaration ou demande d'avis • à rappeler par l'utilisateur en cas de modification ou suppression _____
OUI	1					
NON	2					
4 ORGANISME DECLARANT Nom ou raison sociale : _____ Noms usuels, ou sigle : _____ Adresse complète : _____						
5* SERVICE CHARGE DE LA MISE EN OEUVRE DU TRAITEMENT Nom _____ Adresse complète : _____ Téléphone () _____						
6 DENOMINATION DU TRAITEMENT (APPLICATION) (s'il y a lieu) _____		POPULATION CONCERNEE (nombre approximatif) _____				
7* FINALITE PRINCIPALE du TRAITEMENT _____						
8* SERVICE AUPRES DUQUEL S'EXERCE LE DROIT D'ACCES Nom : _____ Adresse complète : _____ Téléphone () _____ Eventuellement non générique des établissements décentralisés _____						
9 N° de la norme simplifiée de référence (Art. 17) _____ N° de la déclaration du modèle type de référence _____	10** Le traitement donne-t-il lieu à des transmissions d'informations entre le territoire français et l'étranger ? <table border="1"> <tr><td>OUI</td><td>1</td></tr> <tr><td>NON</td><td>2</td></tr> </table>		OUI	1	NON	2
OUI	1					
NON	2					
11 En cas de déclaration simplifiée ou de déclaration de suppression Date : _____ Signature : _____ Nom du signataire : _____ Fonction du signataire : _____						

* En cas de déclaration ordinaire ou de demande d'avis ces rubriques sont complétées par des annexes

** Si la réponse est oui, cette rubrique est complétée par une annexe

CERFA N° 99001

**POUR VOUS PERMETTRE DE MIEUX CONNAÎTRE
VOS DROITS ET OBLIGATIONS :**

Vous trouverez ci-après, les extraits de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, auxquels se réfère le présent bordereau.

Art. 15. — Hormis les cas où ils doivent être autorisés par la loi, les traitements automatisés d'informations nominatives opérés pour le compte de l'Etat, d'un établissement public ou d'une collectivité territoriale, ou d'une personne morale de droit privé gérant un service public, sont décidés par une loi ou par un acte réglementaire pris après avis motivé de la commission nationale de l'informatique et des libertés.

Si l'avis de la commission est défavorable, il ne peut être passé outre que par un décret pris sur avis conforme du Conseil d'Etat ou, s'agissant d'une collectivité territoriale, en vertu d'une décision de son organe délibérant approuvée par décret pris sur avis conforme du Conseil d'Etat.

Si, au terme d'un délai de deux mois renouvelable une seule fois sur décision du président, l'avis de la commission n'est pas notifié, il est réputé favorable.

Art. 16. — Les traitements automatisés d'informations nominatives effectués pour le compte de personnes autres que celles qui sont soumises aux dispositions de l'article 15 doivent, préalablement à leur mise en œuvre faire l'objet d'une déclaration auprès de la commission nationale de l'informatique et des libertés.

Cette déclaration comporte l'engagement que le traitement satisfait aux exigences de la loi.

Dès qu'il a reçu le récépissé délivré sans délai par la commission, le demandeur peut mettre en œuvre le traitement. Il n'est exonéré d'aucune de ses responsabilités.

Art. 17. — Pour les catégories les plus courantes de traitements à caractère public ou privé, qui ne comportent manifestement pas d'atteinte à la vie privée ou aux libertés, la commission nationale de l'informatique et des libertés établit et publie des normes simplifiées inspirées des caractéristiques mentionnées à l'article 19.

Pour les traitements répondant à ces normes, seule une déclaration simplifiée de conformité à l'une de ces normes est déposée auprès de la commission. Sauf décision particulière de celle-ci, le récépissé de déclaration est délivré sans délai. Dès réception de ce récépissé, le demandeur peut mettre en œuvre le traitement. Il n'est exonéré d'aucune de ses responsabilités.

Le non-respect des articles ci-dessus entraîne notamment l'application des dispositions pénales suivantes :

Art. 41. — Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 2 000 à 200 000 francs, ou de l'une de ces deux peines seulement, quiconque aura procédé ou fait procéder à des traitements automatisés d'information nominative, sans qu'aient été publiés les actes réglementaires prévus à l'article 15 ou faites les déclarations prévues à l'article 16 ci-dessus.

En outre, le tribunal pourra ordonner l'insertion du jugement intégralement ou par extraits, dans un ou plusieurs journaux, et son affichage dans les conditions qu'il déterminera, aux frais du condamné.

Art. 19. — La demande d'avis ou la déclaration doit préciser :

- la personne qui présente la demande et celle qui a pouvoir de décider la création du traitement ou, si elle réside à l'étranger, son représentant en France ;
- le service ou les services chargés de mettre en œuvre celui-ci ;
- le service auprès duquel s'exerce le droit d'accès défini au chapitre V ci-dessous ainsi que les mesures prises pour faciliter l'exercice de ce droit ;
- les catégories de personnes qui, à raison de leurs fonctions ou pour les besoins du service, ont directement accès aux informations enregistrées ;
- les informations nominatives traitées, leur origine et la durée de leur conservation ainsi que leurs destinataires ou catégories de destinataires habilités à recevoir communication de ces informations ;
- les rapprochements, interconnexions ou toute autre forme de mise en relation de ces informations ainsi que leur cession à des tiers ;
- les dispositions prises pour assurer la sécurité des traitements et des informations et la garantie des secrets protégés par la loi ;
- si le traitement est destiné à l'expédition d'informations nominatives entre le territoire français et l'étranger, sous quelque forme que ce soit, y compris lorsqu'il est l'objet d'opérations partiellement effectuées sur le territoire français à partir d'opérations antérieurement réalisées hors de France.

Toute modification aux mentions énumérées ci-dessus, ou toute suppression de traitement, est portée à la connaissance de la commission.

Peuvent ne pas comporter certaines des mentions énumérées ci-dessus les demandes d'avis relatives aux traitements automatisés d'informations nominatives intéressant la sûreté de l'Etat, la défense et la sécurité publique.

Art. 30. — Sauf dispositions législatives contraires, les juridictions et autorités publiques agissant dans le cadre de leurs attributions légales ainsi que, sur avis conforme de la commission nationale, les personnes morales gérant un service public peuvent seules procéder au traitement automatisé des informations nominatives concernant les infractions, condamnations ou mesures de sûreté.

Jusqu'à la mise en œuvre du fichier des conducteurs prévu par la loi n° 70-539 du 24 juin 1970, les entreprises d'assurances sont autorisées, sous le contrôle de la commission, à traiter elles-mêmes les informations mentionnées à l'article 5 de ladite loi et concernant les personnes visées au dernier alinéa dudit article.

Art. 31. — Il est interdit de mettre ou conserver en mémoire informatisée, sauf accord exprès de l'intéressé, des données nominatives qui, directement ou indirectement, font apparaître les origines raciales ou les opinions politiques, philosophiques ou religieuses ou les appartenances syndicales des personnes.

Toutefois, les églises et les groupements à caractère religieux, philosophique, politique ou syndical peuvent tenir registre de leurs membres ou de leurs correspondants sous forme automatisée. Aucun contrôle ne peut être exercé, de ce chef, à leur endroit.

Pour des motifs d'intérêt public, il peut aussi être fait exception à l'interdiction ci-dessus sur proposition ou avis conforme de la commission par décret en Conseil d'Etat.

En cas de déclaration simplifiée ou de déclaration de suppression, ne pas remplir cette page

12 * CARACTÉRISTIQUES DE L'APPLICATION
Fonctions

1
2
3
4
5
6
7
8
9
10

Suite :

OUI	1
NON	2

13 SECURITES ET SECRETS

- Existe-t-il des dispositions destinées à assurer la sécurité et la confidentialité des traitements et des informations ?

OUI	1
NON	2
- Sont-elles consignées dans un document ?

OUI	1
NON	2
- Le secret de certaines des informations traitées fait-il par ailleurs l'objet d'une protection légale ?

OUI	1
NON	2

14 * CATÉGORIES D'INFORMATIONS TRAITÉES

<input type="checkbox"/>	A	Identité
<input type="checkbox"/>	B	N° de Sécurité sociale
<input type="checkbox"/>	C	Situation familiale
<input type="checkbox"/>	D	Situation militaire
<input type="checkbox"/>	E	Formation - Diplômes - Distinctions
<input type="checkbox"/>	F	Logement
<input type="checkbox"/>	G	Vie professionnelle
<input type="checkbox"/>	H	Situation économique et financière

Suite :

OUI	1
NON	2

<input type="checkbox"/>	I	Déplacement des personnes
<input type="checkbox"/>	J	Utilisation des médias et moyens de communication
<input type="checkbox"/>	K	Consommation d'autres biens et services
<input type="checkbox"/>	L	Loisirs
<input type="checkbox"/>	M	Santé
<input type="checkbox"/>	N	Habitudes de vie et comportement
<input type="checkbox"/>	O	Informations en rapport avec la police
<input type="checkbox"/>	P	Informations en rapport avec la justice

CATÉGORIES DE DESTINATAIRES

CATÉGORIES D'INFORMATIONS FOURNIES

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P		
1																		
2																		
3																		
4																		
5																		
6																		
7																		
8																		
9																		
10																		

Suite :

OUI	1
NON	2

15 * LE TRAITEMENT FAIT-IL USAGE :

- du Répertoire national d'identification des personnes physiques (Art. 18)

OUI	1
NON	2
- d'informations nominatives concernant les infractions, condamnations ou mesures de sûreté (Art. 30)

OUI	1
NON	2
- d'informations nominatives faisant apparaître les origines raciales ou les opinions politiques, philosophiques, religieuses ou les appartenances syndicales des personnes (Art. 31)

OUI	1
NON	2

16 * CESSION, INTERCONNEXION, MISE EN RELATION, RAPPROCHEMENT

- le traitement fournit-il des informations nominatives à un organisme extérieur ?

OUI	1
NON	2
- le traitement reçoit-il des informations nominatives d'un organisme extérieur ?

OUI	1
NON	2
- les informations enregistrées peuvent-elles être cédées, louées, échangées ?

OUI	1
NON	2

17 Nom du signataire : _____ Date : _____
Fonction l'habilitant à signer : _____ Signature : _____

* Rubriques à compléter par des annexes.



ภาคผนวก ง

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

PRIVACY ACT 1974

§ 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 [5 USCS § 552(e)];
- (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 [5 USCS § 552];
- (3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(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 [13 USCS §§ 1 et seq.];
- (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 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 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;

(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;

(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,
 - (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 or 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 [5 USCS § 553], which shall—

- (1) establish procedures whereby an individual can be notified 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.

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 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 September 27, 1975.

(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 (e)(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 [5 USCS §§ 553(b)(1)–(3), (c), and (e)], 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 (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 [5 USCS § 553(c)], 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 [5 USCS § 553(b)(1), (2), (3), (c), and (e)], 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 [5 USCS § 552(b)(1)];

(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 to the President of the United States or other individuals pursuant to section 3056 of title 18 [18 USCS § 3056],

(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 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 [5 USCS § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(l) (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 [44 USCS § 3103] 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 [effective 270 days following Dec. 31, 1974], 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.

(m) 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 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 [5 USCS § 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(Added Dec. 31, 1974, P. L. 93-579, § 3, 88 Stat 1897, Dec. 31, 1975, P. L. 94-183, § 2(2), 89 Stat 1057.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A former 5 USC § 552a was transferred by Act Sept 6, 1966, which enacted 5 USCS §§ 101 et seq, and now appears as 7 USCS § 2244

Effective date of section:

Section 8 of Act Dec 31, 1974, provided that this section "shall become effective 270 days following the day on which this Act is enacted [enacted Dec. 31, 1974]"; see the Other provisions note to this section.

Amendments:

1982. Act Oct 25, 1982, in subsec. (b), in para (10), deleted "or" following "Office," in para (11), substituted ", or" for a concluding period, and added para (12), and, in subsec (m), designated the existing provisions as para (1), and added para. (2)

Act Dec 21, 1982, in subsec (e)(4), in the introductory matter, substituted "upon establishment or revision" for "at least annually"; and substituted subsec (p) for one which read "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"

1983, Act Jan 12, 1983, in subsecs. (b)(12) and (m)(2) substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

1984, Act Oct 15, 1984, in subsec. (q), designated the existing provisions as para. (1), and added para. (2)

Act Oct 19, 1984 (effective 4/1/85, as provided by § 301 of such Act, which appears as 44 USCS § 2102 note), in subsec. (b), substituted para. (6) for one which read: "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,"; and in subsec. (l)(1), substituted "Archivist of the United States" for "Administrator of General Services" in two places.

§ 552a. Records maintained on individuals

(a) [Unchanged]

(b) Condition of Disclosure. [Introductory matter unchanged]

(1)–(5) [Unchanged]

(6) to the National Archives and Records Administration 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 Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7)–(9) [Unchanged]

(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;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31 [31 USCS § 3711(f)].

(c), (d) [Unchanged]

(e) Agency Requirements. [Introductory matter unchanged]

(1)–(3) [Unchanged]

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A)–(I) [Unchanged]

(5)–(11) [Unchanged]

(f)–(k) [Unchanged]

(l)(1) Archival Records. Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 [44 USCS § 3103] 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 Archivist of the United States 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), (3) [Unchanged]

(m)(1) 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.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 [31 USCS § 3711(f)] shall not be considered a contractor for the purposes of this section.

(n), (o) [Unchanged]

(p) Annual Report. The President shall annually submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year [note to this section];

(2) describing the exercise of individual rights of access and amendment under this section during such year,

(3) identifying changes in or additions to systems of records,

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974 [note to this section]

(q)(1) Effect of Other Laws. No agency shall rely on any exemption contained in section 552 of this title [5 USCS § 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title [5 USCS § 552]

(As amended Oct 25, 1982, P. L. 97-365, § 2, 96 Stat 1749, Dec. 21, 1982, P. L. 97-375, Title II, § 201(a), (b), 96 Stat 1821; Jan 12, 1983, P. L. 97-452, § 2(a)(1), 96 Stat 2478, Oct 15, 1984, P. L. 98-477, § 2(c), 98 Stat 2211, Oct. 19, 1984, P. L. 98-497, Title I, § 107(g), 98 Stat 2292)

ประวัติผู้เขียน

นายกงจักร์ โพธิ์พร้อม เกิดวันที่ 9 พฤษภาคม 2503 สำเร็จการศึกษานิติศาสตรบัณฑิต (เกียรตินิยมอันดับสอง) จากมหาวิทยาลัยรามคำแหง เมื่อปีการศึกษา 2523 และเนติบัณฑิตไทย เมื่อปีการศึกษา 2524



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย