

## THE RIGHT TO PRIVACY: THERE'S MORE LOOPHOLE THAN LAW

**H**is bank cost Theodore Cizik his job. In 1983, the former controller at a New Jersey company sided with his employer in a dispute with Midlantic National Bank/North—just after he applied for his own loan there. When Cizik wouldn't budge, he claims, the bank got even. It told Cizik's boss that he had a Rolls-Royce and Mercedes—assets he had wanted kept secret but had listed on his loan application—and the bank suggested that he had been moonlighting. Fired from his \$45,000 job on that pretext, he says, Cizik sued the bank, and ultimately settled out of court.

Cizik's case highlights a startling fact: Almost no information is private. Only rarely, moreover, can individuals find out that information on them is being used. With about 10 privacy laws on the books, how can that be? The laws are narrow, and full of holes.

**'BORK BILL.'** The Fair Credit Reporting

Act of 1970 is a case in point. It sounds good. It gives individuals the right to see and correct their credit reports and limits the rights of outsiders to look at them. But it has five exceptions, including a big one: Anyone with a "legitimate business need" can peek. Legitimate isn't defined.

Then there's the Right to Financial Privacy Act of 1978. It forbids the government to rummage through bank-account records without following set procedures. But it excludes state agencies, including law enforcement officials, as well as private employers. And more exceptions are tacked on every year. Says John Byrne, the federal legislative counsel for the American Bankers Assn.:

"There's not a lot to this act anymore."

The best protection, in fact, is for customers of video stores. In 1987, a Washington (D.C.) weekly, *The City Paper*, published a list of videotape titles borrowed by Robert H. Bork, then a U.S. Supreme Court nominee. Outraged, lawmakers passed the Video Privacy Protection Act of 1988. Called the Bork Bill, it bars retailers from selling or disclosing video rental records without a customer's permission or a court order. While this is a breakthrough of sorts, privacy advocates say it's silly to pass such laws when medical and insurance records remain unprotected. Others find it ironic that the government itself continues to reveal more than anyone else.

For instance, the Privacy Act of 1974 was supposed to bar federal agencies from sharing information on U.S. citizens, a practice called matching. But it's O.K. to share information if the

disclosure is consistent with the purpose for which the stuff was collected. That's called the routine use exception. In 1977, Health, Education & Welfare Secretary Joseph A. Califano Jr. crafted the exception to help root out welfare cheats by letting HEW review federal payroll records (page 76). His reasoning: Efficiency is a goal of all federal agencies. So they can share data to ensure it.

**WATCHING WATCHERS.** Today, matching remains alive and well. When Congress passed last year's Computer Matching & Privacy Protection Act, which regulates the way federal agencies verify eligibility for benefits or recoup delinquent debts, it gave the government explicit permission to perform frequent matches. It tossed a bone to the subjects of matches. Before their benefits can be cut off, an agency needs two pieces of proof for its findings. And it has to notify individuals who are under suspicion.

Every bit helps, of course, but reformers want more. George B. Trubow, the former general counsel to the White House Right to Privacy Committee, wants a federal data protection agency to "watch the watchers." David F. Linowes goes further. The former chairman of the U.S. Privacy Protection Commission, which was set up by the Privacy Act, is in favor of rules without exceptions. And he would give individuals \$10,000 in punitive damages every time an abuse occurs. An interesting idea. But not one that Congress is likely to buy soon—at least not outside of video stores.

By Michele Galen, with Jeffrey Rothfeder, in New York

### THE MAJOR LAWS ON PRIVACY

**FAIR CREDIT REPORTING ACT (1970)** Bars credit agencies from sharing credit information with anyone but authorized customers. Gives consumers the right to review their credit records and be notified of credit investigations for insurance and employment.

► But the law lets credit agencies share information with anyone it reasonably believes has a "legitimate business need"

**PRIVACY ACT (1974)** Bars federal agencies from letting information they collect for one purpose be used for a different purpose.

► The law's exceptions let agencies share data anyway

**RIGHT TO FINANCIAL PRIVACY ACT (1978)** Sets strict procedures when federal agencies want to rummage through customer records in banks.

► But the law doesn't cover state and local governments. And a growing list of exceptions let the FBI and U.S. attorneys grab files

**VIDEO PRIVACY PROTECTION ACT (1988)** Prevents retailers from disclosing video-rental records without the customers' consent or a court order. It also forbids the sale of the records.

► Privacy supporters want the same rules for medical and insurance files

**COMPUTER MATCHING & PRIVACY PROTECTION ACT (1988)** Regulates computer matching of federal data for verifying eligibility for federal benefits programs or for recouping delinquent debts. Requires the government to give individuals a chance to respond before taking adverse action.

► Limited in scope, the law leaves many potential matches unaffected, including those done for law enforcement and tax purposes

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