

107TH CONGRESS
1ST SESSION

S. 851

To establish a commission to conduct a study of government privacy practices,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2001

Mr. THOMPSON (for himself, Mr. KOHL, Mr. VOINOVICH, Mr. LEVIN, Mr. THURMOND, Ms. COLLINS, and Mr. FITZGERALD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To establish a commission to conduct a study of government
privacy practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Citizens’ Privacy Com-
5 mission Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Americans are increasingly concerned about
9 their civil liberties and the security, collection, use,

1 and distribution of their personal information by
2 government, including medical records and genetic
3 information, educational records, health records, tax
4 records, library records, driver's license numbers,
5 and other records.

6 (2) The shift from a paper based government to
7 an information technology reliant government calls
8 for a reassessment of the most effective way to bal-
9 ance personal privacy and information use, keeping
10 in mind the potential for unintended effects on tech-
11 nology development and privacy needs.

12 (3) Concerns have been raised about the ade-
13 quacy of existing government privacy laws and the
14 adequacy of their enforcement in light of new tech-
15 nologies.

16 **SEC. 3. ESTABLISHMENT.**

17 There is established a commission to be known as the
18 "Citizens' Privacy Commission" (in this Act referred to
19 as the "Commission").

20 **SEC. 4. DUTIES OF COMMISSION.**

21 (a) **STUDY.**—The Commission shall conduct a study
22 of issues relating to protection of individual privacy and
23 the appropriate balance to be achieved between protecting
24 individual privacy and allowing appropriate uses of infor-
25 mation, including the following:

1 (1) The collection, use, and distribution of per-
2 sonal information by Federal, State, and local gov-
3 ernments.

4 (2) Current efforts and proposals to address the
5 collection, use, and distribution of personal informa-
6 tion by Federal and State governments, including—

7 (A) existing statutes and regulations relat-
8 ing to the protection of individual privacy, in-
9 cluding section 552a of title 5, United States
10 Code (commonly referred to as the Privacy Act
11 of 1974) and section 552 of that title (com-
12 monly referred to as the Freedom of Informa-
13 tion Act); and

14 (B) privacy protection efforts undertaken
15 by the Federal Government, State governments,
16 foreign governments, and international gov-
17 erning bodies.

18 (3) The extent to which individuals in the
19 United States can obtain redress for privacy viola-
20 tions by government.

21 (b) FIELD HEARINGS.—The Commission shall con-
22 duct at least 3 field hearings in different geographical re-
23 gions of the United States.

24 (c) REPORT.—

1 (1) IN GENERAL.—Not later than 18 months
2 after the appointment of all members of the
3 Commission—

4 (A) a majority of the members of the Com-
5 mission shall approve a report; and

6 (B) the Commission shall submit the ap-
7 proved report to the Congress and the Presi-
8 dent.

9 (2) CONTENTS.—The report shall include a de-
10 tailed statement of findings, conclusions, and rec-
11 ommendations regarding government collection, use
12 and disclosure of personal information, including the
13 following:

14 (A) Findings on potential threats posed to
15 individual privacy.

16 (B) Analysis of purposes for which sharing
17 of information is appropriate and beneficial to
18 the public.

19 (C) Analysis of the effectiveness of existing
20 statutes, regulations, technology advances,
21 third-party verification, and market forces in
22 protecting individual privacy.

23 (D) Recommendations on whether addi-
24 tional legislation or regulation is necessary, and
25 if so, specific suggestions on proposals to re-

1 form or augment current laws and regulations
2 relating to citizens' privacy.

3 (E) Analysis of laws, regulations, or pro-
4 posals which may impose unreasonable costs or
5 burdens, raise constitutional concerns, or cause
6 unintended harm in other policy areas, such as
7 security, law enforcement, medical research and
8 treatment, employee benefits, or critical infra-
9 structure protection.

10 (F) Cost analysis of legislative or regu-
11 latory changes proposed in the report.

12 (G) Recommendations on non-legislative
13 solutions to individual privacy concerns, includ-
14 ing new technology, education, best practices,
15 and third party verification.

16 (H) Recommendations on alternatives to
17 government collection of information, including
18 private sector retention.

19 (I) Review of the effectiveness and utility
20 of third-party verification.

21 (d) ADDITIONAL REPORT.—Together with the report
22 under subsection (c), the Commission shall submit to the
23 Congress and the President any additional report of dis-
24 senting opinions or minority views by a member of the
25 Commission.

1 (e) INTERIM REPORT.—The Commission may submit
2 to the Congress and the President an interim report ap-
3 proved by a majority of the members of the Commission.

4 **SEC. 5. MEMBERSHIP.**

5 (a) NUMBER AND APPOINTMENT.—The Commission
6 shall be composed of 11 members appointed as follows:

7 (1) 2 members appointed by the President.

8 (2) 2 members appointed by the Majority Lead-
9 er of the Senate.

10 (3) 2 members appointed by the Minority Lead-
11 er of the Senate.

12 (4) 2 members appointed by the Speaker of the
13 House of Representatives.

14 (5) 2 members appointed by the Minority Lead-
15 er of the House of Representatives.

16 (6) 1 member, who shall serve as Chairperson
17 of the Commission, appointed jointly by the Presi-
18 dent, the Majority Leader of the Senate, the Minor-
19 ity Leader of the Senate, the Speaker of the House
20 of Representatives, and the Minority Leader of the
21 House of Representatives.

22 (b) DIVERSITY OF VIEWS.—The appointing authori-
23 ties under subsection (a) shall seek to ensure that the
24 membership of the Commission has a diversity of experi-
25 ences and expertise on the issues to be studied by the

1 Commission, such as views and experiences of Federal,
2 State, and local governments, the media, the academic
3 community, consumer groups, public policy groups and
4 other advocacy organizations, civil liberties experts, and
5 business and industry (including small business, the infor-
6 mation technology industry, the health care industry, and
7 the financial services industry).

8 (c) DATE OF APPOINTMENT.—The appointment of
9 the members of the Commission shall be made not later
10 than 30 days after the date of the enactment of this Act.

11 (d) TERMS.—Each member of the Commission shall
12 be appointed for the life of the Commission.

13 (e) VACANCIES.—A vacancy in the Commission shall
14 be filled in the same manner in which the original appoint-
15 ment was made.

16 (f) COMPENSATION; TRAVEL EXPENSES.—Members
17 of the Commission shall serve without pay, but shall re-
18 ceive travel expenses, including per diem in lieu of subsist-
19 ence, in accordance with sections 5702 and 5703 of title
20 5, United States Code.

21 (g) QUORUM.—A majority of the members of the
22 Commission shall constitute a quorum, but a lesser num-
23 ber may hold hearings.

24 (h) MEETINGS.—

1 (1) IN GENERAL.—The Commission shall meet
2 at the call of the Chairperson or a majority of its
3 members.

4 (2) INITIAL MEETING.—Not later than 45 days
5 after the date of the enactment of this Act, the
6 Commission shall hold its initial meeting.

7 **SEC. 6. DIRECTOR; STAFF; EXPERTS AND CONSULTANTS.**

8 (a) DIRECTOR.—

9 (1) IN GENERAL.—Not later than 40 days after
10 the date of enactment of this Act, the Chairperson
11 of the Commission shall appoint a Director without
12 regard to the provisions of title 5, United States
13 Code, governing appointments to the competitive
14 service.

15 (2) PAY.—The Director shall be paid at the
16 rate payable for level III of the Executive Schedule
17 established under section 5314 of such title.

18 (b) STAFF.—The Director may appoint staff as the
19 Director determines appropriate.

20 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
21 LAWS.—

22 (1) IN GENERAL.—The staff of the Commission
23 shall be appointed without regard to the provisions
24 of title 5, United States Code, governing appoint-
25 ments in the competitive service.

1 (2) PAY.—The staff of the Commission shall be
2 paid in accordance with the provisions of chapter 51
3 and subchapter III of chapter 53 of that title relat-
4 ing to classification and General Schedule pay rates,
5 but at rates not in excess of the maximum rate for
6 grade GS–15 of the General Schedule under section
7 5332 of that title.

8 (d) EXPERTS AND CONSULTANTS.—The Director
9 may procure temporary and intermittent services under
10 section 3109(b) of title 5, United States Code.

11 (e) STAFF OF FEDERAL AGENCIES.—

12 (1) IN GENERAL.—Upon request of the Direc-
13 tor, the head of any Federal department or agency
14 may detail, on a reimbursable basis, any of the per-
15 sonnel of that department or agency to the Commis-
16 sion to assist it in carrying out this Act.

17 (2) NOTIFICATION.—Before making a request
18 under this subsection, the Director shall give notice
19 of the request to each member of the Commission.

20 **SEC. 7. POWERS OF COMMISSION.**

21 (a) HEARINGS AND SESSIONS.—The Commission
22 may, for the purpose of carrying out this Act, hold hear-
23 ings, sit and act at times and places, take testimony, and
24 receive evidence as the Commission considers appropriate.

1 The Commission may administer oaths or affirmations to
2 witnesses appearing before it.

3 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
4 ber or agent of the Commission may, if authorized by the
5 Commission, take any action which the Commission is au-
6 thorized to take by this section.

7 (c) OBTAINING OFFICIAL INFORMATION.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), if the Chairperson of the Commission
10 submits a request to a Federal department or agen-
11 cy for information necessary to enable the Commis-
12 sion to carry out this Act, the head of that depart-
13 ment or agency shall furnish that information to the
14 Commission.

15 (2) EXCEPTION FOR NATIONAL SECURITY.—If
16 the head of that department or agency determines
17 that it is necessary to guard that information from
18 disclosure to protect the national security interests
19 of the United States, the head shall not furnish that
20 information to the Commission.

21 (d) WEBSITE.—The Commission shall establish a
22 website to facilitate public participation and the submis-
23 sion of public comments.

24 (e) MAILS.—The Commission may use the United
25 States mails in the same manner and under the same con-

1 ditions as other departments and agencies of the United
2 States.

3 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
4 request of the Director, the Administrator of General
5 Services shall provide to the Commission, on a reimburs-
6 able basis, the administrative support services necessary
7 for the Commission to carry out this Act.

8 (g) GIFTS AND DONATIONS.—The Commission may
9 accept, use, and dispose of gifts or donations of services
10 or property to carry out this Act, but only to the extent
11 or in the amounts provided in advance in appropriation
12 Acts.

13 (h) CONTRACTS.—The Commission may contract
14 with and compensate persons and government agencies for
15 supplies and services, without regard to section 3709 of
16 the Revised Statutes (41 U.S.C. 5).

17 (i) SUBPOENA POWER.—

18 (1) IN GENERAL.—The Commission may issue
19 subpoenas requiring the attendance and testimony of
20 witnesses and the production of any evidence relat-
21 ing to any matter that the Commission is empow-
22 ered to investigate by section 4. The attendance of
23 witnesses and the production of evidence may be re-
24 quired by such subpoena from any place within the

1 United States and at any specified place of hearing
2 within the United States.

3 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
4 son refuses to obey a subpoena issued under para-
5 graph (1), the Commission may apply to a United
6 States district court for an order requiring that per-
7 son to appear before the Commission to give testi-
8 mony, produce evidence, or both, relating to the
9 matter under investigation. The application may be
10 made within the judicial district where the hearing
11 is conducted or where that person is found, resides,
12 or transacts business. Any failure to obey the order
13 of the court may be punished by the court as civil
14 contempt.

15 (3) SERVICE OF SUBPOENAS.—The subpoenas
16 of the Commission shall be served in the manner
17 provided for subpoenas issued by a United States
18 district court under the Federal Rules of Civil Pro-
19 cedure for the United States district courts.

20 (4) SERVICE OF PROCESS.—All process of any
21 court to which application is made under paragraph
22 (2) may be served in the judicial district in which
23 the person required to be served resides or may be
24 found.

1 **SEC. 8. PRIVACY PROTECTIONS.**

2 (a) **DESTRUCTION OR RETURN OF INFORMATION RE-**
3 **QUIRED.**—Upon the conclusion of the matter or need for
4 which individually identifiable information was disclosed
5 to the Commission, the Commission shall either destroy
6 the individually identifiable information or return it to the
7 person or entity from which it was obtained, unless the
8 individual that is the subject of the individually identifi-
9 able information has authorized its disclosure.

10 (b) **DISCLOSURE OF INFORMATION PROHIBITED.**—
11 The Commission—

12 (1) shall protect individually identifiable infor-
13 mation from improper use; and

14 (2) may not disclose such information to any
15 person, including the Congress or the President, un-
16 less the individual that is the subject of the informa-
17 tion has authorized such a disclosure.

18 (c) **PROPRIETARY BUSINESS INFORMATION AND FI-**
19 **NANCIAL INFORMATION.**—The Commission shall protect
20 from improper use, and may not disclose to any person,
21 proprietary business information and proprietary financial
22 information that may be viewed or obtained by the Com-
23 mission in the course of carrying out its duties under this
24 Act.

25 (d) **INDIVIDUALLY IDENTIFIABLE INFORMATION DE-**
26 **FINED.**—In this section, the term “individually identifi-

1 able information” means any information, whether oral or
2 recorded in any form or medium, that identifies an indi-
3 vidual, or with respect to which there is a reasonable basis
4 to believe that the information can be used to identify an
5 individual.

6 **SEC. 9. BUDGET ACT COMPLIANCE.**

7 Any new contract authority authorized by this Act
8 shall be effective only to the extent or in the amounts pro-
9 vided in advance in appropriation Acts.

10 **SEC. 10. TERMINATION.**

11 The Commission shall terminate 30 days after sub-
12 mitting a report under section 4(c).

13 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) IN GENERAL.—There are authorized to be appro-
15 priated to the Commission \$3,000,000 to carry out this
16 Act.

17 (b) AVAILABILITY.—Any sums appropriated pursu-
18 ant to the authorization in subsection (a) shall remain
19 available until expended.

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