

108TH CONGRESS
2D SESSION

H. R. 4414

To require designation of a senior official within the Office of Management and Budget as the Chief Privacy Officer, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2004

Mr. MEEK of Florida (for himself, Mr. TURNER of Texas, Mr. THOMPSON of Mississippi, Ms. LORETTA SANCHEZ of California, Mr. MARKEY, Mr. DICKS, Mr. FRANK of Massachusetts, Mr. ANDREWS, Ms. NORTON, Ms. LOFGREN, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, Mr. LANGEVIN, Mr. SANDLIN, Mr. MATSUI, Mr. SKELTON, Mr. HASTINGS of Florida, Mr. GREEN of Texas, Mrs. CAPPS, Mr. NADLER, Ms. ROYBAL-ALLARD, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. WYNN, and Ms. KILPATRICK) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To require designation of a senior official within the Office of Management and Budget as the Chief Privacy Officer, 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 “Strengthening Home-
5 land Innovation to Emphasize Liberty, Democracy, and
6 Privacy Act” or the “SHIELD Privacy Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The protection of our Nation's civil liberties
4 and privacy is fundamental to the American way of
5 life.

6 (2) Strengthening our homeland security en-
7 sures that our way of life and the rights protected
8 by the Constitution remain intact.

9 (3) In developing homeland security initiatives,
10 our Government must take care to protect funda-
11 mental constitutional rights and strive to minimize
12 unnecessary impositions on the freedoms and privi-
13 leges enjoyed in the United States.

14 (4) As governments develop and employ new
15 technologies and gather information from the private
16 sector for homeland security efforts, they must en-
17 sure that our society's constitutional guarantees re-
18 lating to privacy, due process, and civil liberties are
19 protected.

20 **SEC. 3. CHIEF PRIVACY OFFICER.**

21 (a) DESIGNATION.—The President shall designate a
22 senior official within the Office of Management and Budg-
23 et as the Chief Privacy Officer, who shall have primary
24 responsibility for privacy policy throughout the Federal
25 Government.

1 (b) SPECIFIC RESPONSIBILITIES.—The responsibil-
2 ities of the Chief Privacy Officer shall include the fol-
3 lowing:

4 (1) Assuring that the technologies procured and
5 use of technologies by the Federal Government sus-
6 tain, and do not erode, privacy protections relating
7 to the use, collection, and disclosure of personally
8 identifiable information.

9 (2) Assuring that personally identifiable infor-
10 mation contained in systems of records (as that term
11 is defined in section 552a of title 5, United States
12 Code, popularly known as the “Privacy Act of
13 1974”) is handled in full compliance with fair infor-
14 mation practices required under that section.

15 (3) Evaluating legislative and regulatory pro-
16 posals involving collection, use, and disclosure of
17 personally identifiable information by the Federal
18 Government.

19 (4) Exercising responsibility currently vested in
20 the Director of the Office of Management and Budg-
21 et with respect to privacy impact assessment rules,
22 regulations, and oversight under section 208 of the
23 E–Gov Act of 2002 (44 U.S.C. 3501 note).

24 (5) Preparing an annual report to the Congress
25 containing an agency-by-agency analysis of Federal

1 activities that affect privacy, including complaints of
2 privacy violations, implementation of section 552a of
3 title 5, United States Code, internal controls, and
4 other matters.

5 (c) AGENCY INFORMATION.—The head of each Fed-
6 eral agency shall provide to the Chief Privacy Officer such
7 information as the Chief Privacy Officer considers nec-
8 essary for the completion of the annual reports under sub-
9 section (b)(5).

10 (d) REPORT BY SECRETARY OF HOMELAND SECUR-
11 ITY.—Section 222(5) of the Homeland Security Act of
12 2002 (6 U.S.C. 142(5)) is amended by striking “Con-
13 gress” and inserting “the chief Privacy Officer of the Of-
14 fice of Management and Budget”.

15 **SEC. 4. PRIVACY POLICY OF DEPARTMENTS AND INDE-**
16 **PENDENT AGENCIES.**

17 (a) OFFICIALS RESPONSIBLE FOR PRIVACY POL-
18 ICY.—The head of each department and each independent
19 agency in the executive branch shall appoint a senior offi-
20 cial of the department or independent agency, respectively,
21 to assure primary responsibility for privacy policy, includ-
22 ing the following:

23 (1) Assuring that technologies procured and use
24 of technologies sustain, and do not erode, privacy

1 protections relating to the use, collection, and disclo-
2 sure of personally identifiable information.

3 (2) Assuring that personally identifiable infor-
4 mation contained in systems of records (as that term
5 is defined in section 552a of title 5, United States
6 Code, popularly known as the “Privacy Act of
7 1974”) is handled in full compliance with fair infor-
8 mation practices required under that section.

9 (3) Evaluating legislative and regulatory pro-
10 posals involving collection, use, and disclosure of
11 personally identifiable information by the Federal
12 Government.

13 (4) Conducting privacy impact assessments
14 under subsection (b).

15 (5) Ensuring that the department or agency
16 protects personally identifiable information and in-
17 formation systems from unauthorized access, use,
18 disclosure, disruption, modification, or destruction in
19 order to provide—

20 (A) integrity, by—

21 (i) guarding against improper infor-
22 mation modification or destruction; and

23 (ii) ensuring information nonrepudi-
24 ation and authenticity;

1 (B) confidentiality, by preserving author-
2 ized restrictions on access and disclosure, in-
3 cluding means for protecting personal privacy
4 and proprietary information;

5 (C) availability, by ensuring timely and re-
6 liable access to and use of that information; and

7 (D) authentication, by utilizing digital cre-
8 dentials to assure the identity of users and vali-
9 date their access.

10 (6) Submitting an annual report to the Director
11 of the Office of Management and Budget on activi-
12 ties of their agencies that affect privacy, including
13 complaints of privacy violations, implementation of
14 section 552a of title 5, United States Code, internal
15 controls, and other matters.

16 (b) PRIVACY IMPACT ASSESSMENTS.—

17 (1) REQUIREMENT.—The official appointed
18 under subsection (a) for a department or inde-
19 pendent agency shall—

20 (A) assess the impact on privacy of each
21 proposed action of the Department or agency
22 that will require collecting, using, or accessing
23 personally identifiable information from 10 or
24 more persons; and

1 (B) make the results of such assessments
2 publicly available through the World Wide Web
3 site of the Department.

4 (2) MATTERS CONSIDERED.—Each assessment
5 under this subsection regarding a proposed action
6 shall consider the following:

7 (A) The type of any personally identifiable
8 information to be collected, used, or accessed by
9 the Department.

10 (B) Why such information will be collected,
11 used, or accessed.

12 (C) The intended use of such information.

13 (D) The persons with whom such informa-
14 tion will be shared.

15 (E) What notice or consent will be pro-
16 vided to individuals regarding such information
17 to be collected or accessed, and how that infor-
18 mation will be shared.

19 (F) How such information will be secured.

20 (G) Whether a system of records will be
21 created for purposes of section 552a of title 5,
22 United States Code.

23 (H) The method by which, extent to which,
24 and rate at which such collected information
25 will be destroyed or returned.

1 **SEC. 5. COMMISSION ON PRIVACY, FREEDOM, AND HOME-**
2 **LAND SECURITY.**

3 (a) **ESTABLISHMENT.**—There is established a com-
4 mission to be known as the “Commission on Privacy,
5 Freedom, and Homeland Security”.

6 (b) **DUTIES OF COMMISSION.**—

7 (1) **IN GENERAL.**—The Commission shall con-
8 duct a comprehensive legal and factual study relat-
9 ing to United States efforts to further homeland se-
10 curity in a manner that protects privacy, civil lib-
11 erties, and individual freedoms.

12 (2) **MATTERS TO BE STUDIED.**—The matters
13 studied by the Commission under paragraph (1)
14 shall at a minimum include the following:

15 (A) A review of whether Federal agencies
16 are properly assessing the privacy implications
17 of new homeland security technologies before
18 implementing and deploying such technologies.

19 (B) The impact of existing Federal and
20 State privacy statutes and regulations, legisla-
21 tion pending before the Congress, and privacy
22 protection efforts undertaken by the Federal
23 Government, State governments, foreign gov-
24 ernments, and international governing bodies on
25 homeland security.

1 (C) The impact of Federal legislation en-
2 acted since September 11, 2001, or pending be-
3 fore the Congress, on civil liberties.

4 (D) The likely effectiveness of existing
5 technologies for analyzing public and private
6 sources of data and information to identify ter-
7 rorists and prevent terrorist acts.

8 (c) FIELD HEARINGS.—

9 (1) IN GENERAL.—The Commission shall con-
10 duct at least 2 field hearings in each of the 5 geo-
11 graphical regions of the United States.

12 (2) DETERMINATION OF REGIONS.—For pur-
13 poses of this subsection, the Commission may deter-
14 mine the boundaries of the 5 geographical regions of
15 the United States.

16 (d) REPORT.—

17 (1) IN GENERAL.—No later than 24 months
18 after the date on which the Commission first meets,
19 the Commission shall submit to the President and
20 the Congress a comprehensive report of the Commis-
21 sion's findings, recommendations, and conclusions.
22 Such report shall include a summary of the report
23 submitted to the Commission by the National Re-
24 search Council under subsection (g)(9), and a sum-

1 mary of any other material relied on by the Commis-
2 sion in the preparation of its report.

3 (2) RECOMMENDATIONS.—The report under
4 paragraph (1) shall include recommendations re-
5 garding the following:

6 (A) Steps Federal agencies should take
7 when considering new homeland security tech-
8 nologies to ensure that privacy implications are
9 adequately considered before such technologies
10 are implemented.

11 (B) Whether additional legislation is nec-
12 essary to reform or augment current laws and
13 regulations relating to privacy and homeland se-
14 curity, including specific reform proposals and
15 an analysis of the financial costs of any pro-
16 posed changes.

17 (C) Safeguards and protection that should
18 be in place when the Federal Government uses
19 an individual's personally identifiable informa-
20 tion obtained from a commercial database or a
21 list for counterterrorism and homeland security
22 purposes.

23 (3) ADDITIONAL REPORT.—The Commission
24 shall submit to the Congress and the President, with
25 the report under paragraph (1), any additional re-

1 port of dissenting opinions or minority views by any
2 member of the Commission.

3 (4) INTERIM REPORT.—The Commission may
4 submit to the Congress and the President interim
5 reports approved by a majority of the members of
6 the Commission.

7 (e) STRUCTURE OF COMMISSION.—

8 (1) MEMBER AND APPOINTMENT.—The Com-
9 mission shall be composed of 10 members appointed
10 as follows:

11 (A) 1 member appointed by the President,
12 who shall be the chairperson of the Commis-
13 sion.

14 (B) 1 member appointed jointly by the mi-
15 nority leader of the House of Representatives
16 and the minority leader of the Senate, who shall
17 be the vice chairperson of the Commission.

18 (C) 2 members appointed by the majority
19 leader of the House of Representatives.

20 (D) 2 members appointed by the minority
21 leader of the House of Representatives.

22 (E) 2 members appointed by the majority
23 leader of the Senate.

24 (F) 2 members appointed by the minority
25 leader of the Senate.

1 (2) QUALIFICATIONS OF MEMBERS.—The ap-
2 pointing authorities under subsection (1) shall seek
3 to ensure that the membership of the Commission
4 has a diversity of views and experiences on the mat-
5 ters to be studied by the Commission, including
6 views and knowledge of law, civil rights and liberties,
7 privacy matters, homeland security, information
8 technology, security, database integration, and law
9 enforcement.

10 (3) DATE OF APPOINTMENT.—The appointment
11 of the members of the Commission shall be made not
12 later than 30 days after the date of the enactment
13 of this Act.

14 (4) TERMS.—Each member of the Commission
15 shall be appointed for the life of the Commission.

16 (5) VACANCIES.—Any vacancy in the Commis-
17 sion shall be filled in the same manner in which the
18 original appointment was made.

19 (6) COMPENSATION; TRAVEL EXPENSES.—
20 Members of the Commission shall serve without pay,
21 but shall receive travel expenses, including per diem
22 in lieu of subsistence, in accordance with sections
23 5702 and 5703 of title 5, United States Code.

24 (7) QUORUM.—A majority of the members of
25 the Commission shall constitute a quorum for pur-

1 poses of conducting business, except that 2 members
2 of the Commission shall constitute a quorum for
3 purposes of conducting a hearing.

4 (8) MEETINGS.—

5 (A) IN GENERAL.—The Commission shall
6 meet at the call of the Chairperson or a major-
7 ity of its members.

8 (B) INITIAL MEETING.—Not later than 45
9 days after the date of the enactment of this
10 Act, the Commission shall hold its initial meet-
11 ing.

12 (f) DIRECTOR; STAFF; EXPERTS AND CONSULT-
13 ANTS.—

14 (1) DIRECTOR.—

15 (A) APPOINTMENT.—Not later than 60
16 days after the date of the enactment of this
17 Act, the Commission shall appoint a Director,
18 without regard to the provisions of title 5,
19 United States Code, governing appointments to
20 the competitive service.

21 (B) PAY.—The Director shall be paid at
22 the rate payable for level III of the Executive
23 Schedule established under section 5314 of such
24 title.

25 (2) STAFF.—

1 (A) APPOINTMENT.—The Director may
2 appoint such staff as the Director determines
3 appropriate, without regard to the provisions of
4 title 5, United States Code, governing appoint-
5 ments in the competitive service.

6 (B) PAY.—The staff of the Commission
7 shall be paid in accordance with the provisions
8 of chapter 51 and subchapter III of chapter 53
9 of title 5, United States Code, relating to classi-
10 fication and General Schedule pay rates, but at
11 rates not in excess of the maximum rate for
12 grade GS–15 of the General Schedule under
13 section 5332 of that title.

14 (3) EXPERTS AND CONSULTANTS.—The Direc-
15 tor may procure temporary and intermittent services
16 under section 3109(b) of title 5, United States Code.

17 (4) DETAILEES.—

18 (A) IN GENERAL.—Upon request of the
19 Director, the head of any Federal department
20 or agency may detail, on a reimbursable basis,
21 any of the personnel of that department or
22 agency to the Commission to assist it in car-
23 rying out this Act.

24 (B) NOTICE.—Before making a request
25 under this paragraph, the Director shall give

1 notice of the request to each member of the
2 Commission.

3 (g) POWERS OF COMMISSION.—

4 (1) HEARINGS AND SESSIONS.—The Commis-
5 sion may, for the purpose of carrying out this Act,
6 hold hearings, sit and act at times and places, take
7 testimony, and receive evidence to carry out its du-
8 ties under subsection (b). The Commission may ad-
9 minister oaths or affirmations to witnesses appear-
10 ing before it.

11 (2) POWERS OF MEMBERS AND AGENTS.—Any
12 member or agent of the Commission may, if author-
13 ized by the Commission, take any action which the
14 Commission is authorized to take by this section.

15 (3) OBTAINING OFFICIAL INFORMATION.—

16 (A) REQUIREMENT TO FURNISH.—Except
17 as provided in subparagraph (B), if the Com-
18 mission submits a request to a Federal depart-
19 ment or agency for information necessary to en-
20 able the Commission to carry out this Act, the
21 head of that department or agency shall furnish
22 that information to the Commission.

23 (B) EXCEPTION FOR NATIONAL SECU-
24 RITY.—If the head of a Federal department or
25 agency determines that it is necessary to with-

1 hold requested information from disclosure to
2 protect the national security interests of the
3 United States, the department or agency head
4 shall not furnish that information to the Com-
5 mission.

6 (4) **MAILS.**—The Commission may use the
7 United States mails in the same manner and under
8 the same conditions as other departments and agen-
9 cies of the United States.

10 (5) **ADMINISTRATIVE SUPPORT SERVICES.**—
11 Upon the request of the Director, the Administrator
12 of General Services shall provide to the Commission,
13 on a reimbursable basis, the administrative support
14 services necessary for the Commission to carry out
15 this section.

16 (6) **GIFTS AND DONATIONS.**—The Commission
17 may accept, use, and dispose of gifts or donations of
18 services or property to carry out this Act, but only
19 to the extent or in the amounts provided in advance
20 in appropriation Acts.

21 (7) **CONTRACTS.**—The Commission may con-
22 tract with and compensate persons and government
23 agencies for supplies and services, without regard to
24 section 3709 of the Revised Statutes (41 U.S.C. 5).

25 (8) **SUBPOENA POWER.**—

1 (A) IN GENERAL.—If a Federal depart-
2 ment or agency or any other person fails to
3 supply information requested by the Commis-
4 sion, the Commission may require by subpoena
5 the production of the information. The Commis-
6 sion shall transmit to the Attorney General a
7 written notice at least 10 days in advance of
8 the issuance of any such subpoena. A subpoena
9 under this paragraph may require the produc-
10 tion of materials from any place within the
11 United States.

12 (B) INTERROGATORIES.—The Commission
13 may, with respect only to information necessary
14 to understand any materials obtained through a
15 subpoena under paragraph (A), issue a sub-
16 poena requiring the person producing such ma-
17 terials to answer, either through a sworn depo-
18 sition or through written answers provided
19 under oath (at the election of the person upon
20 whom the subpoena is served), interrogatories
21 from the Commission regarding such informa-
22 tion. A complete recording or transcription shall
23 be made of any deposition made under this
24 paragraph.

1 (C) CERTIFICATION.—Each person who
2 submits materials or information to the Com-
3 mission pursuant to a subpoena issued under
4 subparagraph (A) or (B) shall certify to the
5 Commission the authenticity and completeness
6 of all materials or information submitted.

7 (D) TREATMENT OF SUBPOENAS.—Any
8 subpoena issued by the Commission under sub-
9 paragraph (A) or (B) shall comply with require-
10 ments for subpoenas issued by a United States
11 district court under the Federal Rules of Civil
12 Procedure.

13 (E) FAILURE TO OBEY A SUBPOENA.—If a
14 person refuses to obey a subpoena issued by the
15 Commission under subparagraph (A) or (B),
16 the Commission may apply to a United States
17 district court for an order requiring that person
18 to comply with such subpoena. The application
19 may be made within the judicial district in
20 which that person is found, resides, or transacts
21 business. Any failure to obey the order of the
22 court may be punished by the court as civil con-
23 tempt.

24 (9) ARRANGEMENTS WITH NATIONAL RE-
25 SEARCH COUNCIL.—

1 (A) IN GENERAL.—In carrying out its du-
2 ties under subsection (b), the Commission shall
3 arrange with the National Research Council of
4 the National Academy of Sciences for assist-
5 ance in conducting the studies required by the
6 Commission under subsection (b)(2), including
7 performance of the analysis required under sub-
8 section (b)(2)(C).

9 (B) REPORT.—The arrangements entered
10 into under (A) shall require that the National
11 Research Council submit a report to the Com-
12 mission detailing the results of its efforts no
13 later than 15 months after the date on which
14 the Commission first meets.

15 (C) USE OF FUNDS.—Of amounts appro-
16 priated to carry out this section, up to
17 \$750,000 shall be available to the Commission
18 to carry out this paragraph.

19 (h) BUDGET ACT COMPLIANCE.—Any new contract
20 authority authorized by this section shall be effective only
21 to the extent or in the amounts provided in advance in
22 appropriation Acts.

23 (i) PRIVACY PROTECTIONS.—

24 (1) DESTRUCTION OR RETURN OF INFORMA-
25 TION REQUIRED.—Upon the conclusion of the mat-

1 ter or need for which individually identifiable infor-
2 mation was disclosed to the Commission, the Com-
3 mission shall either destroy the individually identifi-
4 able information or return it to the person or entity
5 from which it was obtained, unless the individual
6 that is the subject of the individually identifiable in-
7 formation has authorized its disclosure.

8 (2) DISCLOSURE OF INFORMATION PROHIB-
9 ITED.—Any individual employed by an individual,
10 entity, or organization under contract to the Com-
11 mission shall be considered an employee of the Com-
12 mission for the purposes of section 1905 of title 18,
13 United States Code.

14 (3) PROPRIETARY BUSINESS INFORMATION AND
15 FINANCIAL INFORMATION.—The Commission shall
16 protect from improper use, and may not disclose to
17 any person, proprietary business information and
18 proprietary financial information that may be viewed
19 or obtained by the Commission in the course of car-
20 rying out its duties under this section.

21 (4) INDIVIDUALLY IDENTIFIABLE INFORMATION
22 DEFINED.—For the purposes of this section, the
23 term “individually identifiable information” means
24 any information, whether oral or recorded in any
25 form or medium, that identifies an individual, or

1 with respect to which there is a reasonable basis to
2 believe that the information can be used to identify
3 an individual.

4 (j) TERMINATION OF COMMISSION.—The Commis-
5 sion shall terminate 30 days after submitting a report
6 under subsection (d)(1).

7 (k) AUTHORIZATION OF APPROPRIATIONS.—

8 (1) IN GENERAL.—There is authorized to be
9 appropriated to the Commission \$4,750,000 to carry
10 out this Act.

11 (2) AVAILABILITY.—Any sums appropriated
12 pursuant to the authorization in subsection (a) shall
13 remain available until expended.

○