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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

AUGUST 31, 1984

GENERAL GOVERNMENT
DIVISION

B-215677



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The Honorable Glenn English
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Subject: Privacy Policy Activities of the National
Telecommunications and Information
Administration (GAO/GGD-84-93)

This report responds to the segment of your January 4, 1984, letter requesting that we review the privacy policy activities of the National Telecommunications and Information Administration (NTIA) at the Department of Commerce. As agreed with your office, we will respond in a subsequent report to the other segments of your request on how agencies are organized to implement the Privacy Act and how agencies identify and consider non-Privacy Act privacy issues.

Our review found a decline in the activity and resources devoted to privacy policy matters at NTIA in recent years. In the 2 years following its establishment in 1978, NTIA was actively developing and coordinating domestic privacy policy initiatives for the nonfederal sector. Beginning in 1981, this activity, and the resources devoted to it, declined substantially. At the present time, NTIA maintains a minor residual capability to respond to or refer requests for information on privacy matters.

OBJECTIVE, SCOPE,
AND METHODOLOGY

The objective of our review was to determine NTIA's activities devoted to privacy protection policy since it was formed in 1978. We focused on NTIA's privacy efforts which relate to private sector recordkeeping on individuals. Such recordkeeping includes the collection, maintenance, use, and dissemination of information about people by businesses and other nonfederal government institutions. Since the Office of Management and

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Budget (OMB) has the lead responsibility for privacy protection matters within the government under the Privacy Act of 1974, we did not review these activities.

To determine NTIA's past and present activities in developing policy for the protection of personal privacy, we analyzed NTIA's budget justification documents and appropriation hearings from 1979 to the present; reviewed NTIA privacy-related documents and records; and interviewed present and former NTIA personnel who are or were engaged in privacy-related activities. We conducted our review in accordance with generally accepted government auditing standards.

NTIA'S ESTABLISHMENT AND MISSION

NTIA was established within the Department of Commerce on March 26, 1978, as a result of Reorganization Plan No. 1 of 1977, as implemented by Executive Order 12046. The reorganization combined the functions and resources of two offices: the Office of Telecommunications Policy (OTP) from the Executive Office of the President and the Office of Telecommunications (OT) within the Department of Commerce.

Before this reorganization, OTP was the principal federal agency involved in issues relating to the impact of increased telecommunications and computerization on personal privacy. OT's primary function was to provide OTP with scientific and engineering support for managing radio frequencies used by federal agencies. The formation of NTIA essentially merged the policy and technical support functions of the two offices.

NTIA's mission is to develop national telecommunications and information policy, allocate and manage federal agencies' use of radio frequencies, and provide grants for planning and constructing public telecommunications facilities. There is no statutory specification of privacy-related responsibilities; however, section 2-410 of Executive Order 12046 authorizes Commerce to study and make recommendations on the impact of the convergence of computer and communications technology. According to NTIA officials, this authority enabled NTIA to carry out privacy-related responsibilities.

NTIA was formed with a capability to develop privacy policy in matters affecting the private sector since its staff included several individuals who had worked on privacy matters at OTP. As such, it continued work on privacy issues relating to recordkeeping practices in such nonfederal institutions as medical information bureaus, credit bureaus, banks, insurance companies, and check authorization services. At the same time, OMB continued to be responsible for providing oversight and

guidance to federal agencies on privacy requirements for their own personal recordkeeping activities, as assigned by the Privacy Act of 1974. This act set governmentwide standards for the protection of personal privacy by federal agencies which maintain records on individuals.

NTIA'S INVOLVEMENT IN PRIVACY
POLICY

An account of NTIA's involvement in privacy policy matters must begin before NTIA's establishment as an organization. The Privacy Protection Study Commission, created by the Privacy Act of 1974, issued its final report in July 1977. This report contained 162 recommendations for actions needed to achieve a balance between an individual's right to personal privacy and society's need for information. In December 1977, the President established a Privacy Coordinating Committee, composed of nine agencies and three White House components, to analyze these recommendations and related privacy issues and to determine an Administration position through the White House domestic policy review process. When NTIA was formed in March 1978, it provided central staff support for the committee, which was co-chaired by the Secretary of Commerce and the President's Domestic Policy Advisor. The committee reported its analysis and recommendations in a 207-page document dated November 1, 1978. NTIA prepared a further summary, which became the principal component of a Presidential Review Memorandum, dated December 6, 1978. This memorandum stated that NTIA had built up expertise on privacy matters and made a recommendation, supported by all agencies, that NTIA:

- Continue staffing the privacy area by coordinating work on a legislative package described in the Presidential Review Memorandum.
- Continue developing and setting forth privacy initiatives in the international area and coordinating U.S. preparations for participating in international conferences and negotiations, subject to the State Department's primary authority for conducting foreign policy.
- Study the consequences of the growth of information technology for privacy and monitor and evaluate nonfederal information practices on privacy matters.

The President's approval of this recommendation, transmitted to the Congress in April 1979, designated NTIA as the lead agency responsible for initiatives in each of these three areas.

Legislative proposals

As the designated lead agency responsible for nonfederal privacy matters, NTIA drafted, participated in drafting, and coordinated with other public and private organizations five proposed bills that were submitted to the Congress. These proposed bills dealt with privacy matters relating to certain law enforcement activities, research, medical records, and financial transactions.

Three of the five bills were sent to the Congress in April 1979 with the President's Privacy Message to the Congress. Of these, one limited law enforcement authorities' use of searches for documents possessed by reporters and others, such as authors and scholars, engaged in activities under First Amendment protection. This bill was substantially enacted in Title I of the Privacy Protection Act of 1980 (Public Law 96-440). The other two bills--the Privacy of Research Records Act and the Privacy of Medical Information Act--did not become law. In addition, two other bills were submitted in October 1979: the Fair Financial Information Practices Act and the Privacy of Electronic Fund Transfers Act of 1979. These, however, also did not become law.

According to an NTIA official, these five bills represented the legislative agenda and, with their disposition by the Congress, NTIA's staff work on legislative proposals decreased. By 1981, little if any NTIA staff time was devoted to legislative initiatives on privacy.

International privacy initiatives

While these legislative proposals sought to address privacy concerns in domestic recordkeeping, NTIA was also addressing privacy concerns in international commerce. In October 1980, the Council for the Organization for Economic Cooperation and Development (OECD) adopted Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. Working with the State Department, NTIA played a substantial part in drafting the voluntary guidelines.

According to Commerce, the guidelines embody public policy principles that are widely reflected in U.S. federal and state law. In negotiating the guidelines, the requirement for legislative or administrative action was avoided in favor of a voluntary approach. To implement this approach, NTIA and Commerce requested private sector endorsement of the guidelines to demonstrate a serious commitment to privacy protection.

NTIA requested private sector endorsement on three occasions between January 1981 and June 1982. As of March 1, 1983,

when the most recent tabulation was compiled, 182 major U.S. multinational corporations and trade associations had endorsed the guidelines. The objective of such endorsement by major U.S. corporations and trade associations was to demonstrate the U.S. commitment for the protection of personal privacy to the OECD member nations.

Other privacy-related activities

NTIA also completed informational and analytical privacy protection initiatives beyond its legislative efforts and the OECD guidelines. In February 1981, NTIA published a collection of papers, which included a major segment on privacy, that was intended to encourage informed debate on information policy. In May 1982, NTIA issued Privacy Protection Law in the United States, a report on the evolving body of law implementing privacy protection principles in the United States. This report was distributed to OECD member nations.

In addition, in May 1982, NTIA hosted a conference on "Future Directions in Information Policy" attended by about 300 representatives of industry, academia, and government. The conference's purpose was to discuss the critical domestic and international information policy issues facing the United States over the next 20 years. One of the five workshops focused specifically on privacy. Since the May 1982 conference, NTIA has not published further domestic privacy-related publications, nor has it organized other activities on domestic privacy issues.

BUDGET RESOURCES REFLECT DECLINING PRIVACY ACTIVITY

NTIA's budget justifications document a reduction in privacy-related activity. As shown in the table on the following page, NTIA's privacy budget decreased from a high of 15 positions and \$639,000 in fiscal year 1980 to an estimated equivalent level of 1 staff year and \$100,000 for fiscal year 1984.

<u>NTIA Funding Levels</u>				
<u>FY</u>	<u>Privacy activities</u>		<u>All activities (salaries and expenses)</u>	
	<u>Positions</u>	<u>Amount (thousands)</u>	<u>Positions</u>	<u>Amount (thousands)</u>
1979	15a	\$ 395	323	\$11,925
1980	15a	639	324	17,644
1981	6b	437	301	17,237
1982	4b	446	256	16,483
1983	1	101	234	12,693
1984 ^c	1	100	257	12,856
1985	1 ^c	100 ^c	260 ^d	13,944 ^d

^aIncludes three other-than-permanent positions and nine full-time permanent staff positions that were loaned by the Commerce Department.

^bIncludes two other-than-permanent positions.

^cEstimates.

^dPresident's request.

NTIA began in 1981 to reduce its activities in the privacy area and so informed the Congress through the budget process. For fiscal years 1981 and 1982, NTIA requested decreased resources because the objective to draft legislation in selected areas had been accomplished and a more stable workload was anticipated. In the authorization hearings for NTIA's fiscal year 1983 budget, the Assistant Secretary of Commerce for Communications and Information said that a compelling public policy need for a major NTIA privacy program no longer existed and, as a result, further reductions in privacy protection activities were proposed. Several reasons were cited for this conclusion:

- The Congress had passed the Privacy Protection Act of 1980.
- Several states had enacted legislation in the insurance records area that NTIA had previously urged the Congress to enact in its proposed Fair Financial Information Practices Act.
- Many U.S. corporations and relevant industry associations had indicated their support of the OECD privacy guidelines.

Fiscal year 1983 was the last budget cycle in which NTIA mentioned privacy efforts as a distinct activity. NTIA's 1984 and 1985 budget requests make no reference to a privacy program. According to NTIA, 1984 resources for privacy have fallen to an estimated equivalent of one position and \$100,000.

As shown in the table, the decline in resources devoted to privacy has coincided with an overall budget reduction for the agency. NTIA's overall budget declined, beginning in fiscal year 1981, from a 1980 high of 324 positions and a funding level of \$17.6 million to a fiscal year 1983 low of 234 positions at a funding level of \$12.7 million. According to an NTIA official, the combination of a general decrease in NTIA's overall budget with a decrease in private and public sector concerns about privacy matters explains NTIA's reduced efforts in the privacy area. An NTIA official told us that NTIA is prepared to respond to inquiries on privacy issues. In addition, NTIA officials said that an average of 10 to 15 requests per month are received for information related to the OECD guidelines and the status of European data protection laws.

AGENCY COMMENTS AND
OUR EVALUATION

Commerce Department officials generally agreed with the factual data presented in our report. The officials suggested a small number of minor changes to update our information and we incorporated these into the report.

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As arranged with your office, unless you publicly announce the contents earlier, we plan no further distribution of this report for 30 days. At that time, we will send copies to the Secretary, Department of Commerce, and other congressional committees having jurisdiction over matters discussed in the report. We will make copies available to others upon request.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director