

THE AGE
COMMENTARY ON "AGE POLL"

AN AUSTRALIAN VIEW OF PRIVACY THREATS

by Mr. Justice Kirby
Chairman of the Australian Law Reform Commission
and Professor Robert Hayes
Commissioner in charge of the Privacy inquiry

November 1980

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AGE POLL RESULTS

The publication of the result of questions included in the 'Age Poll' concerned with attitudes to privacy contain some surprises.

- . 83% of the people surveyed thought that those who were in a job should have a right to see their personnel file if they ask for it
- . 89% thought that a person seeking a loan should have the right to see and comment on any report obtained by lending bodies
- . 83% were aware that information gathered by government departments about individuals is not universally treated as confidential, in the sense that it is sometimes passed to other government departments or outside bodies
- . Only 31% of Australians felt that their personal liberty was threatened. 65% felt that it was not under threat.

The Federal Government has given the Australian Law Reform Commission the task of proposing federal laws on privacy protection. The inquiry is now entering the home straight. Discussion papers containing provisional suggestions for federal legislation have been distributed throughout the country. During November public hearings and seminars are being held in all parts of Australia. At the end of the process of consultation, a report with draft legislation will be presented to Federal Parliament. Perhaps Australian laws on privacy protection will be enacted before 1984 : the year of Orwell's nightmare.

The old-fashioned way to consult the community is by the procedure of public hearings. Now, with the aid of the Age and Irving Saulwick & Associates, a more scientific approach is being taken to test community attitudes to important issues of law reform : by survey of public opinion. Though the results are not binding on law reformers, any more than on Parliament, they provide a fascinating backdrop against which future privacy legislation may be sketched with greater assurance.

RIGHTS OF ACCESS

Take first the responses on credit files and employment records. It is reassuring to see such high proportions favouring the 'right of access' to such information. In fact, this 'right of access' is a key provision in privacy legislation that has sprung up in Europe and North America during the past decade. It is also the central proposal in the Law Reform Commission's discussion paper on 'Information Privacy'. Largely in response to the computerisation of information, including personal information, legislation has been enacted in Western Europe and North America to guarantee the individual a general right of access to files containing personal data about him or her. The idea is a simple one. Privacy in the future will be invaded more through people looking at the personal files of others, than through the keyhole. If the subject has the 'right of access' he can at least know, others, if he wants to, how others are perceiving him. Machinery can then be provided to:

- . erase false and prejudicial information
- . delete out of date information
- . update and correct misleading information or
- . annotate disputed information

In 1980 Australia we are literally on the brink of the almost 'cashless' society. Goods in supermarkets are already coded. Soon there will be systems for adding the bill at the supermarket counter and automatically debiting the customer's bank account. All of this is made possible by computerisation linked to telecommunications. Computerised credit decisions will become more and more important. This seems to be realised by the overwhelming majority of respondents to the Age poll. Unless they can have access to material relevant to their 'credit rating' vital decisions affecting their life may be made on the basis of false, outdated or unfair information.

Already, credit legislation in Victoria and Queensland and voluntary agreements in New South Wales and Victoria permit access by an individual to his credit report. But present Australian legislation has defects. Sometimes it restricts the right of access to cases where reliance on an adverse credit report was the 'principal' reason for refusing credit. Sometimes it leaves it to the credit grantor to make this decision. Sometimes it limits access to 'the substance' of the credit file not the actual data. Under voluntary agreements, there is no legally enforceable right of access. Gentlemen's agreements have not always been effective in regulating the conduct of people whose financial interests run counter to those of complainants. No credit record access provisions yet exist in Western Australia, Tasmania or the Territories.

EXCHANGE OF GOVERNMENT INFORMATION

The 83% of Australians who are aware that information gathered about an individual may sometimes be passed to other departments in government or to other bodies are not far off the mark. Occasionally, this exchange of information may be specifically authorised by legislation. To prevent abuse of pension entitlements and 'double claims' information may be swapped systematically by revenue-protecting officials in the Taxation Office, and departments such as Social Security and Education. Whereas exchanges of this kind occurred in the pre-computer age, nowadays it is increasingly simple to 'run' one computer tape against another so that inconsistencies and patterns of behaviour can be thrown up in a way that would just not have been possible with a million paper files.

Of course, some exchanges of information can be socially justified. The efficient prevention of fraudulent claims for, say, students' assistance and unemployed benefits must be welcomed. But there are equal dangers in indiscriminate movement of personal data to all and sundry. Information supplied for a specific purpose may be quite incomplete or even misleading when used for other purposes. An aggregate of incomplete pictures of a person may give a thoroughly distorted view. Furthermore, our legal system has spent generations building up controls and protections against official intrusions into the life of the individual. Such intrusions can occur at the keyboard of a computer just as surely as by the rather more orthodox means of physical search and seizure. At present, although there are often administrative checks, there are few legal checks against dangers of this kind. The dangers have come about largely as a result of the new technology of 'comptications' (computers linked by télécommunication). The new technology has come upon us quickly. Our legal responses are slow.

NO THREAT TO LIBERTY?

Perhaps a most interesting outcome of the Age poll is the very small proportion of people (31%) who feel that personal liberty is under threat today. To most Australian computerists are strange new machines which somehow shuffle information. Their workings defy the understanding of ordinary, even intelligent and educated people. They are operated by a wholly new industry which has sprung up and flourished in little more than a decade. Many of the things they do for us are wonderful. International airline bookings would simply not be possible on the present scale without them. Word processors bring greater efficiency to our offices. Credit cards and modern banking could not have coped without computers : there would simply not have been enough tellers and clerks.

The Europeans, and the post-Watergate Americans, are much more sensitive to the dangers that lurk in the misuse and manipulation of personal information. Europeans have gone through it all before, in living memory. They see the dangers to personal liberty more clearly than Australians do. The Gestapo's remorseless pursuit of individuals is still vividly alive in the collective memory of Western Europe. They remember how efficient a dedicated, zealous authoritarian bureaucracy could become. They realise how much more efficient such a bureaucracy might be, served by 'computications'.

This realisation has not yet struck the Lucky Country. Perhaps it is considered out of keeping with our character that such zeal and obsessions could ever take over in Australia. Hopefully, this assessment is right. But just in case it is not, it may be important to provide legal checks against misuse of personal information systems and remedies, enforceable even against government itself, when things go wrong.

The new technology undoubtedly makes it easy for authoritarian control of society. There was a certain protection for liberty in the inefficiencies of paper filing systems. The capacity of computers to match, aggregate, scrutinise and combine vast masses of personal information potentially give the 'data controller' great powers over the life and liberties of everyone in society. In the wired society we are all 'on file'. The aggregation of our files now and in the future will potentially provide the state and large business corporations with a very detailed perspective of most facets of our lives. Our 'zone of privacy' is in retreat. Should the retreat be stopped? Can it be stopped?

Just take one example. In the 'cashless' society, there will be the great advantage of instant credit, available just about everywhere. But the record of every little purchase will leave a 'credit trail' which, potentially at least, would allow someone in authority to check up on virtually one's every movement. Potentially, it would be possible to retrieve the titles of all books read or borrowed, places visited, films seen, activities engaged in. This may all seem remote. Perhaps nothing will come of it. But the fear that these technological possibilities may be misused or that they may have a 'chilling effect' on personal behaviour, has already stirred the lawmakers of Western Europe and North America into action. Data protection, data security and privacy laws have been enacted. Whilst acknowledging all the advantages of computerisation, including of personal information, these laws:

- . provide rules for fair information practices
- . establish privacy bodies to clarify and elaborate these rules and arbitrate disputes
- . permit access to courts for enforcement of privacy standards, even as against powerful interests in the public and private sectors.
- . declare the 'right of access' to one's own personal data, provide for exceptions and establish enforcement machinery.

THE DISEASE OF PRIVACY EROSION

The Law Reform Commission's proposals suggest similar laws in Australia. The Age poll results are instructive because they support the notion that the first line of defence in privacy legislation should be the 'right of access' to personal data about oneself. But the Age poll results also make it clear that the general dangers to individual liberty and privacy are not seen as clearly in Australia as elsewhere in the Western world. The technology is universal. Its social implications cannot be swept under the carpet. They will not miraculously pass Australia by. A public debate will accompany the Law Reform Commission's hearings and seminars on privacy protection during November 1980. These may encourage a clearer understanding of the threats to personal liberty which could arise from national indifference to the social implications of 'computications'. 'The Brave New World' is increasingly, technologically, possible. Laws alone cannot prevent it coming about. The Age poll results suggest that Australians are increasingly seeing the symptoms of loss of 'information privacy'. But they do not yet see a disease which, if unattended, may come to endanger personal liberties, even in this fortunate country. The private debate is about this disease : the quiet erosion of an important feature of individualism : personal privacy.

NOTE

The Law Reform Commission's public hearings in Melbourne will be held on Wednesday 19 November 1980 at 10 a.m. in Arbitration Court No. 1, Nauru House, 80 Collins Street, Melbourne. The hearing will be conducted informally. Copies of the discussion papers on privacy are available free of charge from the Australian Law Reform Commission, 99 Elizabeth Street, Sydney.