

# Privacy Law In the States



APPENDIX 1  
TO

The Report of  
The Privacy Protection Study Commission

July 1977

**The Report of the  
Privacy Protection Study Commission**

*Personal Privacy in an  
Information Society*  
(Stock No. 052-003-00395-3)

Appendix 1:  
*Privacy Law in the States*  
(Stock No. 052-003-00421-6)

Appendix 2:  
*The Citizen as Taxpayer*  
(Stock No. 052-003-00422-4)

Appendix 3:  
*Employment Records*  
(Stock No. 052-003-00423-2)

Appendix 4:  
*The Privacy Act of 1974:  
An Assessment*  
(Stock No. 052-003-00424-1)

Appendix 5:  
*Technology and Privacy*  
(Stock No. 052-003-00425-9)

Copies of each of these volumes may be ordered from the:  
Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402

# PRIVACY PROTECTION STUDY COMMISSION

## *Chairman*

David F. Linowes  
Certified Public Accountant, New York City, and  
Boeschstein Professor of Political Economy  
and Public Policy, University of Illinois

## *Vice Chairman*

Dr. Willis H. Ware  
The Rand Corporation  
Santa Monica, California

William O. Bailey, President  
Aetna Life & Casualty Company  
Hartford, Connecticut

William B. Dickinson  
Retired Executive Editor,  
Philadelphia Evening Bulletin  
Philadelphia, Pennsylvania

Congressman Barry M. Goldwater, Jr. of California  
Washington, D. C.

Congressman Edward I. Koch of New York  
Washington, D. C.

State Senator Robert J. Tennesen, Attorney  
Grose, Von Holtum, Von Holtum, Sieben & Schmidt  
Minneapolis, Minnesota

# PRIVACY PROTECTION STUDY COMMISSION — STAFF

Carole W. Parsons  
*Executive Director*

Ronald L. Plesser  
*General Counsel*

Louis D. Higgs  
*Deputy Executive Director and Director of Research*

## *Office of the Executive Director*

Susan J. Bennett, *Special Assistant*  
Arthur A. Bushkin, *Staff Technical Advisor*  
Commander Walter E. Conner,<sup>1</sup> *Administrative Officer*  
Pamela S. Ellsworth, *Administrative Assistant*  
Mark F. Ferber, *Special Consultant to the Executive Director*  
Christopher E. Heller, *Senior Research Associate*  
Justine V. R. Milliken, *Assistant to the Chairman*  
James F. Sasser,<sup>2</sup> *Administrative Officer* (September 1975 to February 1977)  
Alan F. Westin, *Special Consultant to the Commission*

## *Office of the General Counsel*

Christopher J. Vizas, II, *Special Staff Counsel*  
John A. Turner, Jr., *Assistant General Counsel*  
Stephen C. Nichols, *Assistant to the General Counsel*  
Shirley A. Lewi, *Administrative Assistant*

## *Office of Public Information*

Mark F. Ferber, *Director*  
John F. Barker, *Director* (September 1975 to April 1977)  
Eleanor B. High, *Assistant*

## *Project Management*

Lois Alexander,<sup>3</sup> *Research and Statistics*  
Susan J. Bennett, *Public Assistance, IRS, Social Security Number*  
Arthur A. Bushkin, *Privacy Act Assessment, Technology Assessment*  
William H. Foskett, *Education*  
Christopher E. Heller, *Credit, Credit-Reporting, and Depository Institutions*  
Joan Holloway,<sup>4</sup> *Medical Records*  
David M. Klaus, *Investigative Agencies*  
Christopher J. Vizas, II, *Government Access*  
Jane H. Yurow, *Employment and Personnel*

<sup>1</sup> On detail from the Department of Defense.

<sup>2</sup> On detail from the Department of Health, Education, and Welfare (DHEW).

<sup>3</sup> On detail from the Social Security Administration, DHEW.

<sup>4</sup> On detail from the Division of Hospitals and Clinics, U.S. Public Health Service.

*Professional Staff and Consultants*

Arthur J. Altenberg  
Donald Bartlett  
Joan Berry  
Timothy B. Braithwaite<sup>5</sup>  
Joe S. Cecil  
Nancy H. Chasen  
Claire Dalton  
Warren O. Davis<sup>6</sup>  
Priscilla DeGasparis  
Major William R. Elliott, Jr.<sup>5</sup>  
David Galbraith  
Timothy Gay  
Charles Grezlak  
Charles Gustafson  
Claudia R. Higgins  
Florence B. Isbell  
Mary Kay Kane  
William R. Klamon  
Charles R. Knerr  
John Langton, III  
Donald Letourneau  
Abe Levin  
Michael Liethan

Daniel H. Lufkin  
Kenneth E. Mannella  
Ruth Matthews  
Justine V. R. Milliken  
Hubert A. Mitchell  
William B. McMahon  
Margaret A. Neel  
David Nierenberg  
G. Russell Pipe  
Bruce Ransome  
Ira Reed  
James B. Rule  
Francis M. Rush, Jr.<sup>5</sup>  
Cynthia E. Schaffhausen  
Arden Schell  
Harold D. Skipper  
Joyce R. Starr  
J. Michael Taylor<sup>7</sup>  
Patricia Tucker  
Rein Turn  
Philip Vargas  
Alease M. Vaughn  
Fred W. Weingarten<sup>8</sup>

*Administrative Staff*

Phyllis R. Anderson  
A. Kristen Austin  
Zemphria Raymond Baskin  
Mary K. Chin  
Alice Cumberland  
Louise Goldstein  
Debbie J. Graham  
Emily Hanis  
Lori J. Haselhorst

Jeanne L. Holmberg  
Fran Hoyle  
Susan Kaslow  
Alan C. Luckett  
Nancy Mathes  
Nina A. Mohay  
Joanne Robinson  
Mary Scott

*Research Assistants*

Phyllis R. Anderson  
Zemphria Raymond Baskin  
Laura Bonn  
Vernease Herron  
Brenda Reddix

Catherine J. Rodgers  
Adrienne Taylor  
Roger S. Tilton  
Helene Toiv  
Michael S. Turchin

---

<sup>5</sup> On detail from the Department of Defense.

<sup>6</sup> On detail from the Bureau of the Census.

<sup>7</sup> On detail from the Department of Labor.

<sup>8</sup> On detail from the National Science Foundation.

## Table of Contents

### Preface

Part I: Privacy Law in the States .....	1
Privacy as a State Constitutional Right .....	1
Omnibus Privacy States .....	2
State Open Records Statutes .....	5
Confidentiality Statutes .....	7
Statutes that Apply to the Private Sector .....	7
State Fair Credit-Reporting Statutes .....	7
Statutes that Apply to Financial Institutions and Credit-Grantors .....	11
Statutes that Apply to Insurers .....	16
Statutes that Apply to Employers .....	17
Statutes that Apply to Medical Records .....	19
Developments in the Common Law .....	20
Privacy Invasion as Tort .....	20
Prosser's Four Categories .....	20
Beyond Prosser: Records About Individuals .....	21
Defamation and the Qualified Privilege Doctrine .....	22
Banks' Common Law Duty of Confidentiality .....	25
Conclusion .....	27
Part II: Citations .....	29

## Preface

Through constitutional, statutory, and common law protections, and through independent studies, the 50 States have taken steps to protect the privacy interests of individuals in many different types of records that others maintain about them. More often than not, actions taken by State legislatures, and by State courts, have been more innovative and far-reaching than similar actions at the Federal level. For example, constitutional protections for personal privacy have traditionally been safeguards against governmental rather than private intrusions. That distinction, however, has disappeared in several States whose constitutions protect against both. Ordinarily, the States have also shown an acute appreciation of the need to balance privacy interests against other societal values.

The State of California offers a good case in point. In November, 1972, the citizens of California voted to amend the State Constitution so that it would include a specific protection for the "inalienable right" to personal privacy. In the four years since the amendment was adopted, the California courts have begun to articulate the scope of the privacy right thus established. From their decisions, it is clear that the right encompasses more than limitations on government surveillance and on unreasonable searches and seizures of information in an individual's personal possession. It also includes protections for records about an individual maintained by private and public record keepers.

The California legislature has given broad scope to these court decisions, particularly the ones securing the confidentiality of bank records, by enacting statutes that guarantee the individual a right to participate in a third-party record-keeper's decision to disclose information about him. Perhaps most significantly, the California constitutional amendment, the court decisions predicated on it, and the statutes that have flowed from them do not appear to have levied an undue burden on State government or private organizations. In the law enforcement area, for example, while the new protections have created a few problems and have eliminated some old practices which, from the investigator's point of view, were efficient, they have not crippled State law enforcement. For private organizations, moreover, the new privacy protections often help more than they hinder. Bankers, for instance, no longer have to worry about balancing the State's desire for access to records against their account holder's interest in confidentiality; the decision to disclose or not to disclose is now made for them through legal processes.

The California experience since 1972 allowed the Privacy Protection Study Commission to address the issue of government access to records in Chapter 9 of its final report with a good understanding of the probable consequences of its recommendations. Indeed, the Commission found the wealth of State experience in protecting personal privacy so valuable that the requirement imposed on the Commission by Section 5(c)(3)(A) of the Privacy Act of 1974 became an essential adjunct to our primary inquiry into public and private-sector record-keeping practices. Section 5(c)(3)(A) directed the Commission to "determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study." Pursuant to this broad mandate, the Commission undertook an examination of State laws that affect the creation, use, and disclosure of records about individuals. This volume distills the results of that inquiry and documents its full scope, providing citations to the statutes, cases, and constitutional provisions compiled by the Commission staff. It is not intended to be a definitive description of the "law of privacy" in the States. While it highlights the various approaches to protecting recorded information about individuals that State lawmakers have taken and suggests the general contours of State legal protections for informational privacy, it does not include, for example, the many State statutes that compel employers and financial record keepers to disclose individually identifiable information to agencies of State government.

The volume is divided in two parts. The first, a descriptive summary, examines constitutional, statutory, and common law protections for records about individuals. While the summary examines legal protections for personal privacy in the context of governmental record-keeping and information-management practices, its main focus is on protections for records maintained by record keepers in the private sector.

Part II contains citations to the pertinent statutes and cases. In addition to its own staff research, the Commission asked the State attorneys general to identify statutes, cases, and attorney general opinions germane to the Commission's inquiry. The responses to this request were extremely useful. Often they included copies of attorney general opinion letters and other materials unavailable in law libraries.

As with the Commission's other studies, many individuals helped to complete this one. The project was carried out under the immediate supervision of Christopher J. Vizas II, Special Staff Counsel. Most of the staff research was performed by Stephen C. Nichols, Assistant to the Commission's General Counsel. Research assistance was provided by Phyllis Anderson, Laura Bonn, Vernease Herron, Brenda Reddix, and Michel S. Turchin. We are grateful for the contribution made by each of them.

David F. Linowes  
*Chairman*



# Part I

## Privacy Law in the States

### PRIVACY AS A STATE CONSTITUTIONAL RIGHT

In their constitutions, nine States explicitly provide a right to personal privacy,<sup>1</sup> or a right to be free from intrusion into one's private affairs.<sup>2</sup> Precisely what those rights entail, however, differs from State to State. In five States—Arizona, Hawaii, Louisiana, South Carolina, and Washington—the constitutional right seems to apply only to searches and seizures, reflecting the traditional constitutional concept of privacy as protection against *intrusion by government*. This contrasts with Alaska, California, Illinois, and Montana, where the privacy right granted by the State constitution is broader. In California, the developing case law indicates that that State's constitutional provision established an "expectation of privacy" which includes protections against improper searches and seizures but also encompasses records kept by someone other than the individual to whom they pertain.<sup>3</sup> The Attorney General of Alaska has determined that State income tax records must be kept confidential under the provisions of the Alaska constitution.<sup>4</sup> The Alaska Supreme Court has ruled, however, that the constitutional right may not be asserted unless one can demonstrate "state action." In other words, Alaskans have a right to privacy against State government or against a private party when assisted by some state action, but not against private parties generally.<sup>5</sup>

Illinois is notable as the only State whose constitution explicitly guarantees an affirmative legal remedy for privacy invasions.<sup>6</sup> So far, however, the Illinois courts have not been asked to decide whether the State constitutional right extends to records a private-sector record keeper maintains about an individual. Montana similarly lacks any clear judicial interpretation of the breadth of its constitutional protections for personal privacy.

---

<sup>1</sup>Alaska Const. Art. I, §22; Calif. Const. Art. I, §1; Hawaii Const. Art. 1, §5; Ill. Const. Art. 1, §§6, 12; La. Const. Art. 1, §5; Montana Const. Art. II, §10; S.C. Const. Art. 4, §10.

<sup>2</sup>Ariz. Const. Art. 2, §8; Wash. Const. Art. 1, §7.

<sup>3</sup>*White v. Davis*, 13 Cal. 3d 859, 120 Cal. Rptr. 94, 533 P.2d 222 (1975); *Valley Bank of Nevada v. Superior Court*, 15 Cal.3d 652, 125 Cal. Rptr. 553, 542 P.2d 977 (1975); *Loder v. Municipal Court*, 17 Cal. 3d 859, 132 Cal. Rptr. 464, 553 P.2d 624 (1976); *Porten v. Univ. of San Francisco*, 64 Cal.App.3d 825 (1976).

<sup>4</sup>Alaska Op. Att'y Gen., 1972.

<sup>5</sup>*Allred v. State*, 554 P.2d 411 (Alaska 1976).

<sup>6</sup>Ill. Const. Art. I, §12.

## PUBLIC-SECTOR STATUTES

## OMNIBUS PRIVACY STATUTES

Seven States—Arkansas, Connecticut, Massachusetts, Minnesota, Ohio, Utah, and Virginia—have enacted omnibus statutes, usually referred to as “privacy acts” or “fair information practices acts,” which regulate the collection, maintenance, use, and disclosure of information about individuals by agencies of State (and in some cases local) government.<sup>7</sup> A few other States have legislated privacy protections for limited categories of governmental record keeping. North Carolina mandates protections that cover only State government personnel files.<sup>8</sup> New Hampshire law requires State agencies to issue annual notices describing the record systems they maintain and establishes a commission to study the feasibility of further legislative action.<sup>9</sup>

Like the Federal Privacy Act of 1974, omnibus State statutes generally have three objectives:

- to give an individual an opportunity to know what information about him government collects and maintains, why the information is collected, and to whom it is disclosed;
- to permit an individual to correct or amend inaccurate or incomplete government records about him; and,
- to regulate the collection, maintenance, use, and disclosure of individually identifiable information by State government agencies.

All seven State omnibus statutes have some common features. They require publication of system notices describing agency record-keeping systems that contain individually identifiable information. They prohibit agencies from collecting or maintaining individually identifiable information that is not relevant, accurate, timely, or complete. They restrict the use and disclosure of individually identifiable information except under specified conditions. They establish an individual’s right to find out whether an agency maintains information about him and to have access to such information. And they permit an individual to challenge the relevance, accuracy, and completeness of information in records concerning him and to file a statement of disagreement if an agency refuses to correct or amend a record he believes is erroneous.

Four omnibus statutes regulate local as well as State agency record keeping, while the other three apply only to State agency records.<sup>10</sup> All seven exempt criminal investigative records, either explicitly or by implication. Each contains one or more categories of exempted records. The

<sup>7</sup>Ark. Stat. Ann §16-802 *et seq.*; Conn. Gen. Stat. Ann. §4-190 *et seq.*; Mass. Gen. Laws ch. 30, §63, ch. 66A, §§1-3, ch. 214, §3B; Minn. Stat. Ann. §15.162 *et seq.*; Ohio Rev. Code Ann. §1347.01 *et seq.*; Utah Code Ann. §63-50-1 *et seq.*; Va. Code §2.1-377 *et seq.*

<sup>8</sup>N.C. Gen Stat. §126-24 *et seq.*

<sup>9</sup>1975 N.H. Laws 492.

<sup>10</sup>Ark. Stat. Ann §16-805; Mass. Ann. Laws ch. 66A, §1; Ohio Rev. Code Ann. §1347.01(b); Va. Code §2.1-379.6.

Virginia statute, for example, specifies that it does not apply to court records. An individual need not be given access to medical-record information about himself under the Connecticut and Arkansas acts. And, in a unique provision, the Ohio law permits records containing a "small amount" of information to be exempted from its requirements for five years from its effective date.<sup>11</sup>

Paralleling the Federal experience, the States have attempted to anticipate and resolve conflicts between privacy and freedom of information legislation. The Arkansas and Utah fair information practices acts specify that they shall not be interpreted in a manner that would limit access to information available under the States' respective "open records" statutes.<sup>12</sup> The Connecticut and Massachusetts acts provide that their provisions limiting disclosures do not apply to information that is otherwise authorized to be disclosed by statute.<sup>13</sup>

Minnesota has taken a different tack by establishing a procedure for categorizing information about individuals as "public," "private," or "confidential."<sup>14</sup> Each State agency is responsible for deciding in which of the three categories its records fall. The Minnesota Privacy Act defines "public" information as information that would be available under the State's open records statute. Arrest information that is "reasonably contemporaneous" with the arrest or incarceration, for example, is public information under this arrangement. If State or Federal law specifies that certain information shall not be available to the individual to whom it pertains, it is categorized as "private" information. "Confidential" information refers to information that, by statute, is neither publicly available nor accessible by the individual. Absent explicit statutory authority to categorize a particular record as "private" or "confidential," it must be categorized as "public." An agency, "on an emergency basis," may request permission from the Commissioner of the Department of Administration to classify information as private or confidential until the legislature has an opportunity to confirm or deny the classification.<sup>15</sup> In making such a request, however, the agency must show, among other things, that the information has been treated as private or confidential by "custom of long-standing."

Distinctions among public, private, and confidential information are also made in the Utah fair information practices statute.<sup>16</sup> In Utah, however, a State Records Committee, rather than each State agency, does the categorization. The statute establishes no standards for determining how particular items of information ought to be categorized, but the categories do not appear to be crucial to the operation of any provision of the law, other than the one that limits disclosures to third parties. Indeed, the Utah

<sup>11</sup>Ohio Rev. Code Ann. §1347.04(c).

<sup>12</sup>Ark. Stat. Ann. §16-810; Utah Code Ann. §63-50-10.

<sup>13</sup>Conn. Gen. Stat. Ann. §4-192(c); Mass. Gen. Laws ch. 66A, §2(c).

<sup>14</sup>Minn. Stat. Ann. §15.162, subd. 2a, 5a, 5b.

<sup>15</sup>Minn. Stat. Ann. §15-1642.

<sup>16</sup>Utah Code Ann. §§63-50-3(5)-(7).

statute provides that an individual shall have access to "any data" a State agency maintains about him, regardless of the category into which it falls.<sup>17</sup>

Only two State fair information practices statutes seek to restrict the sources from which information about individuals may be collected. Virginia requires that information be collected directly from the individual, so far as possible,<sup>18</sup> and Arkansas forbids collection from "anonymous sources" unless authorized by statute or by the Information Practices Board the Arkansas law established.<sup>19</sup> The Virginia law is the only one that restricts the collection of information about an individual's religious or political beliefs.<sup>20</sup>

As to disclosures of individually identifiable information pursuant to compulsory legal process, either judicial or administrative, only the Massachusetts statute requires procedures to assure that an individual has an opportunity to quash a subpoena for records about himself.<sup>21</sup> Ohio's law simply requires that a reasonable effort be made to notify an individual when an agency divulges information about him pursuant to a subpoena.<sup>22</sup> The Connecticut act specifically permits disclosure pursuant to a summons or subpoena but does not require that the individual be notified or that he have an opportunity to quash.<sup>23</sup> The laws of the other four States do not address the compulsory process issue.

The seven omnibus State statutes differ markedly in their modes of enforcement and in the remedies they offer individuals. Arkansas, Minnesota, Ohio, and Utah provide for administrative oversight of the implementation of their respective statutes, either through an existing agency or a new board or commission.<sup>24</sup> Under the Arkansas act, the Information Practices Board has broad rule-making authority to articulate the specific standards to which State agencies must adhere. The act, however, does not explicitly give the Board authority to enforce compliance with either the act or the Board's own regulations. In Minnesota, the Commissioner of the Department of Administration is given rule-making authority; but, unlike the Arkansas law, the Minnesota statute spells out the information practices that are to be articulated in regulations. Consequently, the Minnesota Commissioner's interpretative role is more restricted than the interpretative role of the Arkansas Information Practices Board. Under the Ohio act, a Personal Information Control Board is established to enforce the law as it relates to local government, while the Department of Administrative Services has enforcement power over state agencies. The enforcement function of these two units of government, however, appears to be limited to seeking a court order to compel an agency to comply with the requirement that it annually publish a notice describing each of its systems of records

<sup>17</sup>Utah Code Ann. §63-50-7(5).

<sup>18</sup>Va. Code §2.1-380.2.

<sup>19</sup>Ark. Stat. Ann. §16-806(h).

<sup>20</sup>Va. Code §2.1-380.10.

<sup>21</sup>Mass. Ann. Laws ch. 66A, §2(k).

<sup>22</sup>Ohio Rev. Code Ann. §1347.07(B).

<sup>23</sup>Conn. Gen. Stat. Ann. §4-192(d).

<sup>24</sup>Ark. Stat. Ann. §§16-804; Minn. Stat. Ann. §15.1671; Ohio Rev. Code Ann. §§1347.02, .06; Utah Code Ann. §63-50-6.

about individuals. The Utah statute announces certain record-keeping standards to be articulated in regulations issued by the Secretary of State. Massachusetts, Virginia, and Connecticut statutes do not establish any administrative oversight or enforcement mechanism.

With the exception of Virginia, the seven omnibus State statutes permit an individual to recover damages for injury resulting from an agency's failure to comply.<sup>25</sup> Arkansas, Massachusetts, Minnesota, and Utah also permit punitive damages to be awarded. In Massachusetts, a plaintiff is entitled to minimum liquidated exemplary damages of \$100 in addition to whatever actual damages he is able to prove and to be awarded exemplary damages he need not prove that the failure to comply was willful. The Ohio law does not authorize the recovery of attorney's fees, although the other six omnibus statutes do. The Ohio law is also unique in that it makes information obtained in violation of its disclosure provisions inadmissible as evidence in a legal proceeding.<sup>26</sup>

Four of the omnibus statutes impose criminal penalties for certain violations. In Arkansas, willful violation of either the statute or the regulations promulgated by the Information Practices Board is a misdemeanor, as well as the basis for imposing a civil penalty of \$500.<sup>27</sup> Minnesota, Ohio, and Utah provide that certain purposeful or willful failures to comply with their statutes or regulations shall be misdemeanors.<sup>28</sup> The Minnesota law also provides for suspension or dismissal of a public employee responsible for certain violations. Finally, all the statutes, except the Arkansas one, authorize injunctive relief to enforce agency compliance.<sup>29</sup>

#### STATE OPEN RECORDS STATUTES

Nearly every State has a "freedom of information" or "open public records" statute which requires that State government records be available for public inspection. There is, however, no uniform definition of a "public record." Some States have incorporated the common law definition into their statutes, designating as public records those records required by law to be maintained.<sup>30</sup> Other States have expanded the definition to include all records made or received by government agencies in the course of transacting official business.<sup>31</sup> Several State statutes are more comprehen-

<sup>25</sup>Ark. Stat. Ann. §16-808; Conn. Gen. Stat. 64-197; Mass. Ann. Laws ch. 214, §3B; Minn. Stat. Ann. §15.166, Subd. 1; Ohio Rev. Code Ann. §1347.10(A); Utah Code Ann. §§63-50-8(1), (2).

<sup>26</sup>Ohio Rev. Code Ann. §1347.07(C).

<sup>27</sup>Ark. Stat. Ann. §16-808.

<sup>28</sup>Minn. Stat. Ann. §15-167; Ohio Rev. Code Ann. §1347.99; Utah Code Ann. §63-50-9.

<sup>29</sup>Conn. Gen. Stat. §4-197; Mass. Ann. Laws ch. 214, §3B; Minn. Stat. Ann. §15.166, Subd. 2; Ohio Rev. Code Ann. §1347.10(b); Utah Code Ann. §63-50-8(3); Va. Code §2.1-386.

<sup>30</sup>See, e.g., N.J. Stat. Ann. §47:1a-2.

<sup>31</sup>See, e.g., Fla. Stat. Ann. §119.011(1).

sive still, encompassing any record or information that relates to the conduct of government or is in the possession of the State.<sup>32</sup>

Once a record is determined to be a public record, it must be disclosed to anyone who asks for it unless another statutory provision permits, or requires, that it be withheld. Like the Federal Freedom of Information Act, many State open records statutes include an exemption for records whose disclosure would result in an *unwarranted* or *clearly unwarranted* invasion of personal privacy.<sup>33</sup> Another common provision exempts records whose disclosure is otherwise prohibited by law.<sup>34</sup> Sometimes this exemption is phrased to include records which *may* be withheld under other statutes. Often, these exemptions are, in effect, available defenses against requests for disclosure which amount to a grant of discretion to State officials to decide whether to release requested information.<sup>35</sup> Often open records statutes also exempt specific types of records, such as adoption, tax, welfare, and school records.<sup>36</sup> A few permit a record to be withheld if disclosing it would result in the denial of Federal funds.<sup>37</sup>

While the exemptions incorporated into State open records laws are usually permissive, some statutes make withholding certain kinds of information mandatory. Maryland law, for example, requires that access by third parties be denied to individually identifiable "medical, psychological and sociological data," personnel files, letters of reference, and library records showing which books an individual has borrowed.<sup>38</sup>

The Kentucky open records law is unique in that it combines the elements of privacy and freedom of information legislation in one statute, going a step further than Federal law which simply makes the Freedom of Information and Privacy Acts companion sections of the United States Code. In one statute, in other words, Kentucky has dealt with the public's access to State agency records, the individual's access to records containing information about himself, and interagency sharing of information for legitimate governmental purposes.<sup>39</sup>

A few States have enacted records management statutes. Such laws typically establish a commission or committee to oversee, and make recommendations concerning, State information practices. These statutes tend to focus on State agencies' use of electronic data processing and telecommunications technologies,<sup>40</sup> and direct that the preservation of personal privacy be one goal, among many, in the development of State government information systems.

<sup>32</sup>See, e.g., Wash. Rev. Code §42.17.020(24); Ore. Rev. Stat. §192.410(4).

<sup>33</sup>See, e.g., Conn. Gen. Stat. Ann. §1-19(b)(1), Mass. Ann. Laws ch. 4, §7(26)(c); D.C. Code Ann. §204(a)(2).

<sup>34</sup>See, e.g., Ga. Code Ann. §40-2701.

<sup>35</sup>See, e.g., Minn. Stat. Ann. §15-17(4).

<sup>36</sup>See, e.g., Tenn. Code Ann. §15-305.

<sup>37</sup>See, e.g., Iowa Code §68A.9.

<sup>38</sup>Md. Ann. Code Art. 76A, §3(c).

<sup>39</sup>Ky. Rev. Stat. Ann. §61.870-884. See particularly §§61.878(4) and §61.884.

<sup>40</sup>See, e.g., Cal. Gov. Code §11755 *et seq.*; Ill. Rev. Stat. ch. 127, §1201 *et seq.*

## CONFIDENTIALITY STATUTES

In addition to enacting fair information practices and open public records statutes, State legislatures have specifically required that certain government-maintained records not be disclosed to the public, including, in some cases, to the individuals to whom the records pertain. Typical of records treated in this fashion are those relating to adoption, alcohol and drug abuse treatment, child abuse and neglect, handicapped persons, taxation, and welfare. In many cases, the Congress has made the failure to enact such confidentiality statutes grounds for the denial of Federal funding.<sup>41</sup> A large number of States also impose restrictions on the disclosure of criminal history information, more often than not as a response to regulations promulgated by the Law Enforcement Assistance Administration which apply to all State criminal justice information systems receiving LEAA funds.<sup>42</sup>

Frequently, a confidentiality statute will simply provide that individually identifiable information shall not be disclosed except under specified circumstances. Adoption records statutes are generally of this type.<sup>43</sup> Other statutes, notably those concerning welfare records, contain additional provisions and often include sanctions for improper disclosure. A California law, for example, specifies the conditions under which agencies may share welfare applicant or recipient information with one another, and makes violations punishable as a misdemeanor.<sup>44</sup> State confidentiality statutes normally do not restrict the manner in which information is collected and do not provide for access to a record by the individual to whom the record pertains.<sup>45</sup>

## STATUTES THAT APPLY TO THE PRIVATE SECTOR

## STATE FAIR CREDIT-REPORTING STATUTES.

The Federal Fair Credit Reporting Act (FCRA),<sup>46</sup> enacted in 1970, imposes certain requirements on the information practices of consumer-reporting agencies. As defined by the FCRA, a consumer-reporting agency is any person or organization that regularly gathers information on individuals for the purpose of furnishing consumer reports (or investigative consumer reports) in interstate commerce. A consumer report consists of information gathered from others and furnished for use in making a credit, insurance, or employment decision about an individual. An investigative consumer report is a consumer report that includes information about an individual's character, reputation, or mode of living obtained by interviewing his friends, neighbors, or associates. The Act's definition of a consumer-reporting agency does not include a record-keeping organization that

<sup>41</sup>42 U.S.C. §§5101-5106, §5103(b)(2)(E).

<sup>42</sup>28 C.F.R. Part 20.

<sup>43</sup>See, e.g., Mass. Ann. Laws ch. 210, §5c.

<sup>44</sup>Cal. Welf. and Inst. Code §10850.

<sup>45</sup>But see Cal. Welf. and Inst. Code §10850.2, granting data-subject access to his record.

<sup>46</sup>15 U.S.C. §§1681-1681t.

reports information about its own transactions with an individual. A bank which discloses how a customer performed in paying a loan, for example, would not be considered a consumer-reporting agency.

The FCRA prohibits consumer-reporting agencies from reporting obsolete adverse information (bankruptcies, tax liens, and the like) unless the report is to be used in making credit or life insurance decisions involving \$50,000 or more, or the report is in connection with a person's employment at a salary of \$20,000 or more. Generally, adverse information is obsolete if it antedates the report by more than seven years, though in the case of bankruptcies the period is 14 years. Moreover, when reporting public-record information (such as tax liens, judgments, and convictions) for use in making an employment decision, a consumer-reporting agency must either take special precautions to assure the accuracy of the information or notify the individual that such information about him is being reported. Adverse information in an *investigative* consumer report may not be included in a subsequent report without being reverified, unless the subsequent report is furnished within three months of initially acquiring the information.

The Act further requires a consumer-reporting agency to disclose to an individual, on request, the nature and substance of the information it maintains about him, except that medical information and the identities of sources of information used exclusively to prepare an investigative report need not be disclosed to him. The names of prior recipients of consumer reports must also be disclosed to the individual if he so requests.

An individual who disputes the accuracy of any information reported about him can require a consumer-reporting agency to reinvestigate the disputed item unless the agency believes the dispute to be "frivolous" or "irrelevant." If, upon reinvestigation, the disputed information is found to be inaccurate, the consumer-reporting agency must correct it, or if the information cannot be verified, the agency must delete it. If reinvestigation does not resolve the dispute (or if the consumer-reporting agency declines to reinvestigate as requested) the individual may file a brief statement detailing his side of the dispute and the agency must make the statement available, if the individual so requests, to all future recipients of reports containing the disputed information. The individual may also require the consumer-reporting agency to furnish recent previous recipients of the disputed information a copy of the corrected report or, if no correction was made, his dispute statement.

The FCRA imposes some requirements on the users of consumer reports. Unless an investigative consumer report is to be used to decide whether to give an individual a job or promotion for which he "has not specifically applied," the person requesting the report must inform the individual that an investigation into his character, reputation, and mode of living may be made. Thereafter, the individual has a right to ask to be informed of the nature and scope of the investigation. When a user of a consumer report denies credit, insurance, or employment on the basis of information contained in the report, it must so advise the individual and furnish him the name and address of the consumer-reporting agency that prepared the report.



An individual may sue a consumer-reporting agency or a user of a consumer report that fails to comply with the Fair Credit Reporting Act for any actual damages he sustains as a result, and for attorney's fees and costs if his suit is successful. Punitive damages may also be awarded to an individual who is injured by a willful violation of the Act. There are criminal penalties in the Act for consumer-reporting agency employees who willfully disclose information to unauthorized parties and for persons who use fraudulent methods to obtain information from a consumer-reporting agency. The user of a report has a "reasonable procedures" defense against alleged failure to notify an individual that an investigative report may be obtained. Finally, the Federal Trade Commission and certain other Federal agencies are empowered to enforce the provisions of the FCRA on behalf of the public.

The Federal Fair Credit Reporting Act is not preemptive. It establishes minimum requirements applicable nationwide, but allows each State to impose additional ones so long as they do not weaken or are not inconsistent with those of the Federal act. Eleven States have enacted statutes that augment the requirements of the FCRA,<sup>47</sup> several of them significantly. In Arizona, California, and Maryland, for example, an individual has the right to see a consumer-reporting agency's file on him,<sup>48</sup> whereas the FCRA only requires the agency to disclose the "nature and substance" of the information in the file. California also makes it possible for an individual to obtain a copy of his consumer-reporting agency file through the mail. New Hampshire law requires that a consumer-reporting agency furnish an individual, on request, an exact copy of an investigative consumer report it has prepared on him, including the names of all the sources the agency used.<sup>49</sup> The Arizona statute similarly requires a consumer-reporting agency to disclose investigative sources.<sup>50</sup>

Arizona and California are conspicuous in not exempting medical information from their individual access requirements.<sup>51</sup> In Arizona, medical-record information is treated no differently than any other information to which the subject of a consumer-reporting agency file seeks access, whereas the California law provides that an individual who obtains authorization from his attending physician must be permitted to see any medical information the consumer-reporting agency maintains about him.

---

<sup>47</sup>Ariz. Rev. Stat. Ann. §§44-1691 to -1696; Cal. Civil Code §§1785 and 1786; Conn. Gen. Stat. Ann. §§36-431 to -435; Kan. Stat. Ann. §§50-701 to -722; Md. Ann. Code Commercial Law §§14-1201 to -1218; Mass. Ann. Laws ch. 93, §§50-68; Mont. Rev. Codes Ann. §§18-501 to -521; N.H. Rev. Stat. Ann. §359-B:1 to -B:21; N.M. Stat. Ann. §§50-18-1 to -8; N.Y. Gen. Business Law §§370-376; Okla Stat. Ann. Tit. 24, §§81-85.

<sup>48</sup>Ariz. Rev. Stat. Ann. §44-1693.A.4; Cal. Civil Code §1785.15; Md. Ann. Code Commercial Law §14-1206.

<sup>49</sup>N.H. Rev. Stat. Ann. §359-B:9.III. Only the nature and substance of a (non-investigative) consumer report need be disclosed, however. See §359-B:9.I.

<sup>50</sup>Ariz. Rev. Stat. Ann. §44-1693.A.4.

<sup>51</sup>See, e.g., Kan. Stat. Ann. §50-708(a)(1).

The seven State statutes<sup>52</sup> that specifically prohibit the reporting of certain adverse information do not uniformly adopt the FCRA's exceptions to that prohibition.<sup>53</sup> The Montana and New Mexico laws make no exceptions whatsoever; that is, the prohibitions apply to consumer reports furnished in relation to any covered transaction regardless of the dollar amount involved.<sup>54</sup> In California, the reporting prohibitions do not apply to reports to be used in life insurance underwriting in excess of \$100,000 (FCRA: \$50,000) or in employment decisions where the salary exceeds \$30,000 (FCRA: \$20,000).<sup>55</sup> Under New York law, a consumer-reporting agency may not knowingly report that an individual was denied credit if the denial was due solely to lack of enough information to grant credit, unless the report also specifies that lack of enough information was the reason.<sup>56</sup>

Finally, the California and New Mexico statutes reflect a concern that certain items of criminal history information not be indiscriminately reported. Both laws instruct a consumer-reporting agency to discontinue reporting an arrest or indictment upon learning that the ultimate disposition of the case was not a conviction. Similarly, a conviction may no longer be reported when the consumer-reporting agency learns that the offense has been pardoned.<sup>57</sup>

A few States distinguish consumer-reporting agencies from private detective agencies. The California and Maryland statutes specifically declare that licensed private investigators are not consumer-reporting agencies and hence are not subject to any of their reporting prohibitions or disclosure requirements.<sup>58</sup> Conversely, Florida, which has no credit-reporting statute, has provided that credit bureaus need not obtain private detective licenses.<sup>59</sup>

The State fair credit-reporting statutes generally include enforcement mechanisms that correspond to those adopted in the FCRA. Connecticut and Kansas go beyond the Federal act by providing that *any* violation of their statutory provisions is punishable by a fine or as a misdemeanor.<sup>60</sup> In Kansas and Maryland, regulatory agencies are given enforcement authority, while the Massachusetts act makes failure to comply an unfair trade practice. That allows the State attorney general to promulgate rules and

<sup>52</sup>Cal. Civil Code §§1785.13, 1786.18; Kan. Stat. Ann. §50-704; Md. Ann. Code Commercial Law §14-1203; Mass. Ann. Laws c. 93 §52; Mont. Rev. Codes Ann. §18-505; N.H. Rev. Stat. Ann. §359-B:5; N.M. Stat. Ann. §50-18-6.

<sup>53</sup>15 U.S.C. §1681c. See discussion of the FCRA, *supra*.

<sup>54</sup>Mont. Rev. Codes Ann. §18-505; N.M. Stat. Ann. §50-18-6. Note, however, that the New Mexico Statute can be interpreted to apply only to reports furnished for credit (not insurance or employment) purposes. §50-18-1. But see §50-18-4A and §50-18-5, which apply at least to reports prepared for employment purposes.

<sup>55</sup>Cal. Civil Code §§1785.13(b), 1786.18(b).

<sup>56</sup>N.Y. Gen. Business Law §372-a. See also Tex. Rev. Civ. Stat. Ann. art. 9016, which punishes as a misdemeanor knowingly including false information in a credit report.

<sup>57</sup>Cal. Civil Code §§1785.13(a)(6), 1786.18(a)(6); N.M. Stat. Ann. §50-18-6(5).

<sup>58</sup>Cal. Civil Code §§1785.4, 1786.2(d); Md. Ann. Code Commercial Law §14-1201F. Note that, insofar as private investigators behave as consumer reporting agencies, they are subject to the requirements of the FCRA, notwithstanding their exemption from coverage by these State statutes.

<sup>59</sup>Fla. Stat. Ann. §493.11(1)(e). See also Tex. Rev. Civ. Stat. Ann. art. 4413(29bb), §3.(a)(4).

<sup>60</sup>Conn. Gen. Stat. Ann. §36-435; Kan. Stat. Ann. §50-720.

regulations consistent with those issued by the Federal Trade Commission.<sup>61</sup>

None of the State credit-reporting statutes significantly expands on the civil remedies available to individuals under the FCRA, or narrows the limitations of liability the FCRA provides for consumer-reporting agencies, except for the Montana act, which expressly permits lawsuits "in the nature of defamation, invasion of privacy, or negligence" against persons who fail to comply with it.<sup>62</sup>

#### STATUTES THAT APPLY TO FINANCIAL INSTITUTIONS AND CREDIT GRANTORS

Sixteen States have statutes that specifically address the disclosure of information that banks and other financial institutions maintain about individuals. The statutes vary widely; some permit banks to share information without specifically limiting disclosure, while others prohibit disclosure except under specified circumstances.

Since the 1950's, Alaska has forbidden banks to disclose records pertaining to their customers or depositors except when compelled by court order, when required by Federal or State statute, when authorized by the individual or, when returning a check for insufficient funds.<sup>63</sup>

Since 1934, it has been a misdemeanor in Mississippi for a bank to disclose the name of a depositor or the amount of his deposit, except "when [that is] required to be done in legal proceedings" or when a bank becomes insolvent.<sup>64</sup> However, no reported case has been decided under this statute and its imprecise language makes its application uncertain. A brief annotation in the *Mississippi Code Annotated* reveals the annotator's belief that the law is directed to depositor information obtained by the State bank examiner, but nothing in the act's language suggests such limited application.

Mississippi and Alaska also have statutes pertaining to depositor records maintained by savings and loan associations.<sup>65</sup> These laws accomplish two purposes: (1) granting the depositor a right to inspect records relating to his account; and (2) forbidding disclosure of such records to others except under specified conditions. Again, Mississippi makes disclosure in violation of the statute a misdemeanor. A number of other States, including Florida, Kentucky, Minnesota, Missouri, Oregon, Pennsylvania, and Wisconsin, have laws restricting the disclosure of records maintained by

---

<sup>61</sup>Kan. Stat. Ann. §50-721; Md. Ann. Code Commercial Law §§14-1217, -1218; Madd. Ann. Laws c.93, §68.

<sup>62</sup>Mont. Rev. Codes Ann. §18-516. Compare FCRA, 15 U.S.C. §§1681h(e).

<sup>63</sup>Alas. Stat. §06.05.175a.

<sup>64</sup>Miss. Code Ann. §81-5-55.

<sup>65</sup>Alas. Stat. §06.30.120; Miss. Code Ann. §81-11-5.

savings and loan associations but have no corresponding statutes for banks.<sup>66</sup>

Several State laws permit, prohibit, or require certain disclosures by banks. Generally, their application depends on the type of record involved or the person or institution to whom the disclosure is made. Oklahoma law bars a bank or trust company from disclosing information relating to a private trust.<sup>67</sup> (California has a similar statute,<sup>68</sup> quite apart from its Financial Privacy Act discussed below.) In Massachusetts, a bank is required to comply with a written request by the Welfare Department for information regarding accounts maintained by a welfare applicant or recipient. Unreasonable refusal to comply subjects the bank to forfeiture of fifty dollars "to the use of Commonwealth."<sup>69</sup>

A Utah statute permits banks to share with one another, and with credit-reporting agencies, information regarding the identity of depositors whose checking accounts have been closed as unsatisfactory. The banks are declared to be immune from liability for exchanging such information or for any errors or omissions in such exchange.<sup>70</sup> The statute is significant in that it permits the inference that a bank may be liable for otherwise exchanging or disclosing information about a checking account. A Kansas record retention statute similarly implies that banks have an obligation to keep customer records confidential; the act declares that it does not affect "any duty of a bank or trust company to preserve the confidentiality of [its] records."<sup>71</sup> An Illinois Financial Institutions Disclosure Act also specifies that it shall not be construed so as to require disclosure of the names of depositors in view of the "confidential nature" of their financial status.<sup>72</sup> (The common law duty of banks to preserve the confidentiality of customer records will be discussed below.<sup>73</sup>)

Three States—Illinois, Maryland, and California—have recently enacted legislation specifying the conditions under which bank records may be disclosed pursuant to compulsory legal process.<sup>74</sup> These "financial privacy" acts, which have features in common with the Alaska statute discussed briefly above, may signal a developing concern focusing on the conditions under which government agencies ought to be given access to bank records.

The Illinois and Maryland statutes, like the Alaska statute, forbid banks ("State banks" in Illinois and "fiduciary institutions" in Maryland) to disclose customer records except under certain conditions. One of the

<sup>66</sup>Fla. Stat. Ann. §665.111(1); Ky. Rev. Stat. §289.271; Minn. Stat. Ann. §51A.11; Mo. Rev. Stat. §369.099; Ore. Rev. Stat. §722.303; Pa. Stat. Ann. tit. 7, §6020; Wis. Stat. Ann. §§215.02, 215.08.

<sup>67</sup>Okla. Stat. Ann. tit. 6, §1013.

<sup>68</sup>Cal. Financial Code §1582.

<sup>69</sup>Mass Ann. Laws ch. 117, §17.

<sup>70</sup>Utah Code Ann. §§7-14-1 to -5.

<sup>71</sup>Kan. Stat. Ann. §9-1130.

<sup>72</sup>Ill. Rev. Stat. ch. 95, §207.

<sup>73</sup>*Infra*, "Banks' Common Law Duty of Confidentiality."

<sup>74</sup>See also the 1976 Louisiana law, which applies to banks, savings and loan, and creditors, considered *infra* in text accompanying note 92.

conditions is "in response to a lawful subpoena, summons, warrant or court order."<sup>75</sup> Both statutes go beyond the Alaska law, however, in requiring that any such compulsory legal process be served on the customer as well as the bank except when a court waives such service for "good cause." The Alaska law, as amended in 1976, requires only that the bank *notify* the customer of the disclosure of his records pursuant to a court order (other than a search warrant or Grand Jury subpoena) or pursuant to any other requirement of State or Federal law. The law implies that such notification should occur, if possible, before the records are disclosed,<sup>76</sup> but prior notice is not necessary and the bank, not the government, is responsible for giving it.

The California statute differs from the Alaska, Illinois, and Maryland ones in that it is solely concerned with the procedures by which State agencies may gain access to information maintained by financial institutions.<sup>77</sup> The primary burden is on the State agency to comply with certain formal requirements. A financial institution in California is required to deny access to a State agency seeking records unless presented with an apparently valid form of compulsory process. As in Alaska, Illinois, and Maryland, the bank need not ascertain whether the subpoena or other device is in fact valid; it is enough that the subpoena "show compliance [with] the law on its face." A bank or other financial institution must, however, keep an accounting of disclosures to State agencies and provide that accounting to the customer upon request.

California, like Illinois and Maryland, requires that compulsory process be served on both bank and customer, with exceptions for Grand Jury subpoenas issued "upon a showing of probable cause" and for certain administrative subpoenas issued by the State Department of Justice when service upon the customer is waived by court order. The California act takes pains to differentiate between the various forms of compulsory process, and the procedures to be followed with each of them.

Additionally, the act provides a customer with 10 days in which to seek to quash a subpoena, unless the period is shortened or waived by a judge. In this respect, the California statute also differs from its Alaska, Illinois, and Maryland counterparts which do not address the right to quash. Most important, a California customer has legal standing under State constitutional law to move to quash a subpoena for records sought by a State agency, notwithstanding the United States Supreme Court's opinion in *United States v. Miller*<sup>78</sup> that he would not have standing to assert his Fourth Amendment rights when access is sought by a *Federal* agency. California law has moved considerably beyond Federal law in its regard for the confidentiality of bank records.

In addition to their concern with protecting the traditional sorts of records held by a bank about its customers, the States have begun to become concerned with the development of electronic funds transfer systems

<sup>75</sup>Ill. Rev. Stat. Ch. 16 1/2, §48.1 (Supp. 1977); Md. Ann. code art. 11, §224 *et seq.* (Supp. 1977).

<sup>76</sup>Alas. Stat. §06.05.175b.

<sup>77</sup>Cal. Govt. Code §7460 *et seq.*

<sup>78</sup>*United States v. Miller*, 425 U.S. 435 (1976).

(EFTS). A recent Florida statute authorizing the deployment of such systems seeks to assure that confidential information concerning EFTS transactions is safeguarded, whether flowing through the funds transfer system or in the files of a bank.<sup>79</sup>

State statutes also regulate some of the record-keeping aspects of the *credit* relationships that banks and other financial institutions have with their customers. Insofar as they use credit reports or disseminate credit information, banks and other credit grantors are subject to the State credit-reporting statutes discussed earlier.<sup>80</sup> However, there are also several other types of State laws that restrict the collection and dissemination of information about individuals by credit grantors, including, in some cases, banks.

One such area of State activity has been reflected at the Federal level in the Equal Credit Opportunity Act (ECOA), which seeks to prevent discrimination based on race, religion, sex, or marital status.<sup>81</sup> A number of States have legislated to prevent not only *use* of such information in making credit decisions, but also its *collection*. In Kentucky, for example, loan application forms may not seek information regarding race or religion, while in Washington questions about race or sex may not be asked.<sup>82</sup> An Illinois statute prohibits credit-card issuers from asking for sex or marital status;<sup>83</sup> and, a New York law, applicable to creditors generally, prohibits any inquiry implying that sex, race, or marital status are factors in credit decisions.<sup>84</sup> The New York law does, however, permit creditors' records to indicate those personal attributes where necessary to show compliance with the prohibition on credit discrimination. California, on the other hand, bans discrimination based on race, religion, or sex in issuing credit cards but does not prohibit the collection of information indicating a credit applicant's race, religion, or sex.<sup>85</sup>

Like the Federal Fair Credit Billing Act,<sup>86</sup> the statutes of several States restrict a creditor's disclosure of the fact of an outstanding unpaid debt when the debtor disputes the debt as a billing error. Connecticut and Utah statutes require that a creditor take certain steps to resolve an alleged billing error and allow at least 10 days to elapse after the creditor takes action before adverse information concerning the debt may be reported to a third party.<sup>87</sup> Thereafter, if the debtor continues to dispute the debt, the creditor must also report the fact of the dispute when reporting the debt as delinquent. Moreover, the debtor must be notified of the name and address of anyone whom the creditor notifies of the disputed delinquency.

A similar statutory provision in California, applicable only to credit-card issuers, requires compliance with certain procedures for resolving a

<sup>79</sup>Fla. Stat. Ann. §659.06.

<sup>80</sup>*Supra*, "State Fair Credit-Reporting Statutes."

<sup>81</sup>15 U.S.C. §1691.

<sup>82</sup>Ky. Rev. Stat. §344.370; Wash. Rev. Code §49.60.175.

<sup>83</sup>Ill. Rev. Stat. Ch. 121 1/2, §385.1.

<sup>84</sup>N.Y. Exec. Law §296-a.

<sup>85</sup>Cal. Civil Code §1747.80.

<sup>86</sup>15 U.S.C. §§1666-1666j.

<sup>87</sup>Conn. Gen. Stat. Ann. §36-393; Utah Code Ann. §70B-10-102.

billing error before the card issuer may report unfavorable credit information concerning a card holder who disputes his bill.<sup>88</sup> California also prohibits card issuers from "knowingly giving any untrue credit information to any other person concerning a card holder." If these provisions are willfully violated, a card holder may sue for recovery of treble damages plus attorney's fees.

Except for its penalties for noncompliance and its broader scope (i.e., all creditors), the New York law is substantially the same as the California credit-card issuer statute.<sup>89</sup> Virginia and New Jersey also restrict the reporting of unfavorable credit information concerning a disputed debt until the creditor satisfies certain procedural requirements for resolving the dispute.<sup>90</sup>

A few States have enacted legislation apparently designed to prevent mortgage lenders from steering property insurance business (covering property on which they made loans) to favored insurers. When a lender in California, Oregon, or Tennessee is furnished a property insurance policy (as proof of insurance) by a borrower, the lender is forbidden to disclose policy information to other insurers to help them solicit business from the borrower.<sup>91</sup> The purpose of these laws is to assure that the borrower is permitted to choose his property insurer without direction or influence from the lender; they only coincidentally serve to protect a privacy interest of the borrower.

Although the broad protections afforded bank records by a State like California may also apply to bank records kept for credit purposes, Maryland and Louisiana are the only States that have statutorily prescribed the conditions under which a creditor may respond to a subpoena for information concerning an individual consumer.<sup>92</sup> The Maryland statute requires a credit-card issuer to advise its card holder immediately of the subpoena's requirements, and the Louisiana statute, which applies to all creditors, including banks and savings and loan associations, goes even further. It prohibits the disclosure of credit or financial information to law enforcement authorities investigating tax law violations except pursuant to a subpoena *duces tecum* or other "valid and enforceable order." Upon receipt of such an order, and insofar as the order permits, the bank or creditor must immediately notify the individual whose records are sought and allow him 15 days to challenge its legality.

The Maryland law is designed simply to give notice to an individual whose credit-card records are subpoenaed; Louisiana attempts to provide notice and an opportunity for the individual to challenge any summons or subpoena. Neither statute, however, imposes a penalty on the creditor for failure to comply, and the additional protections contained in the Louisiana law are largely illusory—for two reasons. First, the form of notice to be given to the individual is not specified. A person may be notified by his bank

<sup>88</sup>Cal. Civil Code §1747.70.

<sup>89</sup>N.Y. Gen. Business Law §§601.3, 601.5, 701-707.

<sup>90</sup>N.J. Stat. Ann. §56:11-3(c); Va. Code Ann. §6.1-366.

<sup>91</sup>Cal. Insurance Code §770.1; Ore. Rev. Stat. §746.200; Tenn. Code Ann. §47-15-118.

<sup>92</sup>Md. Ann. Code Commercial Law §13-312; La. Rev. Stat. Ann. §9:3571 (Supp. 1977).

or credit-card issuer that his records have been subpoenaed without any information regarding his right to challenge the subpoena or the time period within which he must initiate such a challenge. A second and more substantial problem is that the act does not explicitly give the individual a legal interest in the records a bank or creditor maintains about him. Thus, it fails to remedy the problem that led the Supreme Court to deny standing to the defendant in *United States v. Miller*,<sup>93</sup> although it is conceivable that a State court would grant standing to assert a challenge to such a subpoena grounded in State law, perhaps the Louisiana Constitution's privacy guarantee.<sup>94</sup>

The information practices of collection agencies are one other area of credit-related record keeping that several States regulate. West Virginia and Florida regulate collection agencies' reporting of debt information to third parties. In Florida, the disclosure of "information affecting the debtor's reputation, whether or not for credit worthiness," is prohibited unless it is made to a person with a "legitimate business need" for the information.<sup>95</sup> Furthermore, when reporting a "reasonably" disputed debt, the fact of dispute must be reported. This applies even if the fact of "reasonable dispute" comes to the attention of the collection agency *after* the debt has been reported. Since the statute applies to anyone "collecting consumer claims," it may apply to creditors as well as collection agencies. The West Virginia law bars, as "unreasonable publication" the disclosure of an individual's indebtedness to anyone other than a credit-reporting agency.<sup>96</sup>

Florida and West Virginia, along with Nevada and New Mexico, also prohibit collection agencies from publishing "deadbeat lists," although West Virginia recognizes an exception for lists designed to prevent fraudulent use of credit cards or credit accounts.<sup>97</sup>

#### STATUTES THAT APPLY TO INSURERS

In regulating insurers, the States have been concerned primarily with matters such as rates, coverage, reserves, and financial stability. While some State insurance commissioners have shown concern about the manner in which insurers collect and use information about individuals, few statutes specifically address such practices.

One notable exception is a Maryland law which grants an insurance applicant or claimant a statutory right to see any medical files concerning him that have been compiled by an insurer for health or life insurance purposes.<sup>98</sup> (A physician's report may not be inspected for five years after the date of examination unless the physician authorizes inspection.) The statute also requires an insurance agent to have a signed authorization when seeking an applicant's or claimant's medical records. The Maryland law,

<sup>93</sup>*United States v. Miller*, 425 U.S. 435 (1976).

<sup>94</sup>La. Const. Art. I, §5. See also text accompanying note 81, *supra*.

<sup>95</sup>Fla. Stat. Ann. §559.72.

<sup>96</sup>W. Va. Code Ann. §46A-2-126.

<sup>97</sup>Fla. Stat. Ann. §559.72(14); Nev. Rev. Stat. §649.375(7); N.M. Stat. Ann. §67-15-78(B); W. Va. Code Ann. §46A-12-126(C).

<sup>98</sup>Md. Code Ann. Art. 48A, §490C.



however, does not apply to property and liability insurers, does not deal with disclosures by insurers to third parties, and does not establish any sanctions for failure to comply.

Investigative information developed for insurance purposes may be subject to State fair credit reporting acts, as discussed earlier.<sup>99</sup> In addition, at least two States, Idaho and Texas, confer a statutory "privilege" on statements made by insurers concerning risks insured, or to be insured, under a special underwriting plan for medical malpractice insurance.<sup>100</sup> The insurer may not be held civilly liable for such statements if made in good faith.

Finally, the California Insurance Department has used its regulatory authority under the State's unfair trade practices law to prohibit unfairly discriminatory practices on account of sex, marital status, unconventional life-style, and sexual orientation. The Insurance Department rules prohibiting the *use* of these criteria in making underwriting decisions have tended to discourage insurers from collecting such information, even though the rules themselves do not prohibit collection.<sup>101</sup>

Most States have passed a version of the Model Unfair Trade Practices Act.<sup>102</sup> These laws are applicable to all types of insurance and are designed to protect the insurance consumer by prohibiting insurance institutions from engaging in a wide range of practices specifically defined by the Act to be unfair. The Model Act also provides that the State Insurance Commissioner may hold hearings on any action or practice which he believes unfair, even though it is not specifically defined as unfair in the Model Act. If, after a hearing, an undefined act or practice is found to be unfair, the Commissioner may issue a cease and desist order. The Model Act, however, does not empower the Commissioner to add by regulation new acts to the defined unfair trade practices, or to impose monetary penalties for engaging in undefined unfair trade practices.

#### STATUTES THAT APPLY TO EMPLOYERS

A handful of States have statutes governing the collection, use, and disclosure of information about private-sector employees.<sup>103</sup> Only two States, California and Maine, give employees a right to inspect their personnel records,<sup>104</sup> and in California the right is qualified. It does not extend to reference letters or records "relating to the investigation of a possible criminal offense." Neither statute requires an employer to inform employees of their access rights.

A few States restrict an employer's collection of certain kinds of

<sup>99</sup>*Supra*, "State Fair Credit-Reporting Statutes."

<sup>100</sup>Idaho Code §41-4113; Tex. Insurance Code, art. 21.49-3, §8.

<sup>101</sup>Cal. Admin. Code ch. 5, §2560 *et seq.*

<sup>102</sup>See e.g., Cal. Ins. Code §§790.01 *et seq.*; Mass. Gen. Laws Ann. ch. 176D; Code of Va. (1950) tit. 38.1, §49 *et seq.*; Ill. Rev. Stat., ch. 73, Art. XXVI.

<sup>103</sup>The Federal Fair Credit Reporting Act and several State credit reporting statutes apply to an employer's use of reports prepared by consumer reporting agencies; *Supra*, "State Fair Credit-Reporting Statutes."

<sup>104</sup>Cal. Labor Code §1198.5; Me. Rev. Stat. Ann. Tit. 5, §638, and Tit. 30, §§64, 2257.

information relating to an employee or to an applicant for employment. Maryland has an apparently unique statutory provision barring inquiry by an employer into a job applicant's psychiatric treatment history.<sup>105</sup> In California, Illinois, Massachusetts, and New York, employers may not inquire about prior arrests which did not result in conviction.<sup>106</sup> Massachusetts extends that prohibition to include certain first-offense and misdemeanor convictions. Under Massachusetts law, a job applicant is also permitted, without fear of perjury or similar liability, to withhold criminal history information that employers are forbidden to collect. Another provision in Massachusetts law permits an applicant to answer "no record" when asked about convictions or delinquency adjudications whose records have been ordered sealed.<sup>107</sup> Moreover, an employment application form must include a statement of this right.

New York law not only restricts the collection of arrest information but also regulates an employer's use of conviction information in making hiring decisions. An employer may not deny employment on the basis of a past criminal offense unless there is a "direct relationship" between the offense and the job sought, or unless an "unreasonable risk" to property or persons would result from hiring the individual.<sup>108</sup> The law then proceeds to list the factors employers must consider in determining the relationship of the offense to the job, including: the applicant's age at the time the offense was committed; the seriousness of the crime; and the amount of time that has elapsed since the crime.<sup>109</sup> A former offender who is denied employment must be given, upon request, a written statement of the reasons for the denial.<sup>110</sup> (In this respect, the rights of a former offender appear to be greater than those of the ordinary job applicant.)

Of the statutes which limit the ability of an employer to inquire into arrest records, California's contains the most severe sanctions for violations. Any violation entitles the job applicant to recover damages (minimum recovery, \$200) plus attorney's fees, while an intentional violation warrants recovery of treble damages (minimum recovery, \$500) plus attorney's fees. An intentional violation also constitutes a misdemeanor punishable by a maximum fine of \$500.<sup>111</sup>

The California statutory scheme generally evidences a marked preference for utilizing treble-damage penalty provisions.<sup>112</sup> Such provisions also appear in a 1913 law forbidding employers from making any

<sup>105</sup>Md. Ann. Code art. 100, §95-A.

<sup>106</sup>Cal. Labor Code §432.7; Ill. Rev. Stat. Ann. ch. 48, §853(e); Mass. Gen. Laws Ann. c. 151B, §4 par. 9; N.Y., Corrections Law §§750.-755. See also N.Y. Crim. Procedure Law §160.50 and Exec. Law §§296.14, .15.

<sup>107</sup>Mass. Gen. Laws Ann. c. 276, §100A.

<sup>108</sup>N.Y. Correction Law §752.

<sup>109</sup>Id., §753.

<sup>110</sup>Id., §754.

<sup>111</sup>Cal. Labor Code §432.7(b).

<sup>112</sup>See, e.g., Cal. Civil Code §1747.70, discussed *supra*, in "Statutes that apply to Financial Institutions and Credit Grantors," at footnote 91.

misrepresentation that prevents or attempts to prevent a former employee from obtaining a job.<sup>113</sup> In effect, the statute prohibits a specific type of defamation and provides not only for the recovery of treble damages but for criminal sanctions as well.

Connecticut and Texas also statutorily prohibit the "blacklisting" of former employees.<sup>114</sup> The Connecticut law contains a provision restricting the redisclosure by employers of arrest information furnished on job application forms.<sup>115</sup>

#### STATUTES THAT APPLY TO MEDICAL RECORDS

The duty of a physician to keep his patients' records confidential is reflected in the testimonial privilege statutorily accorded physicians in the majority of States.<sup>116</sup> Many States also provide by statute that patient records in public or private hospitals are to be kept confidential.<sup>117</sup> Notably absent from most statutes concerning medical records, however, are provisions giving patients a right of access to records about themselves. However, a growing number of States statutorily grant such access either to patients, including former patients, or to their attorneys.<sup>118</sup> A few of these statutes specifically provide for patient access to a psychiatrist's or psychologist's records concerning him.<sup>119</sup>

Only one State imposes criminal sanctions for the dissemination or procurement of medical-record information without the patient's consent. A 1975 Michigan statute forbids furnishing (i.e., selling or offering to sell) or obtaining (i.e., buying or offering to buy) information relating to the treatment of a patient without the patient's written permission.<sup>120</sup> The statute expressly applies to information in the files of medical-care facilities and providers and in the records of insurance companies.

Most States require the reporting of a wide variety of medical-record information to State and local authorities. The citations in Part II of this volume document the scope of these reporting requirements and indicate that the basic concern is to control the spread of communicable diseases. Many States now also require medical-care providers to report cases of cancer and other diseases in which an environmental or occupational factor is suspected, and some require reports on drug addiction, gunshot wounds, child abuse, and other violence-related injuries.<sup>121</sup> Indeed, although the Commission inquiry at the State level did not include broad scrutiny of reporting statutes outside the medical record area, reporting requirements

<sup>113</sup>Cal. Labor Code §§1050-1056.

<sup>114</sup>Conn. Gen. Stat. Ann. §31-51; Tex. Rev. Civ. Stat. Ann. art. 5196c.

<sup>115</sup>Conn. Gen. Stat. Ann. §31-51i.

<sup>116</sup>More than 40 States recognize the privilege, although a small number limit its application to psychiatrists. See appendix for citations.

<sup>117</sup>See, e.g., Ga. Code Ann. §§38-717.21, 88-502.10.

<sup>118</sup>See, e.g., Utah Code Ann. §64-7-50, which applies to records maintained by both physicians and hospitals. See also Okla. Stat. Ann. tit. 76, §19.

<sup>119</sup>Colo. Rev. Stat. Ann. §§24-72-204(3)(a)(1), 25-1-802 and -803.

<sup>120</sup>Mich. Comp. Laws Ann. §750.410(2).

<sup>121</sup>See, e.g., Mich. Comp. Laws Ann. §750.411.

exist equally in such areas as employment and the provision of financial services. It is in just these areas that the Commission found Federal compulsory reporting requirements least defensible.

## DEVELOPMENTS IN THE COMMON LAW

To the extent that common law standards currently protect personal privacy, they focus on the improper disclosure of information. Protections against improper *access* to personal information have only tentatively been suggested. As yet, State constitutional strictures alone provide protection against either government or private parties prying into records about individuals. There are indications, however, that common law protections against access to records about individuals maintained by private record keepers may develop.<sup>122</sup>

### PRIVACY INVASION AS TORT

#### PROSSER'S FOUR CATEGORIES

The "discovery" and development of a separate right of privacy in tort law has been chronicled by Dean Prosser in his hornbook on torts.<sup>123</sup> Prosser's review of the case law led him to identify four distinct branches of the tort of privacy invasion: (1) intrusion upon one's physical solitude or seclusion; (2) public disclosure of private facts about an individual; (3) publicity which places an individual in a false light in the public eye; and (4) appropriation of one's name or likeness.

The first of these generally includes not only physical intrusion but eavesdropping, intrusive surveillance, and the making of persistent unwanted telephone calls. The second of these consists of three elements: (1) the disclosure must be public—that is, not merely to a third person or small group of persons; (2) the facts disclosed must be private—matters of public record do not qualify as private facts even though they may not be known by the individual's own family; and (3) the fact disclosed must be, in Prosser's words, "offensive and objectionable to a reasonable [person] of ordinary sensibilities."<sup>124</sup> It is not enough that the individual find the disclosed facts to be objectionable; the law will not protect the hypersensitive.

While Prosser's third branch—publicity placing the plaintiff in a false light in the public eye—is not easily delineated, this invasion of privacy usually takes two broad forms. It may occur when one person publicly attributes spurious opinion or statements to another individual, or when an individual's picture is used to illustrate a book or an article with which he is not connected. Prosser also includes in this classification cases alleging the unjustified inclusion of an individual's picture in a "rogue's gallery," which may be an extension of the second category.

<sup>122</sup>See, e.g., *Infra*, "Banks' Common Law Duty of Confidentiality."

<sup>123</sup>Prosser, *Handbook of the Law of Torts* (4th Ed. 1971), §117.

<sup>124</sup>*Ibid.*

Many of the cases which fall into this third category contain elements of the other three "sub-torts" or of the tort of defamation.<sup>125</sup> Indeed, Prosser points out that the "false light" branch of privacy invasion shades into defamation and may in fact be indistinguishable from it. There are, however, a few differences between the two. A false statement by individual A to just one other person may defame individual B, for example, while the "false light" branch requires publicity of a broader magnitude. Moreover, publicity may not be defamatory at all and yet place an individual in a false light.

A classic example of the fourth branch would be the use of an individual's name or photograph for advertising purposes without his permission. It applies generally to any unauthorized use of an individual's name or likeness for some other person's advantage, which need not be pecuniary.

Several State legislatures have accepted Prosser's formulation of the common law right of privacy and recognized the tort, or its branches. For example, New York since the beginning of the century has statutorily permitted recovery for unauthorized appropriation of one's name or likeness.<sup>126</sup> In 1976, the New York Law Revision Commission recommended that this statute be amended to cover any "unreasonable invasion of privacy." The Commission argued that the statutory language should be broad enough to permit the same flexible interpretation and development of the law in New York as had occurred elsewhere.<sup>127</sup> In effect, the Commission argued that the door be opened to permit the evolution of the tort as a protection for informational, or record-keeping, privacy.

A more recent Massachusetts statute recognizes a cause of action for "unreasonable, substantial or serious interference" with a person's privacy, and an annotator's comment following the statute indicates that the scope of the tort may well be broader than Dean Prosser's formulation.<sup>128</sup>

#### BEYOND PROSSER: RECORDS ABOUT INDIVIDUALS

As yet, courts have been unwilling to apply the tort of privacy invasion to alleged improprieties in the *collection* of information about an individual. Prosser cited *Brex v. Smith*<sup>129</sup> as holding that "unauthorized prying into the plaintiff's bank account" is a tortious invasion of privacy which fell into the first category in his scheme. The court in that case enjoined a prosecutor's attempt to obtain, apparently without compulsory process of any kind, the bank records of all Newark policemen for investigative purposes which the prosecutor did not care to disclose. The court held that the prosecutor was

<sup>125</sup>*Infra*, "Defamation and the Qualified Privilege Doctrine."

<sup>126</sup>N.Y. Civil Rights Law §51. Section 50 provides for criminal penalties, but has been invoked rarely.

<sup>127</sup>1976 Leg. Doc. No. 65(D). The Commission also recommended that Section 50, providing for criminal penalties, be repealed.

<sup>128</sup>Mass. Gen. Laws Ann. c. 214, §1B. The comment to the statute notes that it is "so general that the scope of the tort of invasion of privacy in Massachusetts is, as it was before the statute, a matter of judicial law."

<sup>129</sup>104 N.Y. Eq. 386, 145A.537 (1929).

exceeding his legal authority in conducting such a "fishing expedition." The brief opinion refers almost as an afterthought to the depositors' privacy interest; it does not unequivocally stand for the proposition for which Prosser cites it. The case does suggest that the offensive collection of recorded information about an individual could be actionable as an invasion of privacy within Prosser's framework, but, in the common law context, no court has specifically embraced this approach.

In *Hammonds v. Aetna Casualty and Surety Co.*,<sup>130</sup> the court sustained a cause of action against an insurer that wrongfully induced a physician, in violation of his duty of confidentiality, to disclose information concerning a patient. The plaintiff, however, did not specifically allege an intrusive violation of his right to privacy, although the facts of the case and the reasoning of the opinion strongly suggest that such a claim would have merit. In considering a related issue, a U. S. District Court in New York ruled that a hospital's mere retention of a former patient's records violated no privacy right<sup>131</sup> and implied that improper disclosure was the proper focus of privacy concerns. This opinion reflected the greater inclination by judges to find common law privacy encroachments in dissemination rather than collection or retention of information. A number of decisions have permitted recovery for the indiscriminate public dissemination of information concerning an individual's debts.<sup>132</sup> As noted earlier, however, disclosure to only a limited number of persons may not satisfy the publicity requirement,<sup>133</sup> although such publication, if false, might be actionable as defamation, barring a claim of qualified privilege.<sup>134</sup>

#### DEFAMATION AND THE QUALIFIED PRIVILEGE DOCTRINE

In American law, the tort of defamation consists of three basic elements: (1) the publication of (2) an untrue statement that (3) holds a person up to ridicule, hatred, contempt, or opprobrium. The publication requirement is satisfied if an individual communicates a defamatory statement to one or more persons, other than the person being defamed. The communication may be written (libel) or oral (slander).

The second element of the tort, requiring that the defamatory statement be false, distinguishes defamation from the tort of privacy invasion. It also serves to distinguish defamation from violations of statutorily or judicially created rights of privacy with respect to records about an individual. Defamation law concepts are, nevertheless, relevant to the evolution of broader privacy principles. There are, for example, natural parallels in the determination of a proper measure of damages.<sup>135</sup>

A particularly relevant concept in the law of defamation is the conditional or qualified privilege, which has emerged as a defense to libel

<sup>130</sup>243 F. Supp. 793 (D.C. Ohio 1965).

<sup>131</sup>*Gotkin v. Miller*, 379 F. Supp. 859, *aff'd*, 154 F.2d 125 (1974).

<sup>132</sup>See, e.g., *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927).

<sup>133</sup>See, e.g., *Vogel v. W. T. Grant Co.*, 327 A.2d 133 (Pa. 1974).

<sup>134</sup>*Infra*, "Defamation and the Qualified Privilege Doctrine."

<sup>135</sup>Clare Dalton, "Damages Under the Privacy Act," ms., Report Prepared for the Privacy Protection Study Commission, Washington, D.C. February, 1977.

actions, especially those involving dissemination of allegedly inaccurate information in credit reports. While the elements of libel and slander generally impose strict liability for dissemination of false and injurious information to third parties, the doctrine of qualified privilege relaxes that standard of liability, protecting certain types of communications considered socially necessary or beneficial even if sometimes inaccurate and consequently damaging. The courts have found the privilege applicable to communications:

- made by a person in the discharge of some public or private duty, whether legal or moral;<sup>136</sup>
- made by a person in the conduct of his own affairs, in matters where his interest is concerned;<sup>137</sup> or
- made in good faith by a person who has an interest in, or duty with respect to, the information to a person having a corresponding interest or duty.<sup>138</sup>

A number of States recognize the privilege by statute. Georgia law applies it to: (1) statements made in the *bona fide* performance of a public duty; (2) similar statements made in the performance of a private duty, either legal or moral; or, (3) statements made in good faith, on the part of the speaker, to protect his own interest in a matter where the information is germane.<sup>139</sup>

The early cases recognizing the privilege as a defense to defamation found it applicable to employment reference letters, to communications between employee and employer, and to communications between members of organizations such as labor unions or fraternal associations.<sup>140</sup> As the law developed, most jurisdictions also applied the privilege to credit reports,<sup>141</sup> although the courts of Georgia, Idaho, and possibly Florida have rejected this application of the doctrine.<sup>142</sup> In the States which recognize a qualified privilege for credit reporting, the cases permit its assertion only where the credit report is provided in response to a specific request, not when it is routinely broadcast to subscribers.<sup>143</sup> Nor can the privilege be asserted if the credit reporter acted willfully or maliciously. In other words, anyone communicating information about another person must act in good faith in order to enjoy the protection of the privilege.<sup>144</sup> A few cases indicate that mere absence of malice or willfulness may not satisfy the good-faith requirement. If, for example, a credit-reporting firm has no reasonable

<sup>136</sup>*Watt v. Longsdon*, 1 K.B. 130 (1930).

<sup>137</sup>*Ibid.*

<sup>138</sup>*Kennedy v. Cannon*, 229 Md. 92, 185 A.2d 54 (1962).

<sup>139</sup>Ga. Code Ann. §105-709.

<sup>140</sup>See generally, Jones, "Interest and Duty in Relation to Qualified Privilege," 22 Mich. L. Rev. 437 (1924).

<sup>141</sup>See, generally, cases collected at 30 A.L.R.2d 776.

<sup>142</sup>See text accompanying notes 150-152, *infra*.

<sup>143</sup>See, e.g., *Bradstreet Co. v. Gill*, 72 Tex. 115, 72 Tex. 115, 9 S.W. 753 (1888).

<sup>144</sup>See, e.g., *Riley v. Dun and Bradstreet, Inc.*, 172 F.2d 303 (6th Cir. 1949) (applying Tennessee law); *Watwood v. Credit Bureau, Inc.*, 97 A.2d 460 (D.C. Mun. Ct. App. 1953).

grounds to believe the information reported is true or if, in fact, the firm does not believe it to be true, the privilege may be lost.<sup>145</sup> This formulation suggests that the privilege may not be invoked to protect injuries caused by what may be characterized as "gross" negligence, though a minimal degree of negligence will not destroy the privilege. Failing to verify an item of apparently accurate—though harmful—information, for example, is not enough to defeat the privilege.<sup>146</sup>

A few States have refused to recognize the qualified privilege defense for defamatory credit reports. In *Hood v. Dun & Bradstreet*,<sup>147</sup> the United States Court of Appeals for the Fifth Circuit, applying Georgia law, noted the absence of any compelling reason for the privilege, pointing out that, while the doctrine is not recognized in Georgia and Idaho as to the reports of credit-reporting agencies, they nevertheless thrive and commercial intercourse continues. The opinion in *Hood* cited an empirical study<sup>148</sup> comparing Boise, Idaho (privilege unavailable) with Spokane, Washington (privilege available), which concluded that credit information was equally available in both cities and hence there was no inhibition of commercial transactions. A Florida case, *Vinson v. Ford Motor Co.*,<sup>149</sup> cites the Fair Credit Reporting Act as an indication that "[t]imes change and principles of law change with them."<sup>150</sup> In that case, the court, declining to follow precedent, refused to permit assertion of the privilege by a credit grantor who supplied damaging credit information to a credit bureau while simultaneously assuring the consumer that his credit was good.

The conditional, or qualified, privilege doctrine is, arguably, an unnecessarily burdensome mechanism for alleviating the otherwise stringent liability for defamation. In a Utah case, *Berry v. Moench*,<sup>151</sup> for example, a physician furnished information on a former patient to another doctor who had requested it on behalf of the parents of the fiancée of the former patient. The information forwarded was seven years old and included psychiatric treatment information and evaluations, details of the patient's social life, spending habits and performance in school, as well as a recommendation that the fiancée break off her engagement. The trial court held that the qualified privilege doctrine protected the doctor from liability unless the jury could find (which it did not) evidence *outside* the letter to show actual malice. The Utah Supreme Court ordered a new trial, ruling that the question of whether the privilege was available should itself have gone to the jury. The court listed a number of conditions that must be met before the privilege may be applied: (1) the information must be transmitted in good faith—that is, the defendant must not have been indifferent to the truth of derogatory information; (2) the information must have been communicated fairly—if, for example, the defendant is relying on information whose source

<sup>145</sup>*Krumholz v. TRW, Inc.*, 142 N.J. Super. 80, 360 A.2d 413 (1976).

<sup>146</sup>*Dun and Bradstreet, Inc. v. O'Neil*, 456 S.W.2d 896 (Tex. 1970). But see *Baird v. Dun and Bradstreet, Inc.*, 446 Pa. 266, 285 A.2d 166 (1971).

<sup>147</sup>486 F.2d 25 (5th Cir. 1973), *cert. denied*, 415 U.S. 985 (1974).

<sup>148</sup>*Pacific Packing Co. v. Bradstreet Co.*, 25 Idaho 696, 139 P. 1007 (1914).

<sup>149</sup>259 So.2d 768 (Fla.Ct.App. 1972).

<sup>150</sup>*Id.* at 771.

<sup>151</sup>331 P.2d 814 (Utah 1958).



is suspect or unknown, he should convey that fact as well; (3) only that information necessary to the purpose for which the privilege exists should be conveyed; and (4) the information should be transmitted only to persons who need to know. Of course, the purpose for which the information is communicated must be legitimate in the first place. In other words, the communication must have been made in order to protect a legitimate interest.

The reasoning in *Berry* illustrates that it may be unnecessary and artificial to first inquire whether the "privilege" exists and then determine whether bad faith or malice can be shown to destroy the privilege. If all of the specified conditions are met, there can be no showing of bad faith and no destruction of the "privilege." A more straightforward approach might be to jettison the qualified privilege concept and simply hold that a communication which meets all of the specified criteria is not defamatory.

Finally, the qualified privilege doctrine has already been applied in cases involving truthful (i.e., not defamatory) statements. The Kansas Supreme Court, in *Senogles v. Security Benefit Life Insurance Co.*,<sup>152</sup> ruled that the qualified privilege provided a defense against a claim for invasion of privacy based on an insurer's transmittal of admittedly accurate medical information about an individual to the Medical Information Bureau. The opinion draws an analogy between this situation and the credit-reporting cases. The rationale of this and other recent cases indicates that the conditional privilege doctrine probably will have as much vitality where the privacy of accurate information is at stake as it has enjoyed in defamation cases.<sup>153</sup>

#### BANKS' COMMON-LAW DUTY OF CONFIDENTIALITY

A number of cases in several States indicate that banks have a legal obligation not to disclose information concerning their customers' accounts to third parties. The leading case is *Peterson v. Idaho First National Bank*, decided by the Idaho Supreme Court in 1961.<sup>154</sup> Mr. Peterson alleged that his bank violated his right of privacy by gratuitously disclosing to his employer the fact that it had returned a number of his checks for insufficient funds. The Court considered but rejected this claim, largely because the disclosure was not a *public* dissemination of embarrassing private facts and hence not an invasion of privacy within Prosser's framework.<sup>155</sup> The Court went on to find, however, that the relationship of a bank to its depositor is not merely that of debtor to creditor, but also agent to principal. The Court concluded that a bank, as its depositor's agent, has an implied contractual duty not to use or disclose information given to it by the depositor, unless explicitly authorized by law or by the depositor. "Inviolable secrecy,"

<sup>152</sup>217 Kan. 438, 536 P.2d 1358 (1975).

<sup>153</sup>The American Law Institute's *Restatement (Second) of Torts* (Tent. Draft No. 13, 1967, and Tent. Draft No. 22, 1976) recognizes the conditional privilege as a defense to suits alleging invasion of privacy (Chap. 28A, §652G).

<sup>154</sup>*Peterson v. Idaho First National Bank*, 367 P.2d 284 (Idaho, 1961).

<sup>155</sup>See discussion of Prosser's analysis, III.A.1, *supra*.

declared the Court, "is one of the inherent and fundamental precepts of the relationship of the bank and its customers or depositors."<sup>156</sup>

The year following the Peterson decision, the Supreme Court of North Carolina, in *Sparks v. Union Trust Co.*,<sup>157</sup> was asked to decide whether a bank may be held liable for *failing* to disclose information regarding the precarious financial situation of a depositor, when that failure operates to the detriment of a person with whom the depositor is doing business. In the course of its opinion, leading to the conclusion that banks are under no duty to disclose such information, the Court quoted with approval the following statement from a banking law treatise: "Depositors have the right of secrecy. A bank, therefore, is under an implied obligation to keep secret its records of accounts, deposits, and withdrawals."<sup>158</sup>

In *Milovich v. First Nat'l Bank*,<sup>159</sup> the Florida Supreme Court, citing the *Peterson* case as authority, found that a bank is under an implied contractual obligation not to disclose information about a depositor's account. But the Court carefully pointed out that its opinion did not address exchanges of general credit information between banks or "disclosure required by the government or under compulsion of law or disclosure made with the express or implied consent of the customer."<sup>160</sup> The Florida Court, like the court in *Sparks v. Union Trust Co.*, found support for its conclusion in a treatise, which the Court quoted as follows:

[T]here is implied in the [deposit] contract a certain duty of secrecy as regards the customer's affairs . . . . The duty is not absolute and its qualifications can be classified under four heads. These are: (a) a disclosure under compulsion of law, (b) where there is a duty to the public to disclose, (c) where the interests of the bank require disclosure, (d) where the disclosure is made with the express or implied consent of the customer.<sup>161</sup>

The Supreme Courts of Iowa and Minnesota have also expressly recognized a bank's duty of confidentiality. The Iowa Court, however, found the duty inapplicable when the information disclosed is a matter of public record,<sup>162</sup> and the Minnesota Court when a bank possesses enough evidence of its depositor's fraudulent activity that not disclosing would constitute deceit.<sup>163</sup> The Wyoming Supreme Court has rejected the rather weak argument that there is a bank-customer privilege which prevents a

<sup>156</sup>*Peterson v. Idaho First National Bank*, 367 P.2d at 290 (Idaho, 1961).

<sup>157</sup>*Sparks v. Union Trust Co.*, 256 N.C. 478, 124 S.E.2d 365 (1962). The facts are somewhat more convoluted than this summary statement implies, but the details are not critical for this discussion. See also *Richfield Bank and Trust Co. v. Sjogren*, 244 N.W.2d 648 (Minn. 1976) for a recent case involving similar facts.

<sup>158</sup>124 S.E.2d at 367. The treatise cited by the Court is Zollman's *Banks and Banking*, Per.Ed., Vol. 5, Sec. 3413, pp. 379-380.

<sup>159</sup>*Milovich v. First National Bank*, 224 So.2d 759 (Fla. Dist. Ct. App. 1969).

<sup>160</sup>224 So.2d 759, 762.

<sup>161</sup>224 So.2d 759, 761. The Court cites I.F.G. Baxter, *The Law of Banking* 21-1 (2d ed. 1968). See also 10 Am.Jr.2d *Banks*, §332.

<sup>162</sup>*First National Bank in Lenox v. Brown*, 181 N.W.2d 178 (Iowa 1970).

<sup>163</sup>*Richfield Bank and Trust Co. v. Sjogren*, 244 N.W.2d 648 (Minn. 1976).

bank president from testifying, in an embezzlement case, in regard to the financial affairs of a customer.<sup>164</sup> Indeed, no State recognizes such a privilege.

Finally, as discussed earlier, the existence of a common-law obligation not to disclose customer or depositor information is also suggested by statutes in Utah, Illinois, and Kansas.<sup>165</sup> In short, a common-law standard is beginning to emerge in the States which suggests that banks act as mere agents in their handling of account information for depositors, and that, in essence, the account information is more the depositor's than the bank's—a standard somewhat at odds with the understanding of the U. S. Supreme Court in *United States v. Miller*.<sup>166</sup>

### CONCLUSION

The compilation of State law out of which this volume grew facilitated analyses by Commission and staff necessary to prepare various segments of the Commission's final report, *Personal Privacy in an Information Society*. The Commission hopes that this volume will provide similar help in any future research efforts, and will serve as a research aid to policy makers at all levels of government. The volume underscores the central role the States can play as protectors of personal privacy and, more broadly, individual liberty. The federal idea possesses vitality yet. The States have demonstrated that they can, and do, provide conditions for experiments that preserve and enhance the interests of the individual in our technological, information-dependent society.

---

<sup>164</sup>*State v. Hambrick*, 65 Wyo. 1, 196 P.2d 661 (1948).

<sup>165</sup>*Supra*, notes 71, 72, 73.

<sup>166</sup>425 U.S. 435 (1976).



## Part II

### Citations

#### ALABAMA

NOTE: Statutory citations are to *Code of Alabama*.

#### STATUTES - PUBLIC SECTOR

FOI. tit. 41, §145 *et seq.* Right to inspect and copy records.

Sales and income tax records, confidentiality. tit. 51, §§419, 779.

Welfare records, disclosure conditions. tit. 49, §§12(31e), 17(32).

Venereal disease records, required reports, confidentiality. tit. 22, §§262, 267, 269.

#### STATUTES - PRIVATE SECTOR

Credit unions, records open to inspection. tit. 28, §303(6).

Bank records, photographic copies. tit. 5, §145(5).

Insurance agent, records related to termination and license revocation privileged. tit. 28, §85(13).

Insurance superintendent's investigation, information furnished by insurer, agent privileged. tit. 28A, §150.

Auto insurance, permissible bases for cancellation. tit. 28A, §485.

Psychologist/patient privilege. tit. 46, §297(36).

#### CASES

*United States v. First National Bank of Mobile*, 67 F.Supp. 616 (S.D. Ala. 1946). IRS access to bank records upheld. I.R.C. §3614(a).

*Harrison v. Burger*, 212 Ala. 670, 103 So.842 (1925). Libel action against member of mutual retail association for wrongfully reporting plaintiff as having long overdue account. Held: plaintiff has cause of action for libel, where special damages (difficulty in obtaining credit, here) are alleged.

*Ferdon v. Dickens*, 161 Ala. 181, 49 So. 888 (1909). Libelous statements may be absolutely or conditionally privileged. (Here, letter from plaintiff's creditor, defendant, to bank held not privileged under circumstances.)

*Smith Bros. v. W.C. Agee & Co.*, 178 Ala. 627, 59 So. 647 (1912). Recognizes conditional privilege as to statements made at a meeting of creditors.

## ALASKA

NOTE: Statutory citations are to *Alaska Statutes*, unless otherwise noted.

### CONSTITUTION

Article I, Section 22. "The right of the people to privacy . . . shall not be infringed." (1972).

- This provision applies to confidentiality of tax records. Op. Att'y Gen., 1972.
- Requires showing of State action. *Allred v. State*, 554 P.2d 411 (Alaska 1976).

### STATUTES - PUBLIC SECTOR

Public records disclosure. §40.21.150.

Tax information not public record. §§09.25.100, .120.

Medical and related public health records, exempt from public inspection. §09.25.120(3).

Public assistance information §§47.05.020, .030.

Mental hospital records disclosure restrictions. §47.30.260.

Adoption records, sealed. §20.15.150.

Vital statistic information. §18.50.130.

Pre-parole records, reports. §33.15.140.

Juvenile court records. §47.10.090.

Marriage license information. §§25.05.141, .181, .191.

Criminal justice information system. §§12.62.010-.070.

Misuse of confidential information by State employee; criminal penalties. §39.51.010.

### STATUTES - PRIVATE SECTOR

Bank depositor and customer records confidential. §06.05.175.

Savings and loans, records of members' accounts confidential. §06.30.120.

Insurance rating organizations, records. §21.39.060.

Pharmacists' prescription records. §08.80.300.

Hospital records. §18.20.090.

Workmen's compensation, physical exam, no privilege. §23.30.095.

Physician/patient privilege. Alas. R. Civ. P. Rule 43(h)4.

- Not applicable in child abuse cases. Rule 43(h)(8).

## ARIZONA

NOTE: Statutory citations are to *Arizona Revised Statutes*.

### CONSTITUTION

Art. 2, §8. Right to privacy. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

### STATUTES - PUBLIC SECTOR

FOI. §§39.121 to -121.02.

- Att'y Gen. Op. No. 70-1 establishes FOI guidelines.

Welfare records confidential. §46-135.

Criminal records, clearance of charges. §13-1761.

Criminal identification. §41-1750.

Workmen's compensation, medical records. §23-908.

Correction department master file. §31-221.

Vital statistics. §16-150.

Vital records, disclosures restrictions. §36-340.

Health records. §§36-105, -107, -136.

Adoption records. §8-121.

Child welfare and placement records. §8-519.

Sex-offender registration. §13-1273.

### STATUTES - PRIVATE SECTOR

Consumer reporting. §44-1691.

Hospital, nursing home records. §36-404.

- See also Arizona Hosp. Ass'n Consent Manual (1969): Records may be disclosed to "interested parties," but to patient only with physician's or hospital's consent.

Physician/patient privilege. §§12-2235, -2236, §13-1802.

- *Tucson Medical Center v. Misevich*, 113 Ariz. 34, 545 P.2d 958 (1976). Communication privileged under statute remains privileged when transcribed into hospital records and is disclosable to parties in malpractice action only in accordance with the physician/patient privilege.

Willful betrayal of privileged communication is unprofessional conduct. §32-1404(10)(b).

#### CASES

*State Farm Insurance Co. v. Roberts*, 97 Ariz. 169, 398 P.2d 671 (1965). Insurer defending defendant stands in defendant's position for discovery purposes and may be required to produce defendant's statements to insurer's adjuster.

*Tucson Medical Center, Inc. v. Rowles*, 21 Ariz. App. 424, 520 P.2d 518 (1974). In medical malpractice case, evidence covered by physician/patient privilege does not lose privilege by virtue of incorporation into hospital records. Hospital must assert privilege, but court may require discovery of non-privileged material after *in camera* review.

*Jolly v. Superior Court of Pinal County*, 112 Ariz. 186, 540 P.2d 658 (1975). Information given to employer by employees during investigation of possible violations of safety standards is not privileged.

*Ross v. Gallant, Farrow and Co.*, 27 Ariz. App. 89, 551 P.2d 79 (1976). Libel action against accounting firm for allegedly defamatory statements contained in audit. Held: unless malicious, audit is protected by qualified privilege.

#### ARKANSAS

NOTE: Statutory citations are to *Arkansas Statutes Annotated*.

#### STATUTES - PUBLIC SECTOR

FOIA, §12-2804 *et seq.*

Information Practices Act, §16-801 *et seq.* Omnibus act covering State and local government information systems.

Criminal justice information §§5-1101 to -1115.

Arrest expungement, first offenders. §43-1231 *et seq.*



Welfare records. §83-138.

Income tax information. §84-2046.

#### STATUTES - PRIVATE SECTOR

Physician/patient privilege. §28-607.

Psychologist/patient privilege. §72-1516.

#### CASES

*Russell v. United States*, 524 F.2d 1152 (8th Cir. 1975). Bank records. Taxpayer must produce records related to income in response to IRS summons.

### CALIFORNIA

NOTE: Statutory citations are to *West's Annotated California Codes*.

#### CONSTITUTION

Art. 1, §1. Privacy is one of the enumerated inalienable rights.

*White v. Davis*, 13 Cal.3d 757, 120 Cal.Rptr. 94, 533 P.2d 222 (1975). Right of privacy is not limited to search and seizure context.

*Loder v. Municipal Court*, 17 Cal.3d 859, 132 Cal.Rptr. 464, 553 P.2d 624 (1976). Right of privacy is not absolute and does not require destruction of fingerprints and mugshots on release of arrestee.

*Porten v. University of San Francisco*, 64 Cal.App.3d 825 (1976). The constitutional right of privacy is self-executing and protects not merely against State action but against violation by anyone. University's disclosure of plaintiff's grades at a previous school to State Scholarship and Loan Commission may be actionable as invasion of constitutional right of privacy.

See also *Burrows v. Superior Court*, *Valley Bank of Nevada v. Superior Court*, and *Belmont v. Calif. State Personnel Bd.*, discussed under Cases, *infra*.

#### STATUTES - PUBLIC SECTOR

FOI. Gov't. Code §6250 *et seq.* California Public Records Act.

- *Los Angeles Police Dept. v. Superior Court*, 65 Cal.App.3d 661 (1977). FOI statute does not regulate collection or use of information by agencies, nor does it provide a method for correction of records. Also, exemption for investigative and intelligence records of local police agencies is very broad.

Data processing. Gov't. Code §11755 *et seq.* Establishes California Information Systems Implementation Committee.

Criminal justice information. Penal Code §§11101 *et seq.* and 13300 *et seq.*

Court records. Penal Code §1428b.

Acquittal; sealing of records. Penal Code §851.8.

Arrests not resulting in conviction; public agencies may not inquire of license applicants. Bus. and Prof. Code §461.

Student records. Educ. Code §§967, 10931, 22509, 25430.

Tax records. Rev. and Tax Code §408 (Property Tax).

Welfare records. Welf. and Inst. Code §10850.

Records of mental patients confidential. Welf. and Inst. Code §5328.

Insurance Commissioner, information confidential. Ins. Code §12919.

#### EXECUTIVE ORDERS - PUBLIC SECTOR

Executive Order No. B-22-76, Sept. 30, 1976. Agency records; requirements on record keepers; data subject access.

#### STATUTES - PRIVATE SECTOR

Credit reporting. Civil Code §§1785, 1786.

Banks, trust companies. Private trust information. Fin. Code §1582.

Insurance policy information; restrictions on disclosure by mortgagee. Ins. Code §770.1.

Credit cards. Civil Code §1747 *et seq.*

Insurance; unfair to discriminate on basis of sex, marital status, and sexual orientation. Regulations, Cal. Admin. Code ch. 5, §2560 *et seq.*

Invasion of privacy. Penal Code §630 *et seq.* Eavesdropping, telephone interception prohibited.

Telephone answering service; customer list is trade secret. Bus. and Prof. Code §11605.

Employment agency; customer list is trade secret. Bus. and Prof. Code §16607.

Personnel files, employee right to inspect. Labor Code §1198.5.

Financial privacy. Gov't. Code §7460 *et seq.* Government access to financial records, conditions, restrictions.

Medical records; access by patient's attorney. Evid. Code §§1040, 1158.

Physician/patient privilege, exceptions. Evid. Code §§990-1007.

Willful betrayal of professional secret is unprofessional conduct. Bus. and Prof. Code §2379.

Physician's communications to quality review committee are confidential. Bus. and Prof. Code §2124.25.

Employer's misrepresentation that prevents former employee from obtaining job. Misdemeanor; civil remedies. Labor Code §§1050-1056.

Employer's procurement or use of arrest data (where no conviction resulted) prohibited. Civil remedies; criminal sanctions. Labor Code §432.7.

#### CASES

*Burrows v. Superior Court*, 13 Cal.3d 238, 118 Cal.Rptr. 166, 529 P.2d 590 (1974). Bank records acquired by police without legal process were obtained through an illegal search, tested against California Constitution Art. 1, §§1, 13, notwithstanding bank's consent.

*Belmont v. Calif. State Personnel Board*, 36 Cal.App.3d 518, 111 Cal.Rptr. 607 (1974). Psychiatric social workers may not (1) invoke statutory privilege nor (2) assert patients' privacy rights in order to avoid furnishing patient information to Department of Social Welfare for inclusion in computerized record-keeping system.

*Valley Bank of Nevada v. Superior Court of San Joaquin County*, 15 Cal.3d 652, 125 Cal.Rptr. 553, 542 P.2d 977 (1975). Defendant seeks discovery of transaction between bank and non-party to suit, in order to establish defense to plaintiff's action on promissory note. Held: lower court's discovery order vacated; right of discovery must be balanced against bank customer's constitutional right of privacy. (Cal. Const., Art. 1, §1).

*Carlson v. Superior Court*, 58 Cal.App.3d 13, 129 Cal.Rptr. 650 (1976). Bank's production of bank records to District Attorney prior to subpoena return date, and not in court, invalid.

*Richards of Rockford, Inc. v. Pacific Gas & Electric Co.*, 71 F.R.D. 388 (N.D.Calif. 1976). Discovery; researcher not required to produce information gained on pledge of confidentiality in civil suit to which researcher is not a party.

*Virgil v. Time, Inc.*, 527 F.2d 1122 (9th Cir. 1975), *cert. denied*, 425 U.S. 998 (1976). Denial of summary judgment for Time, Inc. vacated and remanded for reconsideration in light of balancing principles laid down by court, under which magazine's right to publish (and right of public to know) must be balanced against plaintiff's right of privacy. On remand, defendant publisher's motion for summary judgment granted, *sub nom, Virgil v. Sports Illustrated*, F.Supp., 45 U.S.L.W. 2329 (1977).

## COLORADO

NOTE: Statutory citations are to *Colorado Revised Statutes* (1973).

### STATUTES - PUBLIC SECTOR

FOI. §24-72-202.

- Medical records available to person in interest. §24-72-204(3)(a)(I).

Open meetings. §24-6-4 *et seq.*

Division of Automatic Data Processing. §24-30-601 *et seq.*

Social services records. §26-1-114.

Vital statistics. §25-2-117.

Developmentally disabled persons, records. §27-10.5-120.

Mentally ill persons, records. §27-10-120.

State personnel records. §24-50-127.

Workmen's compensation records. §8-24-102.

Banking Commissioner's records, disclosure of information. §11-2-111.

School records, access by employers and police. §24-72-204.

Insurance Commissioner may require insured to produce records relating to surplus line insurance. §10-5-116.

### STATUTES - PRIVATE SECTOR

Medical records, health-care providers, patient access. §§25-1-801, 25-1-802.

Hospital lien law, examination of financial records. §38-27-104.

Physician/patient privilege. §13-90-107(d).

Psychologist/client privilege. §13-90-107(g).

Required reporting, physicians:

- Venereal disease. §25-4-402.
- Tuberculosis. §25-4-502.
- Child abuse. §19-10-104.

## CASES

*A. v. District Court*, 550 P.2d 315 (Colo. 1976). Individual plaintiff has insufficient privacy expectation in documents in possession of corporate defendant to assert Fourth Amendment objection to their production pursuant to grand jury subpoena. Only corporate defendant has the requisite privacy expectations.

## CONNECTICUT

NOTE: Statutory citations are to *Connecticut General Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. §19.

- *Meriden Record Co. v. Browning*, 294 A.2d 646 (1971). Newspaper permitted to inspect death certificate after *in camera* review confirmed that public's right to know outweighed privacy interests involved.

Personal data, confidentiality. §§4-190 to -197. Omnibus privacy act covering State agencies. Effective July 1, 1977.

Public assistance recipients. §17-83.

Tax information. §12-520.

Child abuse. Health Commissioner's records confidential. §17-38a.

Health Department, certain record confidential. §19-6a.

Student records. §10-15b.

Arrest record expungement. §54-90.

## STATUTES - PRIVATE SECTOR

Consumer credit reports. §§36-431 to -435.

Credit discrimination. §36-437 *et seq.*

Fair Credit billing. §36-393 *et seq.*

Attachments. §52-279. (Applicable to, *inter alia*, actions for invasion of privacy)

Public and private hospitals; subpoena for medical records; patient access to records. §4-104.

Psychiatrist/patient privilege. §52-146d.

Psychologist/patient privilege. §52-146c.

Required reporting, physicians:

- Cases of occupational disease. §31-40a.
- Cases of drug dependency. §19-48a.

Blacklisting of employees prohibited. §31-51.

Arrest information on job application; restriction on dissemination. §31-51i.

## DELAWARE

NOTE: Statutory citations are to *Delaware Code Annotated*.

### STATUTES - PUBLIC SECTOR

FOI. tit. 29, §10001 *et seq.*

- Exemption for personnel, medical, pupil file, disclosure of which would invade personal privacy. §10002(d)(1).
- Exemption for records specifically exempted by statute or common law. §10002(d)(6).

Driving records. Public access to certain information. tit. 21, §305.

Public assistance records; confidential. tit. 31, §1101.

Adoption records. tit. 13, §§924, 1111.

School records. tit. 41, §4114.

Arrest records; destruction. tit. 11, §3904.

Juvenile court record; expungement of evidence of adjudication and destruction of indicia of arrest. tit. 10, §930.

### STATUTES - PRIVATE SECTOR

Violations of privacy (eavesdropping, etc.); misdemeanor. tit. 11, §1335.

Physician/patient privilege; not available in cases involving child neglect. tit. 16, §907.

Psychologist/patient privilege. tit. 24, §§3518, 3534.

Workers' compensation; employee's right to inspect record. tit. 19, §2322.

Hospitals asserting lien must make records available to persons legally liable. tit. 25, §4306.

## CASES

*Shorter v. News Journal Co.*, 58 Del. 592, 212 A.2d 718 (1965). District director of IRS released information to news media which erroneously named plaintiff as a delinquent taxpayer. Held: plaintiff has no libel claim absent showing of malice or abuse of privilege.

## DISTRICT OF COLUMBIA

NOTE: Statutory citations are to *District of Columbia Code*.

## STATUTES - PUBLIC SECTOR

FOI. Freedom of Information Act of 1976. §§1-201 to -209.

- Exemption for "information of a personal nature where the disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." §1-204(a)(2).

Public assistance records. §3-211.

Tax returns. §47-1412, §47-641.

Juvenile records. § 11-1586.

Unemployment compensation records. §46-313.

Bail agency records. §23-903.

Child placement records. §32-785.

Public hospital mental patient; right of physicians or attorney to inspect records. §21-562.

## STATUTES - PRIVATE SECTOR

Physician/patient privilege. §14-307.

Psychologist/patient privilege. §2-496.

Medical lien law. §38-304.

Required reporting; cancer. §6-1301.

Pharmacies, hospitals; narcotic drug records. §33-419.

## CASES

*Watwood v. Credit Bureau, Inc.*, 97 A.2d 460 (D.C.Mun.Ct.App. 1953). A mercantile agency's credit report to an interested subscriber is privileged unless made in bad faith or for an improper purpose.

*Gottlieb v. Bresler*, 24 F.R.D. 371 (D.D.C. 1959). No privilege for communications received by insurance company from insured.

*Mackey v. United States*, 351 F.2d 794 (D.C. Cir. 1965). Records of law enforcement agencies such as D.C. Metropolitan Police Department are confidential and not subject to public inspection, but criminal defendant may subpoena records necessary to his defense.

*In re Adoption of Female Infant*, 237 A.2d 468 (D.C.Ct. App. 1968). In adoption petition case, discussion of to whom and under what circumstances an investigative report compiled by welfare department concerning prospective adopters may be disclosed.

*In re Alexander*, 259 A.2d 592 (D.C.Ct. App. 1969). In rare case, court may require complete expungement of arrest record.

*Goggins v. Hoddes*, 265 A.2d 302 (D.C.Ct.App. 1970). Libel action report which plaintiff's employer filed with Unemployment Compensation Board is absolutely privileged.

*Spock v. District of Columbia*, 283 A.2d 14 (D.C.Ct.App. 1971). If arrested person affirmatively demonstrates non-culpability, the police record of his arrest should so reflect, and past recipients of record should be so notified.

See also, *Nader v. General Motors Corp.*, reported in New York case listing.

## FLORIDA

NOTE: Statutory citations are to *Florida Statutes Annotated*.

### STATUTES - PUBLIC SECTOR

FOI. §119.07.

Arrest records; expungement. §901.33.

- *Johnson v. State*, 336 So.2d 93 (1976). Arrest record expungement statute is unconstitutional insofar as it requires courts to destroy records. (Separation of Powers. See Florida Constitution Art. 2 §3, Art. 3 §1, Art. 5 §§1, 2.)

Department of Offender Rehabilitation; electronic data system, confidentiality. §20.315(14).

Vocational rehabilitation; misuse of lists and records. §413.34.

Department of Revenue; information received on returns is confidential. §214.21(1).

Student records; disclosure. §§232.23(1), 239.77.

Birth records confidential. §382.35(1).



Public assistance rolls; not to be used for political or commercial purposes. §409.355(2).

Criminal Justice Information System Council. §943.08(3).

Narcotics treatment records, confidential. §396.112(2).

#### STATUTES - PRIVATE SECTOR

Collection agencies; may not communicate debt information to third parties. §559.72.

Credit bureaus; detective agency licensing statute does not apply. §493-11(1)(e).

Private investigators; restrictions on reporting information to third parties. §493-19.

Savings and loan associations; confidentiality of records of members' accounts. §665.111(1).

EFTS authorized. §659.062. Contains provisions for protecting confidential data.

Medical practitioners; reports to be furnished, confidentiality. §458.16.

Psychologist/client privilege. §490.32.

Accountant/client privilege. §473.141.

#### CASES

*Commercial Bank v. Atlanta & St. Andrews Bay Ry. Co.*, 120 Fla. 167, 162 So. 512 (1935). Railroad is given discovery as to bank depositors' accounts, despite bank's assertion of privilege.

*Milovich v. First National Bank of Miami Springs*, 224 So.2d 759 (Fla.Ct.App. 1969). Reverses judgments dismissing suit by individual and corporate depositor against bank for breach of contractual duty not to divulge account information to third parties.

*Hagaman v. Andrews*, 232 So.2d 1 (Fla. 1970). Bank and depositor sought declaratory judgment invalidating subpoena from legislative investigating committee for bank records of depositor. (Depositor, and association, received funds for governor's private use.) Held: legitimate investigative purpose and public interest in integrity of public officials render subpoena valid.

*Vinson v. Ford Motor Credit Co.*, 259 So.2d 768 (Fla.Ct.App. 1972). Refuses to follow prior case law (see, e.g., *Caldwell v. Personal Finance Co. of St. Petersburg*, 46 So.2d 726 (Fla. 1950)) holding communications between credit bureaus and their members to be qualifiedly privileged.

*Retail Credit Co. v. Dade County, Florida*, 393 F.Supp. 577 (S.D.Fla. 1975). County credit reporting law is invalid as inconsistent with FCRA.

## GEORGIA

NOTE: Statutory citations are to *Georgia Code Annotated*.

### STATUTES - PUBLIC SECTOR

FOI. §40-2701 *et seq.* Inspection of public records.

- Exceptions, §40-2703.

Insurance license fees, taxes. §56-1313. Certain information confidential.

Tax return information. §§92-3216, -9914.

Names of drug dependent persons. §84-6318.

Alcoholics, intoxicated persons. §99-3914.

Crime Information Center. §92A-3001 *et seq.*

State hospitals, clinical records disclosable only under certain conditions. §88-502, 10.

### STATUTES - PRIVATE SECTOR

Medical information, confidential §38-721.

Invasion of privacy. §26-3001 *et seq.*

Psychiatrist/patient privilege. §38-418(5).

Psychologist/patient privilege. §84-3118.

Venereal disease cases must be reported. §88-1602.

### CASES

*Gouldman-Taber Pontiac, Inc. v. Zerbst*, 213 Ga. 682, 100 S.E.2d 881 (1957). Debt collection case. Contacting debtor's employer no privacy invasion.

*Peacock v. Retail Credit Co.*, 302 F.Supp. 418 (N.D.Ga. 1969), *aff'd*, 429 F.2d 31 (5th Cir. 1970). No actionable privacy invasion for credit report not publicly disseminated and in absence of physical intrusion.

*Southeast Bankcard Ass'n v. Woodruff*, 124 Ga. App. 478, 184 S.E.2d 191 (1971). Libel action maintainable where plaintiff who neither requested nor used card is listed in company's bulletin to merchants as having cancelled the card.

*Conway v. Signal Oil and Gas Co.*, 229 Ga. 849, 194 S.E.2d 909 (1972). Plaintiff who did not apply for credit has privacy invasion claim for submission of false credit information to her employer.

*Hood v. Dun and Bradstreet, Inc.*, 486 F.2d 25 (5th Cir. 1973), *cert. denied*, 415 U.S. 985 (1974). Reaffirms 19th century case law holding that there is no conditional privilege for credit reports in Georgia.

*Wrigley v. Dun and Bradstreet, Inc.*, 375 F.Supp. 969 (N.D.Ga. 1974), *aff'd*, 500 F.2d 1183 (5th Cir. 1974). Suit under FCRA; act held not to apply to commercial credit reports.

*Peller v. Retail Credit Co.*, 359 F.Supp. 1235 (N.D.Ga. 1973), *aff'd*, 505 F.2d 733 (5th Cir. 1974). Interprets FCRA; does not reach State law claims. FCRA held inapplicable to a former employer who told current employer that polygraph exam showed plaintiff had used marijuana.

*Howard v. Dun and Bradstreet, Inc.*, 136 Ga.App. 221, 220 S.E.2d 702 (1975). Unsuccessful suit by user of business credit report alleging that misinformation therein caused him to buy into worthless business venture.

*Hines v. Columbus Bank and Trust Co.*, 137 Ga.App. 268, 223 S.E.2d 468 (1976). Dismisses suit alleging bank's letter to U.S. Ambassador in Costa Rica requesting information about plaintiff was invasion of privacy.

## HAWAII

NOTE: Statutory citations are to *Hawaii Revised Statutes*.

### CONSTITUTION

Art. 1, §1. Right to be free from unreasonable searches, seizures, and invasions of privacy.

### STATUTES - PUBLIC SECTOR

FOI. §92-50 *et seq.* Contains exception for records that "invade the right of privacy."

- Att'y Gen. Op. No. 76-3. Names of witnesses to industrial accidents, in records of Division of Occupational Safety and Health, are not to be disclosed, because prohibited by State law.

Open meetings. §92-2 *et seq.*

Campaign contributions, expenditures. §11-191 *et seq.*

Voluntary ID card program. §28-34-45.

State health department; records confidential, including records of patients in mental health facilities. §334-5.

Paternity proceedings, records. §584-10.

Birth records. §584-23.

Welfare applicants, records. §346-10.

Arrest records; disposition when no conviction results. §831-3.1.

#### STATUTES - PRIVATE SECTOR

Medical records, subpoena. §622-52. Amended by §15 of Act 219, 1976 Haw. Sess. Laws, to provide for access by patient or patient's attorney.

Cancer research information. §324-21.

Physician/patient; confidential communications. §621-20.5.

Medical information, required reporting:

- Injuries caused by violence. §453-14.
- Child abuse. §350.
- Communicable diseases. §325-4.

Credit union information. §410-3(c).

#### IDAHO

NOTE: Statutory citations are to *Idaho Code*.

#### STATUTES - PUBLIC SECTOR

FOI. §9-301. Right to inspect, copy public records.

Tax return information, disclosure restrictions. §63-3076.

#### STATUTES - PRIVATE SECTOR

Hospital records; patient standing to challenge subpoena. §9-420(4).

Malpractice insurance association agents, statements privileged if made in good faith. §41-4113.

Physician/patient privilege, exceptions. §9-203(4).

Willful betrayal of privileged communication or professional secret; loss of license to practice medicine. §54-1810(h).

Records of patients hospitalized for mental illness; disclosure only with patient consent or under court order. §66-348(a).

## CASES

*Peterson v. Idaho First National Bank*, 83 Ida. 578, 367 P.2d 284 (1961). Bank's disclosure of depositor's financial condition to employer is no basis for invasion of privacy claim but supports claim for breach of implied contract between bank and depositor.

*Hansen v. Morgan*, 405 F.Supp. 1318 (D.Idaho 1976). Under FCRA, where credit report indicated an excellent credit record and plaintiff did not allege that report was false, plaintiff has no claim against user of report who transmits it to congressional committee investigating plaintiff-candidate's campaign finances.

## ILLINOIS

NOTE: Statutory citations are to *Illinois Revised Statutes*.

## CONSTITUTION OF 1970

Art. 1, §6. Right to be secure against unreasonable searches, seizures, invasions of privacy.

Art. 1, §12. Provides for remedy for invasions of privacy.

## STATUTES - PUBLIC SECTOR

FOI. ch. 116, §§43.4-28.

Data Information Systems Commission. ch. 127, §1201 *et seq.*

- To recommend procedures to insure privacy. §1202(3).

Identification Card Act. ch. 124, §§22, 25, 31.

Criminal identification records, class A misdemeanor; confidential. ch. 38, §206-7.

Insurance company examination information, confidential. ch. 73, §743.22.

Tax return information. ch. 120, §9-917.

Welfare records. ch. 23, §§11-9, 11-12.

School Student Records Act. ch. 122, §50-1 *et seq.*

## STATUTES - PRIVATE SECTOR

Financial Institutions Disclosure Act. ch. 95, §201 *et seq.*

- Confidential information on individuals. ch. 95, §207.

Credit card application may not contain question as to marital status. ch. 121 1/2, §385.1.

Banks; confidentiality of customer records. ch. 16 1/2, §48.1.

Privacy invasions, statute of limitations. ch. 83, §14.

- *Leopold v. Levin*, 45 Ill.2d 434, 259 N.E.2d 250 (1970). Statute implies recognition of privacy right by legislature.

Arrest. Inquiry by employer forbidden. ch. 48, §853(e).

Hospitals; patient access to medical records. ch. 51, §71.

Physician/patient privilege. ch. 51, §5.1.

Psychiatrist/patient privilege. ch. 51, §5.2.

Required reporting, child abuse. ch. 23, §2054.

#### CASES

*Kolb v. O'Connor*, 14 Ill. App.2d 81, 142 N.E.2d 818 (1957). Police may retain mug shots, fingerprints and other ID of acquitted or untried defendant.

*Bloomfield v. Retail Credit Co.*, 14 Ill. App.3d 158, 302 N.E.2d 88 (1973). Plaintiff's implied consent to inclusion of personal information in credit report bars action for invasion of privacy.

*Tom Oleskar's Exciting World of Fashion, Inc. v. Dun and Bradstreet, Inc.*, 61 Ill.2d 129, 334 N.E.2d 160 (1975). Defamation action. Credit-reporting agency has less constitutional protection than mass media.

#### INDIANA

NOTE: Statutory citations are to *Burns Indiana Statutes Annotated*, Code Edition.

#### STATUTES - PUBLIC SECTOR

FOI. §5-14-1-1 *et seq.* Public Proceedings and Public Records; Anti-Secrecy Act.

- Exception for confidential records. §5-14-1-5.

Bank examinations, duty of banking department employees not to disclose information. §28-1-2-30.

Tax return information. §§6-1-39-2, 6-3-6-8.

Welfare records. §§12-1-2-3, 12-1-10-2.

## STATUTES - PRIVATE SECTOR

Hospital records, available to "authorized" persons, including patients. §34-3-15.5-4.

Physician/patient privilege. §34-1-14-5.

Required reporting, physicians:

- Tuberculosis cases. §16-1-10-2.
- Child abuse cases. §§12-3-4.1-1 to -6.

## CASES

*Mavity v. Tyndall*, 225 Ind. 360, 74 N.E.2d 914 (1947), *app. dismissed*, 333 U.S. 834 (1948). Plaintiff, who was acquitted of misdemeanor charge, could not require police to return or destroy photographs, fingerprints and other identifying records.

*Leonard v. State*, 249 Ind. 361, 232 N.E.2d 882 (1968). Criminal defendant could not challenge legality of seizure of his bank records belonging to bank.

## IOWA

NOTE: Statutory citations are to *Iowa Code Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. §68A.1 to §68A.9 (1967).

- Certain records confidential. §68A.7 (Includes pupil records, medical records).
- Denial of federal funds; exception. §68A.9.

Criminal justice information. §749B.1.

Social services records confidential. §§217.30-.31.

Tax return information. §§422.20-.21.

## STATUTES - PRIVATE SECTOR

Bank records; preservation, destruction. §528A.1 *et seq.*

Bank records, access by commissioner to enforce Consumer Credit Act. §524.227.

Bank satellite facilities, records. §524.1208.

Physician/patient privilege. §622.10.

Required reporting, cases of venereal disease. §140.3.

## CASES

*Yoder v. Smith*, 253 Iowa 505, 112 N.W.2d 862 (1962). No privacy invasion when creditor notifies plaintiff's employer of debt and asks that money be withheld from wages.

*First National Bank in Lenox v. Brown*, 181 N.W.2d 178 (Iowa 1970). Recognizes bank's duty not to reveal customer's confidential affairs known only to bank and to customer.

## KANSAS

NOTE: Statutory citations are to *Kansas Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. §45-201. Public Records Act.

State Records Center, Records Board. §§75-3502, 3509.

Tax information, restrictions on disclosure. §79-3234.

Social welfare records. §39-713b.

Savings and loan department, restrictions on disclosure of information. §74-3109.

Credit Union Council, information disclosure. §17-2227.

Secretary of Health, certain medical data confidential. §65-177.

## STATUTES - PRIVATE SECTOR

Fair Credit Reporting Act. §50-701 *et seq.*

- *Kansas Commission on Civil Rights v. Sears, Roebuck and Co.*, 216 Kan. 306, 532 P.2d 1263 (1975). Enforcement of subpoena for names of those to whom credit was extended did not result in violation of act.

Truth-in-Lending. §16a-3-206. Incorporates by reference federal Truth-in-Lending Act.

Banks, record retention. §9-1130. Statute does not affect duty of confidentiality. §9-1130(i).

Banks, remote service units authorized. §9-1111.

Physician/patient privilege. §60-427.

Psychologist/patient privilege. §74-5323.

Required reporting, child abuse. §§38-717, -719.

Records of mentally ill, disclosure restrictions. §59-2931



## CASES

*Pyramid Life Ins. Co. v. Gleason Hospital, Inc.*, 188 Kan. 95, 360 P.2d 858 (1961). Insurer is denied injunction to compel hospital to permit it to inspect records of insured patients, notwithstanding that insurer has written authorization from patients to inspect records.

*Senogles v. Security Benefit Life Ins. Co.*, 217 Kan. 438, 536 P.2d 1358 (1975). Insurance company's communication to Medical Information Bureau of medical information received in connection with plaintiff's application for health insurance is qualifiedly privileged and does not support action for privacy invasion.

*Vespa v. Safety Federal Savings and Loan Association*, 219 Kan. 578, 549 P.2d 878 (1976). Discussion of foreclosure on plaintiff's property between mortgagee's assignee and realtor cannot support claim of privacy invasion.

## KENTUCKY

NOTE: Statutory citations are to *Kentucky Revised Statutes*.

## STATUTES - PUBLIC SECTOR

FOI. §61.870 *et seq.* (1976).

- Privacy exemption. §61.878(1)(a).
- Records subject to federal disclosure prohibitions, exemption. §61.878(1)(i).
- Data-subject access. §61.884.

Privacy study commission established. Senate Joint Resolution 13, March 29, 1976.

Public assistance information. §205.175.

Department of Human Resources, patient and client records. §§194.060, 200.490, 210.230.

Tax return information. §131-190.

Criminal history records. §17.110 *et seq.*

State agencies, sharing of client information, conditions. §205.177.

## STATUTES - PRIVATE SECTOR

Financial institutions, loan request forms may not inquire as to race, religion, other factors. §344.400.

Savings and loan associations, records confidential. §289.271.

Consumer reporting agencies, prohibition on reporting criminal charges not resulting in conviction. §331.350.

Consumer protection. Sale or lease price may not be contingent on referral of names of prospective consumers. §367.350.

Physician/patient privilege. §213.200.

Psychologist/patient privilege. §319.111.

Psychiatrist/patient privilege. §421.215.

#### CASES

*Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927). Allegation that defendant publicized plaintiff's indebtedness states a claim for privacy invasion.

#### LOUISIANA

NOTE: Statutory citations are to *Louisiana Statutes Annotated*.

#### CONSTITUTION OF 1974

Art. I, §5. Right to Privacy. Every person secure against unreasonable searches, seizures, or invasions of privacy.

#### STATUTES - PUBLIC SECTOR

Public records (FOI). §44:1 *et seq.*

- Exceptions: (partial list)
  - (1) Tax returns. §44:4(1).
  - (2) Certain welfare records. §44:4(2).
  - (3) Certain confidential records relating to business liquidation. §44:4(3).
  - (4) Hospital records (public hospitals). §44:7.
  - (5) Arrest records, misdemeanor. §44:9(A).
  - (6) Arrest records, destruction upon acquittal or *nolle prosequi*. §44:9(B).
- *Bartels v. Rousel*, 303 So.2d 833 (La. 1974). FOI law applies to city-parish records.
- Op. Att'y Gen. No. 74-201. Student loan applications are exempt from disclosure under FOI law.

Tax collector's records. §47:1508.

Patient access to records in public hospitals. §40:2014.1.

Mental hospital patient records, inspection. §40:2013.3.

#### STATUTES - PRIVATE SECTOR

Credit grantors; restrictions on disclosure of information. §9:3571.

Physician/patient privilege. §15:476.

## CASES

*Itzkovitch v. Whittaker*, 155 La. 479, 39 So. 499 (1905). Upholds injunction against police inspector's inclusion of plaintiff's photo in "rogue's gallery."

*Hamilton v. Lumbermen's Mutual Casualty Co.*, 82 So.2d 61 (La.Ct.App. 1955). Insurer's unauthorized use of insured's name in advertisement for information concerning auto accident held invasion of privacy.

*Passman v. Commercial Credit Plan of Hammond, Inc.*, 220 So.2d 758 (La.Ct.App. 1969). No privacy invasion where creditor informs judgment-debtor's employer of intention to garnish wages.

*Glenn v. Kerlin*, 248 So.2d 834 (La.Ct.App. 1971). No privacy invasion where doctor reveals details of plaintiff's condition to attorneys defending plaintiff's suit for damages based on personal injuries.

*Pitcher v. Iberia Parish School Board*, 280 So.2d 603 (La. 1973), *cert. denied*, 416 U.S. 904 (1974). Requirement that teachers have annual physical examinations by doctor of their own choice, who sends report directly to school board officers, held not to be unreasonable invasion of privacy.

## MAINE

NOTE: Statutory citations are to *Maine Revised Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. tit. 1, §401 *et seq.*

- Op. Att'y Gen. Feb. 17, 1976. FOI applies to budget of state university.
- Op. Att'y Gen. Sept. 29, 1975. Citizen crime complaints are public records except for names of complainants.
- Op. Att'y Gen. April 24, 1975. Applications for state trooper examination and results of examination are public records.

Central computer services. tit. 5, §1861.

Criminal history information. tit. 16, §601 *et seq.*

School counselors, privileged communications. tit. 20, §806.

Employee review of personnel file. tit. 5, §638, tit. 30, §§64, 2257.

Vital records. tit. 22, §2706.

Welfare records. tit. 22, §42.

Social security number may be requested for driver's license application. tit. 29, §539-A.

Mental hospital records. tit. 34, §2256.

#### STATUTES - PRIVATE SECTOR

Employee review of personnel file. tit. 26, §631.

Physician/patient privilege. tit. 32, §3153.

Hospital lien law; records relating to treatment or medical condition need not be disclosed. tit. 10, §3412.

### MARYLAND

NOTE: Statutory citations are to *Annotated Code of Maryland*.

#### STATUTES - PUBLIC SECTOR

FOI. Art. 76A, §§1-5.

Commission on privacy, state data systems. H. Res. No. 63, April 4, 1976.

Criminal Justice Information System. Art. 27, §742 *et seq.*

Criminal records, expungement. Art. 27, §735.

Public assistance lists, misuse. Art. 88A, §6.

Income tax information. Art. 81, §300.

#### STATUTES - PRIVATE SECTOR

Consumer credit reporting. Com. Law, §14-1201 *et seq.*

Banks and fiduciary institutions - confidentiality of records. Art. 11, §224 *et seq.* (1976).

Credit card accounts, subpoenas. Com. Law, §13-312.

Banks, off-premises terminals authorized. Art. 11, §105.

Insurance. Inspection of medical information by claimant, applicant or agent. Art. 48A, §490C.

Confidential records, furnishing for research purposes. Cts. & Jud. Proc., §5-302.

Psychiatric treatment history; restrictions on inquiry by employer. Art. 100, §95-A.

## CASES

*Household Finance Corp. v. Bridge*, 252 Md. 531, 250 A.2d 878 (1969). No privacy invasion where creditor informs debtor's employer of debtor's refusal to repay auto loan.

*Hollander v. Lubow*, 277 Md. 47, 351 A.2d 421, *cert. denied*, U.S., 96 S.Ct. 2651 (1976). Plaintiff has no invasion of privacy claim against bank which disclosed fact that plaintiff is a partner in a particular firm.

## MASSACHUSETTS

NOTE: Statutory citations are to *Annotated Laws of Massachusetts*.

## STATUTES - PUBLIC SECTOR

FOI. Public inspection of records. ch. 66, §10.

Fair information practices. ch. 66A, §§1-3.

Notices of personal data systems. ch. 30, §63.

Remedies for violation of ch. 66A. ch. 214, §3B.

Public welfare records, limits on disclosure. ch. 66, §17A.

Public welfare applicants; penalties for disclosing records. ch. 271, §43.

Child abuse records. ch. 119, §51A *et seq.*

Bank examination information. ch. 167, §3.

Criminal records. ch. 6, §§167-178.

Probation records. ch. 276, §100.

Arrest record expungement. ch. 276, §100C.

Certain criminal records, sealing. ch. 276, §100A.

Drug law convictions, sealing. ch. 94C, §§34, 44.

Drug information, exchanged between law officers. ch. 94C, §42.

Mental health records, patient access. ch. 123, §36.

Application for sexually dangerous status. ch. 123A, §8.

Motor vehicle registration. ch. 90, §30 *et seq.*

Pupil records. ch. 71, §340.

## STATUTES - PRIVATE SECTOR

Consumer credit reports. ch. 93, §§50 to 68.

Release of bank information to public welfare department. ch. 117, §17.

Cause of action is created for "unreasonable, substantial or serious interference" with privacy. ch. 214, §1B.

Records of public hospitals; inspection by patient. ch. 111, §70.

Information regarding employment agencies. ch. 140, §46R.

Schools, restrictions on seeking certain criminal history information from prospective students. ch. 151C, §2(F).

Drugs dispensed, records. ch. 94C, §24.

Employment discrimination, persons with criminal history. ch. 151B, §4.

Required reporting, physicians:

- Venereal disease cases. ch. 111, § 111.
- Child abuse cases. ch. 119, §51A.

#### CASES

*Ostric v. Board of Appeal*, 361 Mass. 454, 280 N.E.2d 692 (1972). No violations of privacy right in requiring driver's license applicant to divulge SSN.

#### ATTORNEY GENERAL OPINIONS

No. 74/75-56. Comprehensive Employment Training Act implementation. Permissible to ask applicant about criminal history, with restrictions. Applicants need not divulge SSN, but hirees must.

No. 75/76-42. Firearm permit application is a public record.

#### MICHIGAN

NOTE: Statutory citations are to *Michigan Compiled Laws Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. §24.221. Items subject to public inspection.

- Items not subject to public inspection, including those which would result in an unwarranted invasion of privacy. §24.222.

Tax records. §205.11.

Drug Abuse, treatment records. §325.278.

Alcohol treatment records. §325.764.

Mental health services; restrictions on disclosure of recipient's records. §330.1748.

Welfare records. §400.35.

Information obtained by bank department. Disclosure restricted. §487.329.

#### STATUTES - PRIVATE SECTOR

Medical information; unlawful to buy or sell without patient's consent. §750.410(2).

Physician/patient privilege. §600.2157.

Psychologist/patient privilege. §330.1750.

Hospital records related to review of professional practices are confidential and may not be subpoenaed. §331.422.

- *Serafin v. Peoples Community Hospital Authority*, 67 Mich. App. 560, 242 N.W.2d 438 (1976). Statute does not permit doctor's refusal to respond to interrogatories concerning cause of death in medical malpractice case.

Release of medical information to review entities. §331.531.

Required reporting; gunshot and knife wounds. §750.411.

#### CASES

*Bradshaw v. Michigan National Bank*, 39 Mich. App. 354, 197 N.W.2d 531 (1972). Issuance of unsolicited credit card is not an invasion of privacy under any of Prosser's categories.

*Collins v. Retail Credit Co.*, 410 F.Supp. 924 (E.D.Mich. 1976). Jury verdict for plaintiff, finding willful and negligent noncompliance with FCRA. Judge reduces jury award of \$300,000 punitive damages to \$50,000. Attorney's fees and costs allowed.

*Spencer v. Toussaint*, 408 F. Supp. 1067 (E.D.Mich. 1976). City's inquiry into mental illness histories of applicants for bus driver jobs is not objectionable as privacy invasion.

#### MINNESOTA

NOTE: Statutory citations are to *Minnesota Statutes Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. Public Records Act. §15.17.

Omnibus Privacy Act. §15.162 *et seq.* Applies to state and local agencies.

- *Sherburne v. Schoen*, 236 N.W.2d 592 (Minn. 1975). Inmates, parolees, and probationers have right to inspect non-confidential portions of pre-sentence investigation reports.
- Att'y Gen. Op. No. 852, Aug. 2, 1976. Data Privacy Act, disclosure of arrest information.

Tax returns. §290.61.

Information obtained by Tax Commissioner not to be disclosed. §297A.43.

Unemployment security. §268.12.

Board of Medical Examiners, investigatory records. §147.01.

Arrest records; restrictions on use by state agencies. §364.04.

#### STATUTES - PRIVATE SECTOR

Savings associations. §51A.11.

Abortion records. §145.413.

Physician/patient privilege. §595.02(4), Minn.R.Civ.P.Rule 35.03.

Required reporting, physicians:

- Child abuse. §626.556.
- Tuberculosis. §144.42.

#### CASES

*Lowry v. Vedder*, 40 Minn. 475, 42 N.W. 542 (1889). Circulation of defamatory credit report. Held: *if* such communication is privileged, showing of malice destroys privilege.

*Hendry v. Conner*, 226 N.W.2d 921 (Minn. 1975). Hospital credit department clerk, in voice loud enough to others in waiting room to hear, told plaintiff she would not be admitted until she paid her outstanding debt, which she had included in petitions of bankruptcy. Held: even if accountable right of privacy exists in Minnesota this disclosure of a public record fact (bankruptcy petitions) to a small number of people is no such privacy invasion.

*Richfield Bank and Trust Co. v. Sjogren*, 244 N.W.2d 648 (Minn. 1976). Recognizes general duty of a bank not to disclose the financial condition of its depositors.

#### MISSISSIPPI

NOTE: Statutory citations are to *Mississippi Code Annotated*.



## STATUTES - PUBLIC SECTOR

FOI. §89-5-23. Applies only to county chancery court records.

Open meetings. §25-41-1 *et seq.*

Central data processing authority. §25-53-1 *et seq.*

Information, handling and processing. §25-53-53.

School records; not public records. §37-15-1.

Welfare records. §43-1-19.

Hospital records not to be considered public records. §41-9-67.

Tax records. §27-7-83.

## STATUTES - PRIVATE SECTOR

Banks; names of depositors, amounts of deposits confidential. §81-5-55.

Savings and loans; inspection of books and records. §81-11-5.

Physician/patient privilege. §13-1-21.

Psychologist/client privilege. §73-31-9.

Required reporting; gunshot and knife wounds. §45-9-31.

## MISSOURI

NOTE: Statutory citations are to *Vernon's Annotated Missouri Statutes*.

## STATUTES - PUBLIC SECTOR

FOI. §§109.180, 610.010 - .030.

Commissioner of Finance; confidential information about banks. §361.080.

Welfare records. §§208.120, 155.

Tax records. §143.976.

Arrest records; disclosure, expungement. §§610.100 - .115.

## STATUTES - PRIVATE SECTOR

Savings and loan associations, restrictions on disclosure of information as to members' accounts. §369.099.

Physician/patient privilege. §491.060.

## CASES

*Salomon v. Crown Life Insurance Co.*, 399 F. Supp. 93 (E.D. Mo. 1975). Plaintiff not permitted to require production in court of insurance company's records, which were not relevant and included personal and confidential information on policyholders.

## MONTANA

NOTE: Statutory citations are to *Revised Codes of Montana Annotated*.

## CONSTITUTION OF 1972

Art. II, §10. The right of privacy shall not be infringed "without a showing of compelling state interest."

## STATUTES - PUBLIC SECTOR

FOI. §93-1001. Open public records. (See also Constitution, Art. II, §9.)

Department of business regulation, bank information confidential. §§5-1012, -705.

Welfare records. Names of recipients and amounts paid are public records. §71-231.1.

Welfare records. Misuse of public assistance information prohibited. §71-231.2.

Welfare. Use of tax return information. §71-236.

Venereal disease information, confidential. §69-4610.

Tax return information. §84-4931.

## STATUTES - PRIVATE SECTOR

Consumer reporting agencies. §18-501 *et seq.*

Privileged communications. §64-208(3). To an interested person by one who is also interested, without malice. (Similar to common law qualified privilege.)

Physician/patient privilege. §93.701-4(4).

Psychologist/client privilege. §66-3212.

Required reporting, physicians:

- Child abuse cases. §10-1304.
- Venereal disease. §69-4604.

Hospital records confidential. Mont. Bd. of Health Regulations, §31-106.

## NEBRASKA

NOTE: Statutory citations are to *Revised Statutes of Nebraska*.

## STATUTES - PUBLIC SECTOR

FOI. §84-712.

Banking director, not to disclose names of depositors or debtors. §8-112.

Income tax information. §77-27, 119.

Social services records. §§68-1025, -1209.

School records. §§79-4, 156 & 157.

Hospital records, examination by medical staff committee. §§25-12, 120.

## STATUTES - PRIVATE SECTOR

Physician/patient privilege. §25-1206.

Psychologist/client privilege. §71-3826.

## CASES

*Bartels v. Retail Credit Co.*, 185 Neb. 304, 175 N.W.2d 292 (1970). Credit report is conditionally privileged unless actual malice or gross disregard for subject's rights shown.

*Brakhage v. Graff*, 190 Neb. 53, 206 N.W.2d 45 (1973). Insured's statements to company are privileged if company is required to defend claims against insured.

*Bishop Clarkson Memorial Hospital v. Reserve Life Insurance Co.*, 350 F.2d 1006 (8th Cir. 1965). Insurer who had insured patient's consent had right to inspect patient's hospital records for claims settlement purpose unless release would not be in best interest of patient's health.

## NEVADA

NOTE: Statutory citations are to *Nevada Revised Statutes*.

## STATUTES - PUBLIC SECTOR

FOI. ch. 239.101 *et seq.*

Welfare records. §422.290.

Banking superintendent; information obtained is confidential. §665.055.

Bank examination, misdemeanor to reveal confidential information. §668.085.

- *State ex. rel. Tidvall v. Eighth Judicial District Court*, 539 P.2d 456 (Nev. 1975). Bank superintendent has privilege to withhold and duty to prevent others from disclosing examination reports.

Savings and loan examinations, confidential information. §665.055.

Medical records maintained pursuant to State law. §449.200.

Records of State mental institutions, access. §433A.390.

Arrest and conviction records; petition to have sealed. §179.245.

#### STATUTES - PRIVATE SECTOR

Private investigators, unlawful acts. Divulgence of information; false reports. §648.200.

Collection agencies. Unlawful to publish or post names of debtors. §649.375(7).

Physician/patient privilege. §§49.215-.245.

Required reporting, physicians:

- Child abuse. §§200.502, .506.
- Venereal disease. §441.110.
- Communicable disease, epilepsy. §§439.210, .270.

#### NEW HAMPSHIRE

NOTE: Statutory citations are to *New Hampshire Revised Statutes Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. Right to Know Law. §91-A:4 *et seq.*

- *Mans v. Lebanon School Board*, 112 N.H. 1601, 290 A.2d 866 (1972). FOI suit for release of teachers' salaries. Held: disclosure would not be invasion of privacy.

Information systems regulation. §§7-A:1-A:5. Establishes commission, requires inventory of State information systems.

Welfare records. §§167:30-:32.

Bank department records confidential. §383:10-b.

Income tax records. §77:19.

## STATUTES - PRIVATE SECTOR

Credit reporting. §§359-B:1 -21.

Preservation of business records. §§337-A:1 -2. May be destroyed after three years, unless otherwise provided by law.

Medical-scientific research data. §126-A:4-a.

Physician/patient privilege. §329:26.

Psychologist/client privilege. §330-A:19.

## CASES

*Hamberger v. Eastman*, 106 N.H. 107, 206 A.2d 239 (1964). Recognizes a common law right of privacy.

## NEW JERSEY

NOTE: Statutory citations are to *New Jersey Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. §47:1A *et seq.* Examination and copies of public records.

- *Accident Index Bureau, Inc. v. Male*, 95 N.J. Super. 39, 229 A.2d 812 (1967), *aff'd* 51 N.J. 107, 237 A.2d 880 (1968). Suit, by service which compiled industrial accident information for use by employers in evaluating job applications, for access to workmen's compensation records, pursuant to N.J. Right-to-Know Law. Held: State interest in rehabilitation of handicapped, which requires confidentiality of records, outweighs the right to know in this area.

Open public meetings. §§10:4-6 to -21.

Tax records. §54:50-8.

Arrest records, expungement. §§2A:164-28, :169-11.

Juvenile justice records.

- Penalty for disclosure. §2A:4-65.
- Fingerprints, photos. §2A:4-66.
- Sealing of records. §2A:4-67.
- Att'y Gen. Op. No. 17, May 5, 1953. Juvenile offender records may be disclosed to Selective Service System.

Central (Mid-Atlantic) Criminal Intelligence Service, access and use. §53:6-18.

State and county mental institutions. Identification records *not* public records. §30:4-126.1.

Patients in State mental institutions, confidential records. §30:4-24.3.

Training schools for boys. Records are not public. §30:4-157.2.

Voter registration lists, not to be used commercially. §19:31-18.1.

#### STATUTES - PRIVATE SECTOR

Consumer credit. Creditor prohibited from disclosing unfavorable credit status of debtor pending resolution of billing dispute. §56:11-3(c).

Savings and loan associations; lists of members confidential. §17:12B-117.

Banking records. Copies of records relating to depositors' accounts have same force and effect as originals. §17:9A-247.

- *Schlossberg v. Jersey City Sewerage Authority*, 15 N.J. 360, 104 A.2d 662 (1954). Statute cited as permitting subpoena *duces tecum* for bank records.

Hospital and other institutional records. Discharge summary; collect information from patient as far as possible. §26:8-4.

Hospital record; examination in context of personal injury claim. §§2A:82-41 to -45.

Vital statistics, duty to furnish information. §26:8-4.

Physician/patient privilege. §§2A:84A-22.2 to -22.9.

#### CASES

*Brex v. Smith*, 104 N.J.Eq. 386, 146 A. 34 (1929). County prosecutor demanded (to banks) examination of all bank accounts of all members of the Newark Police Department and accounts for some of their wives. Court denies this request, describing the information contained in the records as a property right, of which the policemen cannot be deprived without due process of law. But the records may be obtained by an appropriately drawn grand jury subpoena.

*McGovern v. Van Riper*, 140 N.J.Eq. 341, 54 A.2d 469 (1947). Suit against recording and disseminating fingerprints of persons arrested on misdemeanor charges on grounds of invasion of privacy dismissed.

*Application of Tiene*, 19 N.J. 149, 115 A.2d 543 (1955). Right of privacy does not prevent judicial investigation from compelling

persons to produce their bank records. Public interest in uncovering corruption outweighs the private interest.

*Neigel v. Seaboard Finance Co.*, 68 N.J.Super. 542, 173 A.2d 300 (1961). A creditor has no qualified privilege to inform its debtor's employer of the employee's indebtedness with the purpose of enlisting the employer as its agent in the collection of the debt. The employer has no interest in or duty arising from its employee's indebtedness.

*In re Addonizio*, 53 N.J. 107, 248 A.2d 531 (1968). Individual cannot maintain Fourth Amendment claim of unreasonable search and seizure against subpoenas to his bank and stockbroker for his financial records. Because he lacks a proprietary interest in those records, he has no standing to make such a claim; and public policy requires that courts and prosecutors have access to such records if the fight against corruption is to prevail.

*Meerwarth v. Meerwarth*, 128 N.J.Super. 285, 319 A.2d 779 (1974) *aff'd* 137 N.J.Super. 66, 347 A.2d 804 (1975). Where plaintiff already has substantial alimony and divorce settlement, she cannot abridge former husband's right of privacy by compelling him to submit to a physical examination for life insurance.

*Young v. King*, 136 N.J.Super. 127, 344 A.2d 792 (1975). Patient/doctor privilege no bar to discovery of records maintained by hospital committees. (Medical malpractice suit.)

*Lehrhaupt v. Flynn*, 129 N.J.Super. 327, 323 A.2d 537 (1974), *aff'd* 140 N.J.Super. 250, 356 A.2d 35 (1976). Upholds constitutionality of municipal ordinance requiring elected and appointed officials to disclose financial information. Interest in privacy must yield to public policy of combatting corruption of public officials.

*Krumholz v. TRW, Inc.*, 142 N.J. Super. 80, 360 A.2d 413 (1976). Qualified privilege is unavailable to a credit reporting agency unless the agency's belief in the truth of the matter reported is reasonable under the circumstances, taking into consideration the reliability of the sources and whether the agency's evaluation and investigation of the information were reasonable.

## NEW MEXICO

NOTE: Statutory citations are to *New Mexico Statutes Annotated*.

### STATUTES - PUBLIC SECTOR

FOI. §71-5. Open public records.

State Records Center established. §71-6-8.

Automated Data Processing Act. §4-25-8. Criminal Justice Central Information System, disclosure restrictions.

Income tax records. §§72-13-25 to -88.

Welfare records. §13-1-37.

Mental illness patients; restrictions on records disclosure. §32-2-18.

Medical records, not public records. §12-25-6.

Drug violation information. §54-10-13.

#### STATUTES - PRIVATE SECTOR

Credit bureaus. §50-18-1 *et seq.*

Collection agencies, forbidden to publish "deadbeat list." §67-15-78B.

Psychologist/client privilege. §67-30-17.

#### CASES

*Montgomery-Ward v. Larragoite*, 81 N.M. 383, 467 P.2d 399 (1970). Improper debt collection tactics, such as service of process at plaintiff's place of employment, may support cause of action for invasion of privacy.

#### NEW YORK

NOTE: Statutory citations are to *McKinney's Consolidated Laws of New York*.

#### STATUTES - PUBLIC SECTOR

FOI. Pub. Off. Law §85 *et seq.* "Freedom of Information Law." Amplifies on meaning of "unwarranted invasions of personal privacy."

- *Miller v. Incorp. Village of Freeport*, 81 Misc.2d 81, 365 N.Y.S.2d 444 (1975). FOI. Payroll data; media may copy.
- *Dillon v. Cahn*, 79 Misc.2d 300, 359 N.Y.S.2d 981 (1974). FOI reflects broad policy of citizens' right to know.

Police records. Crim. Proc. Law §160.50. When no conviction results, defendant's mugshot and fingerprints to be returned to him. Court records, police records to be sealed and available only for limited purposes to prosecutor or police or gun licensing agency. Prohibits inquiry as to arrests that did not result in conviction.

Criminal offenders, removal of disabilities. Correc. Law §§702, 703.



Certificates of relief from disabilities (issued by courts) and good conduct (issued by parole board).

Criminal offenders, licensure and employment. Correc. Law §750 *et seq.* Applies to private employers and public agencies. Restricts use of criminal record as factor in employment or licensing decisions.

Access to conviction records by authorized social services agencies. Soc. Serv. Law §378a. (For hiring purposes, when employee will be working with children.)

Police officers' personnel records, confidentiality. Civ. Rights Law §50-a.

Child abuse information, central register. Soc. Serv. Law §442(4).

Child delinquency records. Soc. Serv. Law §372(4).

Child Care Review Service, records. Soc. Serv. Law §444.

Tax information. Tax Law §§697(e)-(g).

Welfare records. Soc. Serv. Law §§136, 136a.

#### STATUTES - PRIVATE SECTOR

Credit reporting. Gen. Bus. Law §370 *et seq.*

- Banking Board regs. §§8.1 to 8.5.
- *Randaccio v. Retail Credit Co.*, 48 App. Div.2d 1007, 372 N.Y.S.2d 4 (1975). Because not denied credit as an individual, corporation president has no standing under statute.
- *Goodnough v. Alexander's, Inc.*, 370 N.Y.S.2d 388 (1975). Report to potential employer of applicant's confession five years previously of theft at another store not improper under either FCRA or N.Y. statute.

Disputed debt; disclosure restricted. Gen. Bus. Law §601(5).

False Information affecting debtor's credit worthiness; disclosure prohibited. Gen. Bus. Law §601(3).

Credit billing errors. Gen. Bus. Law. §701 *et seq.*

Credit discrimination, unlawful practices. Exec. Law §296-a. Creditor not to inquire as to race, sex, other factors.

Private nursing homes, rights of residents. Exec. Law §758-a (1976). Includes right of confidentiality in "personal, social, financial and medical records."

Bank superintendent; information obtained in banking investigation is confidential. Banking Law §38.

## CASES

*Democratic Committee of Bronx County v. Nadjari*, 52 App. Div.2d 70, 383 N.Y.S.2d 311 (1976). Subpoena for bank records upheld.

*United States v. Cedrone*, 400 F.Supp. 1203 (N.D.N.Y. 1975). Depositor lacks standing to challenge IRS use of records obtained from bank.

*Bergman v. Senate Special Committee on Aging*, 389 F.Supp. 1127 (S.D.N.Y. 1975). Recognizes depositor's standing to challenge subpoena for bank records. Congressional committee could subpoena nursing home records but not petitioner's personal finance records.

*Gotkin v. Miller*, 379 F.Supp. 859, *aff'd*, 514 F.2d 125 (1974). Former mental patient not permitted to inspect and copy hospital records.

*Nader v. General Motors Corp.*, 25 N.Y.2d 560 (1970). Applying District of Columbia law, court found cause of action for invasion of privacy in allegations that defendant wiretapped plaintiff and hired people to shadow plaintiff.

*New York Times Co. v. Givens*, 61 Misc.2d 339, 305 N.Y.S.2d 164 (1969). Notwithstanding regulation to the contrary, telephone company must disclose name and address of subscriber with unlisted number to newspaper needing it in order to sue for recovery of unpaid advertising charges.

*Balducci v. Zenner*, 203 Misc. 40, 113 N.Y.S.2d 178 (1951). Pre-statute case in which lender sues credit reporting firm for supplying false information on which he relied in making loan.

*Nitti v. Credit Bureau of Rochester, Inc.*, 84 Misc.2d 277, 375 N.Y.S.2d 187 (1975). Upholds award of punitive damages under Fair Credit Reporting Act and discusses rationale of punitive damages.

## NORTH CAROLINA

NOTE: Statutory citations are to *General Statutes of North Carolina*.

## STATUTES - PUBLIC SECTOR

FOI. §132.1 *et seq.* Public records.

- Attorney General Opinions:
  - (1) Police and sheriff's department investigative reports and memoranda concerning the investigations of crimes are not public records subject to disclosure. 44 N.C.A.G. 340.

- (2) Municipal records such as budgets, bank statements, tax levies, utility accounts and minutes of meetings are public records. 43 N.C.A.G. 274.
- (3) The records of county and city boards of education are public records and subject to public disclosure. 42 N.C.A.G. 229.
- (4) Municipal police departments are not required to maintain arrest or disposition records, but in the event the police department makes records, such records are public records and available for public inspection. 41 N.C.A.G. 407.
- (5) Records and evidence collected by the personnel and agents of the State Bureau of Investigation are not public records and must be kept confidential as provided in N.C. Gen. Stat. §114-15. 40 N.C.A.G. 730.
- (6) Public Welfare Records, declared by N.C. Gen. Stat. §108-14.2 to be public records, are available for public inspection and copying. 40 N.C.A.G. 709.
- (7) The names of public assistance recipients and applicants, made confidential by N.C. Gen. Stat. §108-45, may be supplied to other social services agencies. 40 N.C.A.G. 713.

Confidential data; inclusion in State data processing system only when adequate safeguards established. §143.341(9)F.

State employee personnel records; privacy. §126-24 *et seq.*

Conviction of drug offense, conditional discharge and expungement of records. §90-96.

Offenses involving cannabis, toxic vapors; first offense, conditional discharge and expungement of records. §9-113.14.

Welfare records. §108-45.

Hospitals and institutions operated by Department of Human Resources; disclosure of records. §122-8.1.

Tax information. §105-259.

#### STATUTES - PRIVATE SECTOR

Physician/patient privilege, psychologist/client privilege. §§8-53 to -53.3.

Required reporting, physicians:

- Abortions (for statistical purposes). §14.45.1.
- Venereal disease. §130-95.

- Cancer. §130.184.

#### CASES

*State v. Bellar*, 16 N.C. App. 339, 192 S.E.2d 86 (1972). Judge exceeded authority in ordering records of acquitted defendant removed from court files. As to police records, destruction or expungement *may* be ordered, but only after notice and opportunity to be heard is afforded to police.

*Sparks v. Union Trust Company of Shelby*, 256 N.C. 478, 124 S.E.2d 365 (1962). Bank is under implied obligation to keep depositors' records confidential.

#### NORTH DAKOTA

NOTE: Statutory citations are to *North Dakota Century Code*.

#### STATUTES - PUBLIC SECTOR

FOI. §44-04-18. Access to public records.

- *Grand Forks Herald, Inc., v. Lyons*, 101 N.W.2d 543 (N.D. 1960). Statute does not apply to county court records.

State district court, permissive filing of military discharge papers. §37-01-34.

- Att'y Gen. Op. No. 34, 11/6/1968. Filing does not create public record.

Identification cards; information application is confidential. §14-14-02.

Foundling infant registration; confidentiality, sealing of records. §23-02.1-14.

Aid to disabled; confidential records. §50-24-31.

Supplemental parental care: records confidential. §50-11.1-07(3).

Paternity suits; court records, restriction on inspection. §14-17-19.

State hospitals, confidential records. Hosp. and Related Inst. Regs. R23-16-8A.1-3.

#### STATUTES - PRIVATE SECTOR

Consumer finance reports; information confidential. §13-03.1-10.

Hospital lien act; inspection of records by defendant in lien action. §35-18-09.

Health maintenance organizations; records relating to enrollee or applicant, disclosure restrictions. §26-38-33.

Physician/patient privilege. §31-01-06(3).

Required reporting, physicians.

- Venereal disease. §27-07-03.
- Child abuse. §§50-25-01 to -05.

## CASES

*Emo v. Milbank Mutual Insurance Co.*, 183 N.W.2d 508 (N.D. 1971). No qualified privilege where insurer falsely tells insured driver that her husband has arrest record necessitating termination of her policy.

*Farmers Educ. and Coop. Union of America v. WDAY, Inc.*, 89 N.W.2d 102 (N.D.), *aff'd*, 360 U.S. 525 (1958). Articulates "qualified privilege" concept.

*Sagniller v. Carlson*, 219 N.W.2d 885 (N.D. 1974). Initiation of malpractice suit results in implied waiver of physician/patient privilege at discovery.

*State ex rel. Williston Herald, Inc. v. O'Connell*, 151 N.W.2d 758 (N.D. 1967). Right to inspect court records is not due to statutory authority but to general availability of such records to public for proper purposes.

## OHIO

NOTE: Statutory citations are to *Ohio Revised Code Annotated*.

### STATUTES - PUBLIC SECTOR

Availability of public records (FOI). §149.40 *et seq.*

- *State ex. rel. Grosser v. Boy*, 42 Ohio St.2d 498, 330 N.E.2d 442 (1975). Act applies to student records.
- Op. Att'y Gen. No. 74-097. With certain exceptions, court records are public records. Also, purpose of inspection is not relevant.
- Op. Att'y Gen. No. 71-053. Investigatory case files of highway patrol are not public records.

Privacy Act. §1347.01 *et seq.* Data systems maintained by State and local agencies.

Information obtained in bank examination to be kept secret. §1125.14.

Financial statements required by Tax Commissioner are confidential. §5711.10.1.

Information concerning malignant disease given to State cancer registry for research and statistical purpose is confidential. §3701.26.1.

#### STATUTES - PRIVATE SECTOR

Deceptive consumer sales practices. §1345.02(c). Limits use of rebate in exchange for consumer furnishing names of other prospective consumers.

Impartial (non-malicious, non-negligent) report of indictment, arrest, and disposition is privileged. §2317.05.

Physician/patient privilege. §2317.02(A).

Required reporting, child abuse. §2151.421.

#### CASES

*Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340 (1956). Recognizes action for invasion of privacy where creditor harasses debtor, including phone calls to debtor's supervisors at work.

*LaCrone v. Ohio Bell Telephone Co.*, 140 Ohio App. 299, 182 N.E.2d 15 (1961). Phone company's wiretap held to be invasion of privacy if "unwarranted."

*Hammonds v. Aetna Casualty and Surety Co.*, 243 F.Supp. 793 (N.D. Ohio 1965). Patient has cause of action against doctor's malpractice insurer for inducing doctor to divulge confidential medical information to company under false pretext that patient contemplated malpractice suit.

*Shibley v. Time, Inc.*, 40 Ohio Misc. 51, 321 N.E.2d 791 (1974), *aff'd*, 45 Ohio App.2d 69, 341 N.W.2d 337 (1975). Credit card issuer and publisher distribute names of card holders and subscribers for commercial use. Held: no privacy invasion.

#### OKLAHOMA

NOTE: Statutory citations are to *Oklahoma Statutes Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. tit. 51, §24. Open public records.

Social Security number, State agencies may not require disclosure. tit. 74, §3111.

Workmen's compensation; information acquired is confidential. tit. 85, §147.

Insurance Commissioner:

- Information received from insurance companies confidential. tit. 36, §1657.
- May examine records of persons insured by unauthorized insurers. tit. 36, §1120.

Banking department records; some public, all others confidential. tit. 6, §208.

Motor vehicle certificates, applications confidential; exceptions. tit. 47, §22.23.

Welfare records. tit. 56, §183.

Tax information. tit. 68, §205.

#### STATUTES - PRIVATE SECTOR

Credit ratings. tit. 24, §81 *et seq.*

- *Derryberry v. Retail Credit Co.*, 550 P.2d 942 (Okla. 1976). Report on insurance applicant not within ambit of statute.

Banks and trust companies acting as trustee; restrictions on disclosing details of private trusts. tit. 6, §1013.

Right of privacy. Misdemeanor to use name or photo for advertising without consent. tit. 21, §839 *et seq.*

Physician/patient privilege. tit. 12, §385.

Unprofessional conduct to betray professional secret. tit. 43A, §657.

Required reporting, physicians:

- Child abuse. tit. 21, §846.
- Venereal disease. tit. 63, §1-528.

Patient access to medical records. tit. 76, §19.

#### OREGON

NOTE: Statutory citations are to *Oregon Revised Statutes*.

#### STATUTES - PUBLIC SECTOR

FOI. §192.000 *et seq.* Public Records Act, exceptions.

Tax information. §§314.835, .991.

Welfare records. §§411.320-.335.

Conviction records; petition for expungement. §137.225.

#### STATUTES - PRIVATE SECTOR

Savings and loan associations; members' right to inspect books. §722.303.

Insurance policy furnished to lender, information confidential. §746.200.

Hospital lien law; inspection of records. §441.810.

Physician/patient privilege. §44.040(1)(d).

Psychologist/client privilege. §44.030(h).

Required reporting, injuries caused by violence. §§146.750, .780.

#### CASES

*Hamilton v. Crown Life Insurance Co.*, 246 Or. 1, 423 P.2d 771 (1967). No privacy invasion when insurer discloses to plaintiff's neighbors amount of payment received by plaintiff on death, by suicide, of her husband. (Insurer was soliciting business in plaintiff's neighborhood.)

### PENNSYLVANIA

NOTE: Statutory citations are to *Pennsylvania Statutes Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. tit. 65, §66.1 *et seq.* Inspection and copying of public records.

- *West Shore School District v. Homick*, 353 A.2d 93 (Pa. 1976). Contents of a teacher's personnel file is not obtainable as a public record.
- *Shapp v. Butera*, 348 A.2d 910 (Pa. 1975). Statute does not require disclosure of public officials' financial reports voluntarily given in response to executive order.
- *McMullan v. Wohlgenuth*, 453 Pa. 147, 308 A.2d 888, *app. dismissed*, 415 U.S. 970 (1974). Statute does not require disclosure of names and payment amounts of welfare recipients.

Records of mental patients, inspection. tit. 50, §4605.

Mental health treatment records. tit. 50, §7111.

Welfare records. tit. 62, §404.

Credit bureaus may be utilized in determining welfare eligibility. tit. 62, §426.



Tax information. tit. 72, §7353.

Controller may examine bank records of township officers in order to verify statements. Bank not subject to prosecution. tit. 53, §56103.

#### STATUTES - PRIVATE SECTOR

EFT payments effective as check or cash. tit. 7, §§6121, 6122.

Savings and loan record books and accounts confidential. tit. 7, §6020-92.

Invasion of privacy. tit. 18, §5701. Misdemeanor to intercept telephone communication.

Physician/patient privilege. tit. 28, §328.

Required reporting, physicians; contagious diseases. tit. 53, §24663.

#### CASES

*Altoona Clay Products, Inc. v. Dun and Bradstreet, Inc.*, 367 F.2d 625 (3rd Cir. 1966). Privilege which, under Pennsylvania law, normally attaches to credit reports, is lost when diligence and due care are shown to have been lacking. Whether credit agency employee should have done more than rely on judgment index as basis for reporting judgment is a jury question.

*Baird v. Dun and Bradstreet, Inc.*, 446 Pa. 266, 285 A.2d 166 (1971). Credit report is conditionally privileged, but false report of plaintiff's indictment for adultery is libelous *per se* and not within the privilege.

#### RHODE ISLAND

NOTE: Statutory citations are to *General Laws of Rhode Island*.

#### STATUTES - PUBLIC SECTOR

FOI. §45-43-7. Councils of local government meetings and meeting records to be open.

Insurance Commissioner; information obtained is confidential. §27-35-6.

Misdemeanor conviction; expungement of record after five years. §12-1-13 (1976).

Income tax information. §44-30-95.

Welfare records. §40-6-12.

## STATUTES - PRIVATE SECTOR

Financial institutions (State-chartered); CBCTs permitted with "safeguards." §19-29-1.

Truth-in-Lending. §6-27-1 *et seq.*

Hospital patient's privacy and confidentiality of records. §23-16-19.1.

Required reporting, physicians; occupational diseases. §23-5-5.

Hospital lien law; examination of records. §9-3-7.

## SOUTH CAROLINA

NOTE: Statutory citations are to *Code of Laws of South Carolina*.

## CONSTITUTION

Art. 1, §10. Right to be secure from ". . . unreasonable invasions of privacy." Warrants must describe ". . . information to be obtained." (Quoted language added in 1971.)

## STATUTES - PUBLIC SECTOR

FOI. §1.20 *et seq.* Freedom of Information Act.

- Attorney General Opinions:
  - (1) No. 91, 1970. Names (and amounts received) of welfare recipients are open records, but State need not furnish a *list*.
  - (2) No. 3470, 1972-73. Contracts of employment with public agencies must be disclosed.
  - (3) June 4, 1976. Certain information in personnel files of public employees is confidential.
  - (4) June 5, 1976. Teacher pay classifications must be disclosed.
  - (5) July 6, 1976. Police may maintain nonpublic file on Drug Diversion Program clients.

Criminal Information and Communication System. §§53-30 to -35. Disclosure in violation of law prohibited.

Criminal records, destruction if no conviction. §17-4.

Income tax information. §65-307.

Prenatal patients, disclosure of records. §32-1022.

Mental patient records. §32-1022.

Alcohol or drug addicts, records confidential §§32-993.29, 32-1000.27.

Welfare records, public. §§71-14, -14.1.

Children on welfare, information not disclosable. §71-238.

Required reporting, physicians; venereal disease and other contagious diseases. §§32-552, -593.

#### CASES

*Serino v. Dun and Bradstreet, Inc.*, 267 F.Supp. 396 (D.S.C. 1967). Negligent inclusion of inaccurate information in credit report not actionable, absent malice.

*Thorton v. New South Life Ins. Co.*, 262 S.C. 651, 207 S.E.2d 88 (1974). Qualified privilege protects previous employer's report to credit reporting agency for use by prospective employers, if report is made in good faith without malice and recklessness.

*Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976). No invasion of privacy where credit report refers to plea of guilty to gambling charges. *Ex parte* order to delete such information is reversed.

*Harrison v. Humble Oil and Refining Co.*, 264 F.Supp. 89 (D.S.C. 1967). Recognizes tort invasion of privacy. Held: no unreasonable privacy invasion where creditor calls debtor's employer.

#### SOUTH DAKOTA

NOTE: Statutory citations are to *South Dakota Compiled Laws Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. §1-27-1 *et seq.*

Public officer, privilege for communications made in "official confidence." §19-2-5.

School counselor, communications by student privileged, not to be divulged. §19-2-5.1.

. University counselor, privileged communications. §19-2.-5.2.

Welfare records. §28-1-29 *et seq.*

Income tax information. §10-43-48.

#### STATUTES - PRIVATE SECTOR

Physician/patient privilege. §19-2-3.

Required reporting, physicians:

- Venereal disease. §34-23-2.

- Tuberculosis. §34-22-25.
- Child abuse. §26-10-10.

#### CASES

*Peterson v. Peterson*, 70 S.D. 385, 17 N.W.2d 920 (1945). In absence of statute, income tax report is not privileged merely because it covers private matters and is given to a public official.

*Truxes v. Kenco Enterprises, Inc.*, 80 S.D. 104, 119 N.W.2d 914 (1963). Privacy invasion is actionable. Here, newspaper photo depicting plaintiff as elderly citizen plagued by financial hardship held *not* to be a privacy invasion.

*Hogue v. Massa*, 80 S.D. 319, 123 N.W.2d 131 (1963). In malpractice suit, plaintiff/patient's release of hospital records to second attending physician did not constitute waiver of physician/patient privilege as to this second doctor.

#### TENNESSEE

NOTE: Statutory citations are to *Tennessee Code Annotated*.

#### STATUTES - PUBLIC SECTOR

FOI. §15-304. Records open to public inspection.

Confidential records. §15-305. Applies to records of State hospital patients, student records, taxpayer records, certain law enforcement records.

Welfare records, public inspection and restrictions. §§14-117, -118.

Hospital records not public. §53-1322.

Mental health records confidential. §33-306.

#### STATUTES - PRIVATE SECTOR

Bank Records, preservation. §45-445.

Mortgage, restrictions on disclosure of insurance information furnished by borrower. §47-15-118.

Psychiatrist/patient privilege. §24-112.

Psychologist/client privilege. §63-1117.

#### CASES

*Riley v. Dun and Bradstreet, Inc.*, 172 F.2d 303 (6th Cir. 1949). False information as to plaintiff's explanation of his prior criminal

conduct which credit agency circulated in report is actionable if agency acted with bad faith or malice.

## TEXAS

NOTE: Statutory citations are to *Revised Civil Statutes of Texas*, unless otherwise indicated.

### STATUTES - PUBLIC SECTOR

FOI. Art. 6252-17a, Texas Open Records Act.

- *Industrial Foundation of the South v. Texas Industrial Accident Board*, 19 Tex. Sup. Ct. J. 417, S.W.2d (1976). Information whose disclosure would violate common law privacy right is exempt.
- *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex.Ct.Civ.App. 1975), *aff'd*, 536 S.W.2d 559 (Tex. 1976). Certain law enforcement records are public.
- For Attorney General rulings on specific types of information, see Attorney General's Digest of Open Records Decisions, 1967-1975.

Mental health patient records. art. 5547-87.

Welfare records, disclosure of information. art. 695c, §33.

Insurance Commissioner, information obtained is confidential. Insurance Code art. 21.49-1, §10.

### STATUTES - PRIVATE SECTOR

Hospital lien law. art. 5506a, §4a.

Good faith statements of medical malpractice insurers as to risks to be insured are privileged. Insurance Code art. 21.49-3, §8.

Employers; prohibition against blacklisting employees. art. 5196c.

### CASES

*Bradstreet Co. v. Gill*, 72 Tex. 115, 9 S.W. 753 (1888). Mercantile agency report is privileged when made to a person having particular interest in subject matter but not if circulated freely among subscribers.

*Nettles v. Somervell*, 6 Tex. Civ. 627, 25 S.W. 658 (1894). Inclusion of plaintiff's name on list of "deadbeats" or "delinquents" that is circulated among businessmen is libelous *per se*. (Accord, *Burton v. O'Neill*, 6 Tex. Civ. 613, 25 S.W. 1013 (Tex.Ct.Civ.App. 1894);

*Henderson v. Credit Clearing House*, 204 S.W. 370 (Tex.Ct.Civ.App. 1918)).

*Kochler v. Dubose*, 200 S.W. 238 (Tex.Ct.Civ.App. 1918). Qualified privilege applies to good faith communications by one having an interest or duty to one having a corresponding interest or duty.

*Palatine Insurance Co. v. Griffin*, 202 S.W. 1014 (Tex.Ct.Civ.App. 1918). Communications between insurance companies as to matters of mutual interest are conditionally privileged.

*Employees' Loan Society v. Reynolds*, 57 S.W.2d 860 (Tex.Ct.Civ.App. 1932). Lender's letter to borrower's employer is libelous if tending to injure reputation, impeach honesty, causing financial injury or mental suffering.

*First State Bank of Lyford v. Parker*, 28 S.W. 2d 269 (Tex.Ct.Civ.App. 1930). Bank's disclosure to third party of plaintiff's indebtedness to bank not libelous if true.

*Johns. v. Associated Aviation Underwriters*, 203 F.2d 208 (5th Cir. 1953), *cert. denied*, 346 U.S. 834 (1953). Finds qualified privilege applicable when association of aviation underwriters made report to plaintiff's employer concerning his piloting ability.

*Dun and Bradstreet, Inc. v. O'Neil*, 456 S.W.2d 896 (Tex. 1970). Credit report to interested person is entitled to conditional privilege.

*Fields v. Worsham*, 476 S.W.2d 421 (Tex.Ct.Civ.App. 1972). No libel in letter to plaintiff's business association as to debts owed to defendant.

*Kaplan v. Goodfried*, 497 S.W.2d 201 (Tex.Ct.Civ.App. 1973). Conditional privilege applies whenever a public or private interest in availability of correct information warrants protection of honest communication of misinformation. Here, allegedly slanderous remarks made by orthopedist and his secretary to plaintiff osteopathic physician's patient are conditionally privileged.

## UTAH

NOTE: Statutory citations are to *Utah Code Annotated*.

### STATUTES - PUBLIC SECTOR

FOI. §78-26-1 to -8.

Utah Information Practices Act. §63-50-1 *et seq.* Applies to state government information systems. Distinguishes between "public," "confidential," and "private" data.

Bank commissioner reports, limits on disclosure. §7-1-25.

Commissioner of financial institutions to study EFTS advisability. §§7-16-1 to -6.

Insurance commissioner's records are public except when received on condition of confidentiality. §31-2-4.

Tax information is disclosable only by judicial order except for information shared with IRS. §59-14-72.

State medical institutions, records confidential. §64-7-50.

Confidential information obtained by public officer or employee in official capacity may not be disclosed. §67-16-4(2).

Welfare records, access restrictions. §55-15a-26.

Unemployment compensation records. §35-4-11.

#### STATUTES - PRIVATE SECTOR

Credit rating report limitations. §70B-10-102. Creditors may not report certain disputed outstanding accounts.

Banks may exchange information as to closing out of unsatisfactory accounts. §§7-14-1 to -5.

Bank records, preservation. §7-3-63.

Medical records; attorney may inspect when authorized by patient. §78-25-25.

Health/medical research. Information is confidential and privileged. §26-18-3.

Physician/patient privilege. §78-24-8(4).

Psychologist/client privilege §58-25-9.

Willful betrayal of privileged communication, unprofessional conduct. §58-12-36.

Required reporting, child abuse cases. §55-16-2.

#### CASES

*Berry v. Moench*, 8 Utah 2d. 191, 331 P.2d 814 (1958). Conditional privilege applies to physician-to-physician communication. Information on former patient requested on behalf of parents of patient's fiancée. Remanded for trial on issue whether information and manner of communication were within ambit of the privilege.

#### VERMONT

NOTE: All statutory citations are to *Vermont Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

FOI. tit. 1 §§315-320. Access to public documents and records.

Welfare records. tit. 33, §§20-21.

Social welfare records, disclosure, detentions and nonsupport cases. tit. 33, §2553.

Income tax information. tit. 32, §5815.

## STATUTES - PRIVATE SECTOR

Required reporting, physicians:

- Venereal disease. tit. 18, §1092 *et seq.*
- Communicable diseases. tit. 18, §1001 *et seq.*
- Tuberculosis. tit. 18, §1041.

## CASES

*De Goesbriand Memorial Hospital, Inc., v. Alburg*, 122 Vt. 275, 169 A.2d 360 (1961). Hospital may show pauper's medical record to township when seeking reimbursement for treatment of pauper. No mention of privacy interest.

## VIRGINIA

NOTE: All statutory citations are to the *Code of Virginia*.

## STATUTES - PUBLIC SECTOR

FOI. §2.1-340 *et seq.*

Virginia Public Records Act. §42.1-76 *et seq.*

Privacy Protection Act of 1976. §2.1-377 *et seq.* Applies to state and local government information systems.

Social security number is confidential tax information when disclosed to Department of Taxation. §58-46.3.

Automobile registration and title records are public records, but open to inspection only pursuant to regulations. §46.1-31 *et seq.*

Special identification cards for non-drivers. Information on application confidential. §46.1-383.3.

Income tax information. §§58-46, 58-46.1, 58-46.2.

Vital statistics, unlawful disclosure of records. §32-353.26.

Child welfare records. §63-1-209.

Access to records of local welfare boards. §63.1-53.



Drug control records confidential. §54-524.76.

Information from Board of Pharmacy investigation. §54-524.58.

Criminal Justice Services Commission to conduct continuing study of privacy in criminal history record information, issue regulations. §§9-107.1, 9-109.

Criminal Justice Information System. §9-111.3 *et seq.*

Dissemination of criminal history record information. §19.2-389.

Penalty for disclosure by state officer or employee of records or information concerning banks. §6.1-114.

- *Maryland Cas. Co. v. Clintwood Bank, Inc.*, 155 Va. 181, 154 S.E. 492 (1930). Statute should be strictly construed when invoked for limitation on judicial inquiry.

Person preparing tax returns for another may not disclose information. §58-27.4.

Physician/patient and psychologist/client privilege. §8-289.

Required reporting, physicians:

- Venereal disease. §32-91.
- Communicable diseases. §32-48.

## WASHINGTON

NOTE: Statutory citations are to *Revised Code of Washington Annotated*.

### CONSTITUTION

Art. 1, §7. Invasion of private affairs or home prohibited.

### STATUTES - PUBLIC SECTOR

FOI. §42.17.250 *et seq.*

Data processing and communications systems; confidential or privileged information not to be submitted to common data bank. §43.105.070.

Bank supervisor, secrecy "enjoined." §§43.19.060, .070.

Welfare records. §74.04.060 *et seq.*

### STATUTES - PRIVATE SECTOR

Credit applications, unfair practice to require designation as to sex, other attributes. §49.60.175.

Physician/patient privilege. §§5.60.050, 10.52.020.

Psychologist/client privilege. §18.83.110.

Required reporting, child abuse. §§26.44.030, .060.

#### CASES

*Ecuyer v. New York Life Ins. Co.*, 101 Wash. 247, 172 P. 359 (1918). Sharing of information as to employees by life insurance companies comes within qualified privilege.

*Haugland v. Smythe*, 25 Wash.2d 161, 169 P.2d 706 (1946). County welfare records not privileged.

*Lewis v. Physicians and Dentists Credit Bureau, Inc.*, 27 Wash. 2d 267, 177 P.2d 896 (1947). No privacy invasion when credit bureau calls debtor's employer.

*Mebust v. Mayco Mfg. Co.*, 8 Wash.App. 359, 506 P.2d 326 (1973). Industrial insurance claims files not privileged.

*Razor v. Retail Credit Co.*, 87 Wash.2d 516, 554 P.2d 1041 (1976). Successful suit under FCRA (§1681e(b)). Consumer report does not become commercial report merely because subsequently used in connection with extension of business credit.

*State ex rel. Tarver v. Smith*, 78 Wash.2d 152, 470 P.2d 172 (1970), cert. denied, 402 U.S. 1000 (1972). Welfare recipient not entitled to hearing on sole question whether caseworker's report contains false information.

#### WEST VIRGINIA

NOTE: Statutory citations are to *West Virginia Code*.

#### STATUTES - PUBLIC SECTOR

FOI. §§29A-2-1 to -2.

Information System Services Division, confidential records. §§5-7-8, 5-8-13.

#### STATUTES - PRIVATE SECTOR

Banks; reproduction of checks and other records; admissibility of copies in evidence; disposition of originals. §31A-4-35.

Consumer credit and protection; unreasonable publication. §46A-2-126.

Required reporting, physicians:

- Venereal disease. §16-4-6.
- Communicable diseases. §16-2A-5.

- Tuberculosis. §26-5A-4.

## CASES

*Copley v. Northwestern Mutual Life Insurance Co.*, 295 F.Supp. 93 (D.W.Va. 1968). No actionable privacy invasion when plaintiff is a business and the information wrongfully disclosed is of a business nature.

## WISCONSIN

NOTE: Statutory citations are to *Wisconsin Statutes Annotated*.

## STATUTES - PUBLIC SECTOR

## FOI. § 19.21.

- Attorney General Opinions:
  - (1) No. 103-74. The right of access to public records is qualified to the extent that a custodian of records may decide that the benefit of public disclosure is outweighed by some harm to the public interest.
  - (2) No. 2-76. The custodian must make the above determination on a case-by-case basis; he may not automatically withhold certain types of information and must supply a specific reason for each denial of access.
  - (3) No. 12-76. Neither FERPA nor Wisconsin statute (§118.125) prevents release of pupil information by local education agencies to Department of Public Instruction.

Child welfare agencies. §48.78.

Controlled substances, research subjects. §161.335.

Criminal records. §§165.79, 971.16., 972.15.

Employee welfare funds. §211.06.

Health and sanitation, disease reports. §140.05.

Illegitimate children. §§52.42, 48.42.

Juvenile records. §48.26.

Medical assistance recipients; records. §§49.45, 49.53.

Income tax information. §71.11.

Mentally deficient and ill persons; records. §51.30.

Personal property tax return records. §70.35.

Physical examination, school officers and employees. §§143.16, 143.17.

Alcoholism treatment records. §51.45.

School pupil records. §118.125.

Protective social services records. §55.06.

Sale of mailing lists maintained by Motor Vehicle Department; maximum price. §341.17(6).

#### STATUTES - PRIVATE SECTOR

Banks; examinations, information confidential. §220.06.

Savings and loan associations. §§215.02, .08.

Physician/patient privilege. §905.04.

Required reports are privileged. §905.02.

Psychologists, confidential information. §455.09.

Nursing home residents; records confidential. §146.309(f)3.

Medical practitioners; inspection of records by patient-authorized person. §269.57.

Required reporting, communicable diseases. §§143.06, .07.

#### CASES

*Judevine v. Benzies-Montanye Fuel and Warehouse Co.*, 222 Wis. 512, 269 N.W. 295 (1936). No privacy invasion where creditor circulates handbill offering for sale his undisputed claim against debtor.

### WYOMING

NOTE: Statutory citations are to *Wyoming Statutes*.

#### STATUTES - PUBLIC SECTOR

FOI. §9-692.1 *et seq.*

- Exemptions. §9.692.3.

Adoption; record of procedure. §1-708.

Juvenile courts; records. §14-115.41.

Physicians and surgeons; contagious and infectious diseases, records confidential. §35-172.

Sex criminals; records. §7-362.

Support and maintenance, desertion of wife or children; disclosure of confidential communications. §20-76.

Unemployment compensation; use of information given to commission. §27-33.

Welfare records. §42-19.

Medical assistance and services records. §42-78.

Attorney General (criminal identification division) access to information. §9-136.27.

Vital records, nondisclosures. §35-79.26.

#### STATUTES - PRIVATE SECTOR

Bank records. §§13-100.1 - .7.

Collection agencies. §33.165.

Physician/patient privilege. §1-139.

#### CASES

*State v. Hambrick*, 65 Wyo. 1, 196 P.2d 661 (1948). In embezzlement prosecution, bank president permitted to testify as to defendant's deposits in bank. No bank customer privilege recognized.