Privacy Trends and Legislation

Office of Privacy and Data Protection
January 27, 2022
Today's Presentation

• Introductions
• Data Privacy Day Recognition
• Words from our lawmakers
• Privacy Law Overview
• National Activity
• Washington State Legislation
• Wrap-up
Speakers

Katy Ruckle  
WA State Chief Privacy Officer

Matt King  
Privacy and Data Protection Manager
The State of Washington

Proclamation

WHEREAS, Privacy is a foundational right of individuals, recognized, protected, and promoted in the Washington State Constitution in Article I, Section 7; and

WHEREAS, a day is set aside each year to recognize the importance of data privacy and data protection on January 28th to raise awareness and promote privacy and data protection best practices; and

WHEREAS, it is observed across the world in over 50 countries, in order to draw attention to best practices and innovative discussions that promote and protect individual control over personally identifiable information, responsible privacy practices, and compliance with privacy laws and regulations; and

WHEREAS, the Council of Europe first recognized Data Privacy Day in 2003, and the US Congress followed suit in 2009 by passing House Resolution 31 by a vote of 402-0 declaring January 28th as National Data Privacy Day; and

WHEREAS, Data Privacy Day is recognized as an educational initiative focused on raising awareness among businesses, governments, and individuals about the importance of respecting individual privacy and protecting personal information; and

WHEREAS, many states, including Washington, have passed or continue to discuss further promoting consumers' personal information through education, enforcement, and protection of the rights of access, correction, deletion, and portability of their personal information; and

WHEREAS, the pervasive use of data gathering and generating technologies in our homes, in our everyday life, activities, schools, and in our work, gives rise to the potential compromise of personal privacy if appropriate care is not taken to protect personal information; and

WHEREAS, The protection of all forms of personal information is a global imperative for governments, industry, civil society, and individuals; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, do hereby proclaim January 28, 2022, to be Data Privacy Day.

Data Privacy Day

I encourage all people in our state to join me in this special observance.

Signed this 11st day of January, 2022.
Privacy Law Overview
<table>
<thead>
<tr>
<th>Privacy Act</th>
<th>GLBA</th>
<th>COPPA</th>
<th>VPPA</th>
<th>FERPA</th>
<th>State laws</th>
<th>HIPAA</th>
<th>4th Amdt.</th>
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Office of Privacy and Data Protection
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<td>GLBA</td>
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<tr>
<td>State laws</td>
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</tbody>
</table>
Key considerations

Enforcement
 • Agency enforcement
 • Private right of action
 • Regulation
Right to cure
Preemption
 • Floor vs. ceiling
Sell vs. share
Key considerations

Scope of personal information
• Individual, household, device

Exercising individual rights
• Global opt-out, third parties

Dark patterns

Scope
National Activity
Federal Legislation

A Step Forward for Federal Privacy Legislation

By Sarah Parker - Edited by Nika Shahery

December 05, 2018

Could a Federal Data Privacy Law be a Reality in 2019?

Friday, March 29, 2019

December 12, 2019

Is A Federal Privacy Law In The Cards for 2020?

Robert E. Slavkin

Akerman LLP - Health Law Rx

Office of Privacy and Data Protection

The Hill
States are failing on big tech and privacy — Biden must take the lead | TheHill

2021 Looks To Be A Landmark Year In Privacy

— Privacy state-of-play: New state-level privacy bills are up for consideration on both sides of the country — momentum that could make the matter even more urgent for the 117th Congress.
CONGRESS RAN out of excuses for its inability to pass a privacy law years ago. Now, some of its members are promising they’ll finally do their jobs . . . .

Congress’s aim to do by the end of 2022 what it should have done as long ago as 2012 may be described as unambitious; more generously, it could be described as realistic. Another failure to deliver, however, would surely be embarrassing.
Federal Legislation

Information Transparency and Personal Data Control Act
-Rep. DelBene (D-Wa.)

Consumer Data Privacy and Security Act
-Sen. Moran (R-Kan.)

Online Privacy Act
-Rep. Eshoo (D-Ca.) and Rep. Lofgren (D-Ca.)

Consumer Online Privacy Rights Act (2019)
-Sen. Cantwell
Specific authority re: COPPA, CAN-SPAM, HITECH

General authority re: unfair or deceptive acts or practices
ANPRM, December 2021 – “The Commission is considering initiating a rulemaking . . . To curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.”
Other states - AG enforcement

Four Attorneys General Claim Google Secretly Tracked People

Three states and the District of Columbia allege that the tech giant misled consumers by continuing to track those who had changed their privacy settings to prevent data collection.
## Other states – existing laws

<table>
<thead>
<tr>
<th></th>
<th>California</th>
<th>Virginia</th>
<th>Colorado</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement</td>
<td>AG, new agency, limited private right of action</td>
<td>AG only</td>
<td>AG only, with some rulemaking authority</td>
</tr>
<tr>
<td>Right to cure</td>
<td>Yes, until January 2023</td>
<td>Yes</td>
<td>Yes, until January 2025</td>
</tr>
<tr>
<td>Sell vs. share</td>
<td>Sharing</td>
<td>Exchanging for monetary consideration</td>
<td>Exchanging for monetary or other valuable</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>consideration</td>
</tr>
<tr>
<td>Personal information</td>
<td>Linked to individual, family or device</td>
<td>Linked to individual or device linked to individual</td>
<td>Linked to individual or device linked to individual</td>
</tr>
<tr>
<td>Global opt-out</td>
<td>Yes</td>
<td>Not contemplated</td>
<td>Yes, beginning July 2024</td>
</tr>
<tr>
<td>Dark patterns</td>
<td>Yes</td>
<td>Not contemplated</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Other states – proposed laws

Uniform Personal Data Protection Act

Active legislation in at least 20 states
Washington State Legislation
Trends in Washington

<table>
<thead>
<tr>
<th>Out this year</th>
<th>In this year</th>
<th>In every year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public health information</td>
<td>Minors’ rights</td>
<td>Comprehensive consumer bills</td>
</tr>
<tr>
<td>Elections</td>
<td>Data brokers</td>
<td></td>
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<td></td>
<td>Gov’t data protection</td>
<td></td>
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<tr>
<td></td>
<td>Public records exemptions</td>
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</table>
Trends in Washington

Last year – Focus on public health

• COVID-19 Health Data Privacy (HB 1127)

• WPA – Exposure Notification App sections (SB 5062)

• PRA exemptions for contact tracing info (SHB 1328)

• Codify emergency orders to protect privacy
  • (SB 5113 reintroduced this year but no hearing scheduled)
Trends in Washington

This year –

• Minors' rights
• Elections
Trends in Washington: Minors' Rights

HB 1697

An act relating to privacy rights for Washington minors.

• Prohibits online operators from marketing or advertising specified products and services to minors.

• Restricts certain online advertising practices based on the personal information of minors.

• Provides minors the right to request and obtain removal of certain information posted online.

• Provides that violations are enforceable solely by the AGO under the CPA and subject to civil penalties and statutory damages.
Trends in Washington: Minors' Rights

SB 5813 – Consumer Data Privacy Protections

• Part 1 focuses on Minors:
  • Regulates the collection and security practices for personal data of children and adolescents.

Requires:

• Consent – for processing sensitive data or targeted ads
• Rights – access, delete, correct
• Duties – transparency on collection, security, data minimization, purpose limits
• Data Protection Assessments - required

Federal Law: COPPA
Trends in Washington: Elections

- HB 1796 - Requiring verification of citizenship for voter registration. (no hearing)
- HB 1953 - Exempting sensitive voter information on ballot return envelopes, ballot declarations, and signature correction forms from public disclosure
  - Signatures
  - Voter phone number
  - Email address
Trends in Washington: Comprehensive consumer data privacy

HB 1850
“Protecting and enforcing the foundational data privacy rights of Washingtonians.”

- Data rights - access, correction, deletion, data portability, and opt-out
- Controller duties - transparency, purpose specification, data minimization, security, and nondiscrimination.
- Creates the Washington State Consumer Data Privacy Commission vested with administrative, rulemaking, and enforcement authority.
- Provides that violations are enforceable by the AGO under the CPA.
- Creates a PRA to enjoin violations and recover actual damages.
- Imposes a registration and annual fee on data collectors.
Trends in Washington: Comprehensive consumer data privacy

SB 5813: “establishing data privacy protections to strengthen a consumer's ability to access, manage, and protect their personal data.”

- Right to opt out of processing for purposes of targeted advertising or the sale of personal data beginning July 1, 2024.
- Requires the AGO in consultation with Office of Privacy and Data Protection to adopt rules establishing technical specifications for one or more do not track mechanisms by July 1, 2024.
- 30-day Right to cure period
- Enforcement include limited private right of action for injunctive relief and attorney’s fees
Trends in Washington: Comprehensive consumer data privacy

SB 5062 – Introduced last session/Reintroduced this session – “Washington Privacy Act”

- Establishes consumer personal data rights of access, correction, deletion, data portability and opt-out of the processing of personal data for specified purposes.
- Defines obligations for controllers and processors of personal data who are legal entities that meet specified thresholds.
- Identifies controller responsibilities, including transparency, purpose specification, data minimization, security, and nondiscrimination.
- Provides that violations are enforceable by the AGO under the CPA
- Creates a private right of action for certain violations and limits remedies to appropriate injunctive relief.
- Preempts local laws and ordinances related to the processing of personal data.
- Regulates the processing of data collected by private and public entities for certain public health emergency and contact tracing purposes.
Trends in Washington: Comprehensive consumer data privacy

HB 1433 - Creating a charter of people's personal data rights.
- Introduced last session and reintroduced this session
- Known as “People’s Privacy Act”
  • Requires entities to provide clear and accessible data privacy policies,
  • Requires affirmative, opt-in consent for the collection and use of PII
  • Prohibited companies from refusing to serve, or charge higher prices to customers who choose not to allow the use of their PII,
  • Makes it unlawful for companies and government agencies to use people’s PII to discriminate against them
  • Provided private right of action
## Comprehensive Consumer Privacy Bills

<table>
<thead>
<tr>
<th>Right</th>
<th>5062</th>
<th>1850</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deletion</td>
<td>A consumer has the right to delete personal data concerning the consumer.</td>
<td>A consumer has the right to delete personal data concerning the consumer, including data from all parts of a controller or processor’s network and backup systems.</td>
</tr>
<tr>
<td>Opt-out</td>
<td>Consumer has the right to opt-out of sale.</td>
<td>Consumer has the right to opt-out of sharing.</td>
</tr>
<tr>
<td>Correct</td>
<td>consumer has the right to correct inaccurate personal data concerning the consumer, taking into account the nature of the personal data and the purposes of the processing of the personal data</td>
<td></td>
</tr>
<tr>
<td>Access</td>
<td>A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the categories of personal data the controller is processing.</td>
<td>A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the personal data the controller is processing.</td>
</tr>
</tbody>
</table>
Trends in Washington: Data Brokers

Last year: HB 1303 - Regulation and taxation of the sale of Washingtonian's personal information and related data

This year: SB 5813
Part 2 Requires data brokers to
• Register with the state; and
• Comply with consumer requests to exercise rights of access, delete, or correct.

HB 1956/SB 5859 – Exempts sensitive records about incarcerated individuals

HB 1984 – Protect privacy of addresses related to vehicle registration

HB 1991 – Requires body worn camera recordings to be released unredacted in limited circumstances for prosecution and defense purposes

SB 5869 – Allows for toll camera images to be provided to law enforcement with a warrant

(SB 5113 emergency orders and HB 1953 voter signatures)
### Trends in Washington: Government Data Protection

<table>
<thead>
<tr>
<th>Topic</th>
<th>Legislation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Sale of Data</td>
<td>HB 1552</td>
<td>Prohibits state agencies from selling data to 3rd parties</td>
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<td>HB 2013 (DOL)</td>
<td></td>
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<tr>
<td>Protection of Data (cybersecurity)</td>
<td>HB 2044</td>
<td>Data backup req’ts (ransomware)</td>
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<td></td>
<td>SB 5916</td>
<td>Companion to 2044</td>
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<td></td>
<td>SB 5432</td>
<td>Creation of OCS</td>
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<td></td>
<td>SB 5834</td>
<td>OPDP “establish” privacy principles</td>
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<tr>
<td>Use of Data (AI, ADS, Facial Rec)</td>
<td>SB 5116</td>
<td>Algorithm accountability review</td>
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<tr>
<td></td>
<td>SB 5104</td>
<td>Moratorium on Facial Rec use in the state</td>
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</table>
Trends in Washington: Government Data Protection

Purpose Statement

The government performs a variety of functions that require personal information. Public agencies have an obligation to handle personal information about Washington residents responsibly and in a fair and transparent way. The purpose of this document is to articulate fundamental privacy principles to guide agency practices and establish public trust. See RCW 43.105.369(3)(c).
Quick plug!

Test your knowledge:

Please join the Office of Privacy and Data Protection to recognize and celebrate Data Privacy Day! We will host a presentation on the Washington State Agency Privacy Principles followed by a Kahoot quiz game on the principles and other data privacy trivia. Learn and test your data privacy knowledge (anonymously of course!)

Date: Friday, January 28, 2022
Time: 10 to 10:45am
Where: Teams invite

privacy@ocio.wa.gov
Office of Privacy and Data Protection

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Happy Data Privacy Week!

Thank you!