

SUBJECT: CHOICEPOINT

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OFFICE OF THE GENERAL COUNSEL

9/24, 2001

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TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
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- For Your Info.
- Prepare Response
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 DATE 8/30/02 BY SP5/C/KSB  
 3/21/03 SP1 CLK/JS  
 CA# 02-0063

*K*  
 PATRICK W. KELLEY  
 DEPUTY GENERAL COUNSEL  
 ROOM 7427, EXT. [REDACTED]

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DOCUMENT 69

FEDERAL BUREAU OF INVESTIGATION

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Precedence: ROUTINE

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Date: 09/17/2001

To: National Security

Attn: [REDACTED]

Counterterrorism

Attn: [REDACTED]

Information Resources

Attn: [REDACTED]

(S)  
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From: Office of the General Counsel  
National Security Law Unit/Rm. 7975  
Contact: [REDACTED]

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Approved By: [REDACTED]

mpy b7C

Drafted By: [REDACTED]

WJE b7C 8/30/02

Case ID #: 66F-HQ-A1247863-62

CLASSIFIED BY SP5JCK/SB  
REASON: 1.3 (C)  
DECLASSIFY ON: C1

3/21/03 SP1CKK/JS  
CA# 62-0063

Title: GUIDANCE REGARDING THE USE OF CHOICEPOINT  
FOR FOREIGN INTELLIGENCE COLLECTION OR  
FOREIGN COUNTERTERRORISM INVESTIGATIONS

**Synopsis:** (U) This responds to a request from the Training Unit, National Security Division (NSD) for advice concerning legal restrictions on the use of ChoicePoint for foreign intelligence collection or foreign counterintelligence investigations.

**Administrative:** (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 6.1.

**Details:** (U) After receiving various e-mail announcements concerning the FBI's Public Source Information Program<sup>1</sup> -- one of which stated in pertinent part:

<sup>1</sup> (U) See, e.g., e-mail dated 2/23/00 from [REDACTED] Special Case Support Unit, Field & Headquarters Support Section, Information Resources Division, to Public Source [Points of Contact], titled "New Pub Source Info Program"; e-mail dated 1/19/00 from [REDACTED] SCSU, FHSS, IRD, to All Public Source Customers[;] All Public Source POC, titled "ChoicePoint."

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Section 552

Section 552a

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1 Page(s) withheld for the following reason(s): CHOICEPOINT DOCUMENTS/FBI DOCUMENTS CONTAINING CHOICEPOINT INFORMATION

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resources for criminal law enforcement purposes.<sup>5</sup> The result of that work was the promulgation of the DOJ Online Principles in November of 1999. While these principles state that they are intended to apply only to federal law enforcement agents enforcing criminal laws<sup>6</sup> -- and, thus, are not controlling authority with regard to the methods use to conduct FCI investigations -- they nevertheless provide guidance and useful analogies with regard to the parameters of the Attorney General Guidelines.<sup>7</sup> Pending the promulgation of similar guidance by the Department of Justice (DOJ) concerning the use of the Internet in the conduct of FCI investigations, our advice here is based, in part, on the concepts reflected in the DOJ Online Principles. Additionally, as discussed below, with regard to the Training Unit's specific questions concerning the use of ChoicePoint in conjunction with foreign intelligence and foreign counter-intelligence investigations, we have obtained the opinion of the Deputy Counsel for Intelligence Operations, Office of

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<sup>5</sup> (U) See Overview, Department of Justice (DOJ) Online Investigative Principles for Federal Law Enforcement Agents (November 1999) (hereinafter cited as the "DOJ Online Principles"); see also Office of the General Counsel (OGC) electronic communication (EC) to All Divisions, dated 5/25/99 and titled "FBI Principles and Policies for Online Criminal Investigations, 'FBI Principles'."

<sup>6</sup> (U) The Overview to the DOJ Online Principles states on page 2 that "[w]hile other agencies may find these Guidelines useful, they are intended to apply only to federal law enforcement agents enforcing criminal laws." In a similar manner, the FBI Principles state that "[t]hese Principles do not apply to FBI Foreign Counter Intelligence (FCI) or International Terrorism (IT) investigations."

<sup>7</sup> (U) It almost goes without saying that there are many important legal distinctions that can be drawn between investigations conducted principally for national security purposes -- i.e., investigations undertaken to gather foreign intelligence information -- and investigations conducted to develop evidence for criminal prosecution. An exhaustive discussion of the national security caselaw in this area is beyond the scope of this opinion. Suffice it to say that the courts have long recognized that the "executive branch not only has superior expertise in the area of foreign intelligence [collection], it is also constitutionally designated as the pre-eminent authority in [the conduct] of foreign affairs." United States v. Truong Dinh Hung, 629 F.2d 908 (4th Cir. 1982). See also United States v. United States District Court (Keith), 407 U.S. 297 (1972). Consistent with his authority to prescribe regulations governing intelligence activities, the President has promulgated Executive Order 12333 which vests the Intelligence Community with legal authority to use "all reasonable and lawful means . . . to ensure that the United States will receive the best intelligence available." Executive Order 12333 is the legal basis for the Department's promulgation of the FCIG.

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Re: 66F-HQ-A1247863-62, 09/05/01

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Intelligence Policy and Review (OIPR), DOJ, concerning the restrictions set forth in Section III.B of the Attorney General Guidelines.<sup>8</sup>

(U) X With respect to FCI investigations, the fundamental legal authority for the FBI to conduct counterintelligence activities and collect foreign intelligence information within the United States (and abroad) is Executive Order (EO) 12333.<sup>9</sup> The Order specifically provides that the Attorney General may establish procedures that permit the collection, retention and dissemination of "[i]nformation that is publicly available or collected with the consent of the person concerned."<sup>10</sup> The Attorney General Guidelines set forth those procedures, and "govern all foreign intelligence, foreign counterintelligence, foreign intelligence support activities and intelligence investigations of international terrorism conducted by the FBI . . . ."<sup>11</sup>

(U) X The Attorney General Guidelines provide that intelligence collection must be conducted using the least intrusive means that will provide information of the quality, scope and timeliness required.<sup>12</sup> Such investigations, of course, must also be conducted in a manner that is consistent with the Constitution and laws of the United States and Executive orders.<sup>13</sup> With respect to the use of the Internet to conduct intelligence investigations, this Office has previously opined that "[FBI personnel] who are collecting information in support of the FBI's FCI/counterintelligence mission [are permitted] to use the Internet and collect publicly available information

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<sup>8</sup> (U) X Memorandum from Deputy Counsel for Intelligence Operations, Office of Intelligence Policy and Review, Department of Justice, to Associate General Counsel, Federal Bureau of Investigation, dated 01/22/01 and titled "The FBI's Use of 'ChoicePoint' for Foreign Intelligence Collection or Foreign Counterintelligence Investigations Prior to [REDACTED]" (Cited hereinafter as "OIPR Memorandum.") (S) b1

<sup>9</sup> (U) Part 2, Sec. 2.3, EO 12333.

<sup>10</sup> (U) Id.

<sup>11</sup> (U) Part 1, Sec. A, FCIG.

<sup>12</sup> (U) Sec. III.a.1, FCIG.

<sup>13</sup> (U) Id.

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. . . so long as [the collection of that information] conforms to the requirements of the Privacy Act and relevant Attorney General Guidelines."<sup>14</sup> Our opinion with regard to these issues has not changed. To the extent that there is any potential for conflict between the resources available to FBI personnel to conduct online investigations and the limitations set forth in the Attorney General Guidelines, the latter are controlling and must be followed.

(U) Concerning the ability of federal law enforcement agents to obtain information from "unrestricted sources," the DOJ Online Guidelines provide that:

Law enforcement agents may obtain information from publicly accessible online sources and facilities under the same conditions as they may obtain information from other sources generally available to the public.<sup>15</sup>

In the Commentary explaining this Principle, the DOJ Online Guidelines indicate that:

Obtaining information from online facilities configured for public access is a minimally intrusive law enforcement activity. For Fourth Amendment purposes, an individual does not have a reasonable expectation of privacy in information he or she has made available to the general public . . . . Similarly, an individual does not have a reasonable expectation of privacy in personal information that is made publicly available by others (such as publicly available Internet telephone directories).<sup>16</sup>

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<sup>14</sup> (U) Memorandum from [redacted] NSLU, OGC, to Division 5 personnel, dated 7/1/98 and titled "Internet Access for Foreign Counter-intelligence (FCI)/Counterterrorism Purposes Accessed in [a] Name Other Than FBI.GOV."

<sup>15</sup> (U) Principle 1, Obtaining Information from Unrestricted Sources, DOJ Online Principles, p.8.

<sup>16</sup> (U) Id.

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(U) The DOJ Online Principles, we note, do not specifically define the terms "publicly available" or "online facilities configured for public access." However, concerning the concepts of "public information," "publicly available," and "available to the public" -- terms which we regard as essentially synonymous -- the DOJ Online Principles state that:

Under this Principle, online information available to anyone willing to pay a subscription or other user fee is "available to the public" in the absence of additional access restrictions.<sup>17</sup>

This guidance is consistent with the definition of the term "publicly available" in the Attorney General Guidelines:

[Publicly available information is] information that has been published or broadcast for general public consumption, is available on request to any member of the general public, could lawfully be seen or heard by any casual observer, or is made available at a meeting open to the general public.<sup>18</sup>

(U) These definitions, we believe, are unambiguous and clearly reflect Departmental policy permitting the use of information gleaned from public sources, including the Internet. Thus, we reiterate our prior conclusion that resources of the Internet may be used to collect publicly available information for FCI investigations "so long as [the collection of that information] conforms to the requirements of the Privacy Act and the Attorney General Guidelines."<sup>19</sup>

(U) There is, however, the additional legal issue presented here concerning the FBI's use of ChoicePoint: namely, whether the use of a private (i.e., commercial) information resource, such as ChoicePoint, is consistent with the Attorney General Guidelines which place specific restrictions on the use

<sup>17</sup> (U) Commentary, Principle 1, DOJ Online Principles.

<sup>18</sup> (U) Sec. II, R, FCIG.

<sup>19</sup> (U) Aindra memo, cited infra, n.13.

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consistent with the language of the Attorney General Guidelines which describes "publicly available information" as information "published or broadcast for general public consumption, . . . available on request to any member of the general public, [or that which] could lawfully be seen or heard by any casual observer, or [would be] available at a meeting open to the general public."<sup>24</sup>

(u) To resolve this issue, we need look first to the principal source of the Attorney General Guidelines, the Foreign Intelligence Surveillance Act (FISA).<sup>25</sup> When Congress crafted the Act twenty-two years ago, it sought to balance the federal government's inherent power to protect the Nation's security interests with the Fourth Amendment's restrictions on law enforcement activity.<sup>26</sup> Mindful of past abuses, Congress placed strict limitations on the government's ability to conduct covert intelligence gathering activities without court authorization. Every application to the Foreign Intelligence Surveillance Court (FISC) to conduct some form of intelligence collection activity must, of course, meet the requirements of both the FISA and the Constitution. In this regard, each application must be signed by the head of an intelligence gathering agency, be approved by the Attorney General and be authorized by the FISC. Additionally, the target of a proposed surveillance must be a foreign power or an agent of a foreign power, the information sought must be intended for foreign intelligence purposes, and the certification signed by the head of the requesting agency must state that the information to be gathered cannot be gained by any other, less-intrusive means. In short, the FISA was written deliberately to create multiple layers of scrutiny and to place rigorous limitations on the government's otherwise vast power to gain information on U.S. citizens and other legal residents of this country.<sup>27</sup> JSU

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<sup>24</sup> (u) ~~S~~ Sec. II, R, FCIG.

<sup>25</sup> (U) 50 U.S.C. § 1801 et seq.

<sup>26</sup> (U) See H.R. Rep. 95-1283 on H.R. 7308, pt. 1 (1978).

<sup>27</sup> (U) Id.

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(u) These criteria are fully reflected in the Attorney General Guidelines.<sup>28</sup> Specific legal requirements must be met to [REDACTED]

[REDACTED]<sup>9</sup> As a limited exception to those require-(s)ments, Section III.B.5 of the Attorney General Guidelines provides, in pertinent part, as follows:

[REDACTED] to: (s) b1

- a. collect information from U.S. Government agencies . . .
- b. examine FBI records, review publicly available reference material or check the records of one public agency in order to obtain identifying data concerning an unknown person for indexing purposes;
- c. examine FBI records and review publicly available reference material in order to obtain identifying data concerning a known person for indexing purposes . . . . (Emphasis added.)

Stated differently, all other intelligence gathering activities which are not limited to the collection of information from U.S. Government agencies, FBI records, publicly available reference material or record checks of one public agency can only be conducted if a [REDACTED]

b1 [REDACTED] the Attorney General Guidelines still limit the scope (s) of those inquires to the sources of information itemized in Section III.B.3 -- namely: FBI indices and files, and the examination of publicly available records and other documentary sources of information, when approved by the SAC or other appropriate supervisory personnel. Clearly, these restrictions (s)

<sup>28</sup> (u) See Section III, FCIG.

<sup>29</sup> (u) Section III.B and C, FCIG.

<sup>30</sup> (u) These criteria have been summarized. See Section III.B.3.a, b and c, FCIG.

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or counterintelligence operations. The legal effect of OIPR's opinion is merely to reiterate the existing requirements of the Attorney General Guidelines.<sup>37</sup>

(u) We also were asked to consider whether the FBI's use of ChoicePoint is consistent with the restrictions of the Fair Credit Reporting Act ("FCRA" or "the Act") (codified at 15 U.S.C. § 1681 et seq). In our opinion, it is.

(U) The FCRA protects information in consumer (credit) reports compiled by consumer reporting agencies from disclosure except for the permissible purposes described in Section 1681b of the Act. As used in the Act, however, the term "consumer report" is defined, in pertinent part, in Section 1681a(d) as:

any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for --

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 1681b of [Title 15].  
(Emphasis added.)

In this instance, none of the information which the FBI would seek to review has been collected by ChoicePoint for any of the

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(u) GGC will prepare appropriate correspondence to advise all concerned regarding OIPR's opinion concerning the use of ChoicePoint for foreign intelligence collection and foreign counterintelligence investigations. This guidance should also be reflected in SCSU's periodic "public source" e-mail concerning ChoicePoint.

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purposes highlighted above.<sup>38</sup> Because ChoicePoint does not collect "public record information" for any of the highlighted purposes, ChoicePoint is not acting as a "consumer reporting agency"<sup>39</sup> for the purposes of the FCRA, and the collected information therefore does not constitute a "consumer report."<sup>40</sup>

<sup>38</sup> (U) We note that the "catch all" provision in Subsection 1681a(d)(C) (i.e., "any other purpose authorized under section 1681b of this title") refers to such things as evaluating a consumer for employment, promotion, reassignment, or retention, the underwriting of insurance, a determination of a consumer's eligibility for a license or other benefit granted by a governmental entity, evaluation of a consumer as a potential investor, and establishing an individual's paternity or an individual's capacity to pay child support. None of these limitations pertain to the Bureau's use of the public record information for its law enforcement functions or restrict the government's ability to consider public record information for foreign counterintelligence purposes.

<sup>39</sup> (U) A "consumer reporting agency" means any ["individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity" (§ 1681a(b))] which, for monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." § 1681a(f). See, e.g., D'Angelo v. Wilmington Medical Center, Inc., 515 F. Supp. 1250, 1253 (D.Del. 1981) (definition restricted the scope of the statutory concept to firms which assemble or evaluate consumer credit information, implying a function which involved more than receipt and retransmission of information identifying a particular debt. The FCRA is directed at firms which, as a regular part of their business, aggregate credit information on individual consumers, prepare credit evaluations, and report those evaluations to persons or firms who rely on them in making decisions about extending consumer credit or offering employment).

<sup>40</sup> (U) See Health vs. Credit Bureau of Sheridan, Inc., 618 F.2d 693 (10th Cir. 1980) (holding that "a critical phrase in the definition of consumer report is the second requirement: the relevant information must be 'used or expected to be used or collected in whole or in part for the purpose of serving as a factor' with regard to the enumerated transactions. . . . Thus, if a credit bureau supplies information on a consumer that bears on personal financial status, but does not know the purpose for which the information is to be used, it may be reasonable to assume the agency expected the information to be used for a proper purpose"). See also Razor vs. Retail Credit Co., 554 P.2d 1041 (1976) (quoting a Federal Trade Commission staff opinion supporting this interpretation); Emerson v. J. F. Shea Co., 76 Cal. App. 3d 579 (1978) (holding that the FCRA does not apply to commercial credit reports issued for purposes other than establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, or employment purposes, or other purposes authorized under the FCRA; Porter v. Talbot Perkins Children's Services, 355 F.Supp. 174 (S.D.N.Y. 1973) (holding that for a report to constitute a "consumer report" and fall within the

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Consequently, because the information being provided in any particular case is not a "consumer report" as that term is used in the Act, the other requirements of the Act do not apply.

(S)(u) We turn next to the request that we define the terms "known" and "unknown" for the purposes of the Attorney General Guidelines.<sup>41</sup> Concerning this issue, the request for our opinion quotes portions Section III.B.5 of the Attorney General Guidelines pertaining to [REDACTED]<sup>2</sup> and questions (S) b1 whether the underlined language (footnoted below) should be interpreted to mean that the FBI may check only the records of one public agency to obtain public information concerning an unknown person. If so, the writer posits, then the use of the Internet exceeds the legal standard because that resource can check the records of numerous public entities. We disagree.

(S)(u) Concerning the definitions of the terms "known" and "unknown," neither of these terms is defined in the Attorney General Guidelines, Executive orders, or Departmental regulations that pertain to foreign intelligence collection. Consequently,

coverage of the FCRA, the report must communicate information which bears on the consumer's credit status or general reputation and which is used in a determination of the consumer's eligibility for credit, employment, insurance, or other commercial benefit specified in the FCRA).

<sup>41</sup> (S)(u) Concerning these definitions, we also were asked whether an individual's status as known or unknown restricts the Bureau's ability to use ChoicePoint as a public source in conjunction with the conduct of a [REDACTED]. This issue has been mooted by our prior conclusion with regard to the use of ChoicePoint as a public resource.

<sup>42</sup> (S)(u) The relevant language was misquoted in the request for our opinion. Section III.B.5 provides, in pertinent part, as follows:

[REDACTED] to: (S) b1

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- b. examine FBI records, review publicly available reference material or check the records of one public agency in order to obtain identifying data concerning an unknown person for indexing purposes;
- c. examine FBI records and review publicly available reference material in order to obtain identifying data concerning a known person for indexing purposes . . . .

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they are not considered to be "terms of art" or to have any special meaning or unique legal significance. To the contrary, we believe that for the purposes of the Attorney General Guidelines, these terms have only common sense meanings: An individual is "known" if he or she can be identified by name or an alias, and, thus, distinguished from other individuals.<sup>43</sup>

(u) With regard to the possibility that the use of the Internet to obtain public agency data may be impermissible if used in conjunction with a [REDACTED] concerning an (s) b1 unknown person, this interpretation of the Attorney General Guidelines would require that a reader of the Guidelines parse the language of the regulation and ignore that portion of Section III.B.5.b which specifically authorizes the review of "publicly available reference material." As reflected by the language quoted on page 9 above pertaining to [REDACTED] FBI (s) b1 personnel have the option under the Attorney General Guidelines either "to review publicly available reference material" or "check the records of one public agency." Checking the records of a public agency --i.e., a government source -- may be preferable or even required when an investigator requires a higher degree of confidence that the information being sought will be complete, accurate and "official." The use of an Internet resource simply may not afford FBI personnel the level of confidence required in a particular instance. This, however, is an operational decision, not a legal one. The Attorney General Guidelines do not preclude the use of an Internet resource to obtain publicly available identifying data concerning either known or unknown persons.

### Conclusion

In summary, it is our opinion that, as stated in the DOJ Online Guidelines, "obtaining information from online facilities configured for public access is a minimally intrusive law enforcement activity."<sup>44</sup> In this regard, individuals "do not have a reasonable expectation of privacy in personal information that has been made publicly available . . . ."<sup>45</sup> FBI personnel who are tasked to collect information in support of FBI's foreign

<sup>43</sup> Webster's II defines "unknown" as not disclosed or identified.

<sup>44</sup> Principle 1, Obtaining Information from Unrestricted Sources, DOJ Online Principles, p.8.

<sup>45</sup> Id.

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To: National Security From: Office of the General Counsel  
Re: 66F-HQ-A12478-3-62, 09/05/2001

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intelligence or foreign counterintelligence operations are permitted to use the Internet to collect publicly available information, provided the collection of that information conforms to the requirements of the DOJ Online Principles and Attorney General Guidelines. In collecting foreign intelligence and conducting foreign counterintelligence investigations, FBI personnel may not review the ChoicePoint data prior to the

[REDACTED] (s) b1

Finally, the Attorney General Guidelines do not preclude the use of an Internet resource, such as ChoicePoint, to obtain publicly available identifying data concerning either known or unknown persons.

No manual changes are required as a consequence of this opinion.

LEAD (s):

Set Lead 1: (Adm)

NATIONAL SECURITY

AT WASHINGTON, DC

Distribute the foregoing opinion to NSD personnel affected.

Set Lead : (Adm)

COUNTERTERRORISM DIVISION

AT WASHINGTON, DC

Distribute the foregoing opinion to ASD personnel affected.

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To: National Security From: Office of the General Counsel  
Re: 66F-HQ-A1247-33-62, 09/05/2001

Set Lead 3: (Adm)

~~SECRET~~

ADMINISTRATIVE SERVICES

AT WASHINGTON, DC

Distribute the foregoing opinion to ASD personnel affected.

- 1 - Mr. Parkinson, Rm. 7427
- ① - Mr. P. Kelley, Rm. 7427
- 1 - Mr. Steele, Rm. 7159
- 1 - [REDACTED] Rm. 7975
- 1 - [REDACTED] Rm. 7975
- 1 - NSLU Library
- 1 - NSLU Tickler

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Section 552

Section 552a

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- The following number is to be used for reference regarding these pages:

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OFFICE OF THE GENERAL COUNSEL

2/6, 2009

TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
	7176	DIRECTOR MR. R. BUCKNAM		7427	<del>MR. T. KELLEY</del> VACANT
	7142	MR. PICKARD		7159	<del>MR. STEELE</del>
	7427	MR. PARKINSON		7159	<del>[REDACTED]</del>
	WV 6-3	MR. LOSCH, CJIS		7975	<del>MR. BOWMAN</del>
	ACADEMY	<del>MR. GIGGINS/THAM</del>		7975	<del>[REDACTED]</del>
	6012	MR. WELBY, ASD		7338	<del>[REDACTED]</del>
	5829	MR. DIES, IRD	X	7338	<del>[REDACTED]</del>
	7110	MR. GALLAGHER, NSD	X	7877	<del>[REDACTED]</del>
	7116	MR. GARCIA, CID		7326	<del>[REDACTED]</del>
	3090	MR. KERR, LAB		NP 300	<del>[REDACTED]</del>
	7825	MR. KNOWLTON, Inspection	X	5448	<del>[REDACTED]</del>
	6032	MR. STOLLHANS, Finance		7927	<del>[REDACTED]</del>
	7110	MR. WATSON, CT		7927	<del>[REDACTED]</del>
	7128	MR. ALBA, ISD		7947	<del>[REDACTED]</del>
	7129	MR. DeFEO		7947	<del>[REDACTED]</del>
	7240	MR. COLLINGWOOD		ACADEMY	<del>[REDACTED]</del>
	ACADEMY	MR. NISLEY		7338	<del>[REDACTED]</del>
	7901	MS. KOCH		7427	SUPPLY TECH.
				7427	COMP. SPECIALISTS

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2/23

3/21/03

ALL INFORMATION CONTAINED  
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DATE 8/30/02 BY SP5/KC/KSB

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1B327 MAIL ROOM  
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- Call Me
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- Per Inquiry
- For Your Info.
- Prepare Response
- For Your Approval
- Pls. Handle

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 list all of us discuss. Call  
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ADMINISTRATIVE LAW  
UNIT

PATRICK W. KELLEY  
DEPUTY GENERAL COUNSEL  
ROOM ~~[REDACTED]~~

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Section 552a

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7 Pages were not considered for release as they are duplicative of DOCUMENT # 71

Page(s) withheld for the following reason(s):

- The following number is to be used for reference regarding these pages:

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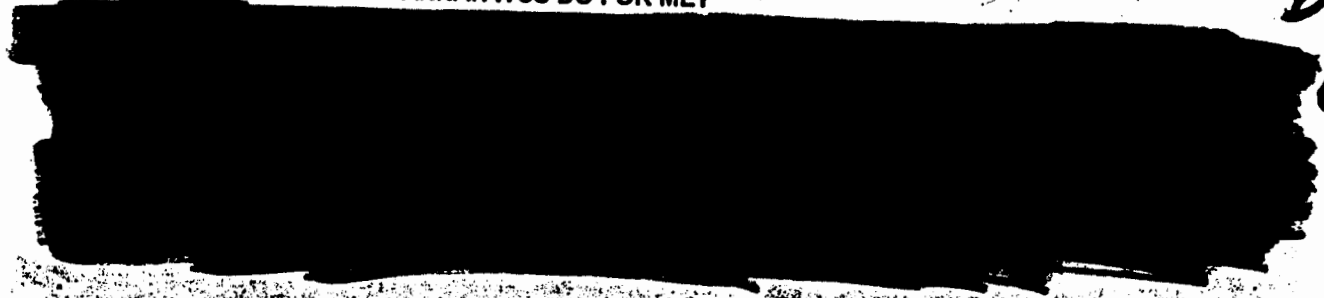
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b7c

WHAT CAN BUTTE AND SAVANNAH ITCS DO FOR ME?



b2  
b7E

Nothing is more dangerous than an idea when you have only one idea.

b7c

b7c

**WHO IS MY PUBLIC SOURCE POC?**

To get more information on these systems, to request an id, training, or software, contact the Point of Contact in your division. They are as follows:

**FO POC**

- AL
- AN
- AQ
- AT
- BA
- BF
- BH
- BS
- BT
- CE
- CG
- CI
- CO
- CV
- DE
- DL
- DN
- EP
- EP
- FM
- HN
- HO
- IP
- JK
- JN

[REDACTED]

**FO POC**

- KC
- KX
- LA
- LR
- LS
- LV
- ME
- MM
- MO
- MP
- MW
- NF
- NH
- NK
- NO
- NY
- OC
- OM
- PD
- PG
- PH
- PO
- PX
- RH
- SA
- SC

[REDACTED]

**FO POC**

- SD
- SE
- SF
- SF
- SI
- SJ
- SL
- SU
- SV
- TP
- WF

[REDACTED]

**HQ division**

**POC**

- HQ-D0
- HQ-D0-AssetFor
- HQ-D0-OCPA
- HQ-D01
- HQ-D02
- HQ-D03
- HQ-D04
- HQ-D05
- HQ-D06
- HQ-D07
- HQ-D14

[REDACTED]

HQ-Counterterr

**AND LAST BUT CERTAINLY NOT LEAST:**

Well, I think that is all the news I have "up my sleeve" for awhile. I hope it tides you over till the next issue. I am sure I have left some topics out, so please contact your POC with any questions you have. If you need me, I am here, and welcome YOUR feedback, positive and negative. I completely welcome any "far-out, funky" ideas on how to use public source information, you never know, you may think they are far-out, but they may be very do-able, just ask [REDACTED]. I need to know if this program is serving your needs, **SO DO NOT HESITATE TO LET ME KNOW WHAT YOU THINK!!** It is your feedback is directly responsible all improvements in this program.

b7c  
b7E

I am thrilled with the acquisition of ChoicePoint, Westlaw and Lexis-Nexis. I hope you are equally happy. I do not want anyone to think I was solely responsible for this transition, there were many people who made it happen. (UT-OH, get ready, my "dorkiness" is getting ready to rear it's head - I am known for it...LOL) There are some people I would like to thank for making our acquisition of the three top providers possible:

Thank you so much to [REDACTED] in the Tampa division. [REDACTED] is the Paralegal who first made me aware of the contract between FBI, DOJ and Westlaw. She is the one who first "turned me on" to Westlaw and it's abundant news archives. [REDACTED] you are responsible for all investigative personnel having access to Westlaw, thank you for "not holding back" your ideas and opinions!!

b7c

[REDACTED] from Chicago has been an invaluable resource for me. [REDACTED] has given me great feedback and come up with ideas on how to write up additional budget justifications, she has provided me with success stories to add to my budget requests, and ensured the feedback from Chicago was heard "loud and clear". She has also been a great "ear" when I needed to vent ..LOL. yes, poo [REDACTED]

For helping to find alternative procurement vehicles, thank you [REDACTED] and all the members of the Public Source Information Working Group. Thank you to NSD and CID for providing additional funds to make this happen.

Thank you to all the personnel who have sent the thousands of e-mails. Thank you for the feedback and your patience. Please be assured all of your concerns regarding ChoicePoint have been forwarded to ChoicePoint.

b7c

Lastly, and this is very personal, thank you to [redacted] and [redacted] [redacted] For any of you who know me, you know I very easily put my foot in my mouth and get myself into trouble by "running my mouth". Though everything, the budget crisis, the negative feedback, the positive feedback, you have stood behind me. For that I am truly grateful.

If you need to get in touch with me, do not hesitate to e-mail me or call me [redacted] An EC will be forthcoming regarding this information.

[redacted] Only with the alliance of everyone working with each other are great things born. -Unknown



# FEDERAL BUREAU OF INVESTIGATION

DOCUMENT 86

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HEREIN IS UNCLASSIFIED  
DATE 8/30/02 BY SP5/KCB  
3/21/03 SP1/CKP/JS

## *The FBI's Public Source Information Program Fact Versus Fiction*

[Redacted] b7c

# *Objectives of this presentation*

---

- Types of information available to law enforcement
- History and growth of the FBI's Public Source Information Program (PSIP)
- FBI's PSIP and its support of the investigative objectives of the FBI
- Demo of ChoicePoint
- Recent news articles on the FBI's usage of public source information (Fact vs. Fiction)
- Privacy legislation recently passed and its potential impact on law enforcement's availability of public records
- Discussion of policy for the use of public source information during criminal cases

# Public Source Databases

Contain billions of public records including:

Property records

Census information

Professional licenses

Telephone books

Newspaper articles

Drivers records

Vehicle records

Credit Bureau Headers



# In the beginning, there was Lexis-Nexis.....

It met the needs of many, due to the fact it contained

- **Public Source Information**
- **News Article Archives**
- **Legal Information**

This was the first time in FBI history, these types of information were so easily accessible to investigative personnel.

# A revolution occurred



**BIRTH OF  
THE  
INTERNET**

**You no longer  
have a college  
course to learn  
how to operate  
a computer**

**Computers  
are not "just  
for nerds"  
anymore**

**Information Super  
Highway was built**

*Many databases are now available  
and are much more user-friendly*

ChoicePoint – Public records

WestLaw – Legal information and news

Lexis-Nexis – Public records, legal information and news

Dun and Bradstreet – Records regarding companies

Credit Bureau Reports – Live credit header information

How much has the FBI's use of public source info grown?



Usage of public source information systems has increased by 9,600% since 1992.

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Section 552

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# Success of the PSIP

**TOP TEN FUGITIVE CAPTURED:** Aurlleas Dame McClarty - He was wanted for a double murder in Orlando and bank robbery in Baltimore and numerous other crimes in between. Based on information found in ChoicePoint, McClarty was located. McClarty was taken into custody without incident. - Baltimore Division

"I was able to locate a fugitive through the ChoicePoint database within minutes of getting the printout [redacted] I heard about ChoicePoint replacing Lexis-Nexis in the morning and sent a request to our OpCenter [redacted] I received a reply with an address that was completely new to me. Based on this info, the fugitive was located. Since that time most of the Agents on the NY Fugitive Squad have been using this service for our cases. The fact that we can do it ourselves (either from the office or from home) makes it real convenient. **The amount of info. generated is a real plus for fugitive investigations**". - New York Division b2

**After 24 years of eluding the FBI, a fugitive wanted for armed robbery and the brutal murder of a prominent Louisiana Attorney and State Senator was found using public source information.** - SITC

During the investigation of the Egypt Airlines crash, timely access to public source information gave the FBI the **ability to rapidly assess the bonafides of the passengers on the plane**, permitting early conclusions to be drawn regarding possible causes of the crash.

## Success of the PSIP

**A subject from Oklahoma was a fugitive for 17 years.** As a result of information, subject's alibi was destroyed in court and revealed an outstanding warrant in Florida. **He was sentenced to 52 years and 3 months. -SITC**

Huey Rich, son of US Rep. Bobby Rush, D-Ill, was killed by two individuals claiming to be police, who wore bulletproof vests, carried badges and walkie-talkies, when they shot and robbed Rich. Leo Foster and Darcell Prince were charged in the killing.

**Prince was arrested, at the Columbus, Ohio address. - Chicago Division**

**Identification Order fugitive located** who was wanted for the murder of his ex-wife in Louisiana. Fugitive's girlfriend was located in New Mexico which subsequently led to his arrest. -SITC

67E



# Benefits to the FBI

Statistics for Butte and Savannah for FY 2000	
# of ITC requests received	67,932
# of ITC requests with positive results	67,310
# Subjects located	2,495
# Subjects identified	4,163
# Witnesses located	5,466
# Witnesses identified	5,016
# Assets located	1,067
# Assets identified	2,092
# Business identified	6,391
# New business associates identified	6,565
# Financial audit trails enhanced	3,253
# New leads generated	12,516
# Arrests made	524
% of ITC requests resulting in new investigative information	99.10%

\*Butte and Savannah account for only 4% of the PSIP searches

# *Fact Versus Fiction*

○ Since the Wall Street Journal article in May 2001, there have been other news articles and one television show that have focused on the FBI contract with ChoicePoint and other public records providers.

○ There have also been many privacy websites that have discussed the FBI's use of public source information.

There is both fact and fiction contained in these documents.

# FBI AND PUBLIC SOURCE: FACT VS. FICTION

The Wall Street Journal  
Copyright (c) 2001, Dow Jones & Company, Inc.  
Friday, April 13, 2001

Big Brother-in-Law: If the FBI Hopes to Get The Goods on You, It May Ask  
ChoicePoint

U.S. Agencies' Growing Use Of Outside Data Suppliers Raises Privacy Concerns

A Fugitive Rents a Mailbox  
By Glenn R. Simpson  
Staff Reporter of The Wall Street Journal

WASHINGTON -- Big Brother isn't gone. He's just been outsourced.

After surveillance scandals in the 1960s and 1970s, the Federal Bureau of Investigation and other federal law-enforcement authorities curbed their file-keeping on U.S. citizens. But in the past several years, the FBI, the Internal Revenue Service and other agencies have started buying troves of personal data from the private sector.

From their desktop computers, 20,000 agents at the IRS have access to outside data on taxpayers' assets, driving histories, phone numbers and other personal statistics. Using a password, FBI agents can log on to a custom Web page that links them with privately owned files on tens of millions of Americans. And with just a few keystrokes, the U.S. Marshals Service can find out if a fugitive has recently rented a mailbox or acquired a new phone line.

Behind such high-tech tools are ChoicePoint Inc., a publicly held Alpharetta, Ga., company and other commercial "look-up" services. ChoicePoint and its rivals specialize in doing what the law discourages the government from doing on its own -- culling, sorting and packaging data on individuals from scores of sources, including credit bureaus, marketers and regulatory agencies.

Privacy activists say that by outsourcing these tasks, federal agencies are violating at least the spirit of the nation's major privacy law, which admonishes the agencies to maintain only the data about a given individual that they need to do their jobs. "It's simply an end run around the Privacy Act" of 1974, says Marc Rotenberg, a lawyer for the Electronic Privacy Information Center, an advocacy group based here.

Back in the 1970s, critics say, lawmakers never imagined that technology would place so much data within the government's reach but outside its actual possession. They add that the government's alliances with ChoicePoint and its peers have evolved largely without debate or congressional oversight at a time of increasing public concern about online threats to privacy.

ChoicePoint and its federal clients say their use of the company's data follows both the letter and spirit of the law. And, indeed, there has been little evidence so far of privacy violations arising from government access to the data. "We are only permitted to obtain evidence and information consistent with applicable laws, including the Privacy Act, and rigorous attorney general guidelines," says FBI spokesman John Collingwood. "A vigorous inspection process, judicial oversight of prosecuted cases and civil remedies are in place to enforce compliance by FBI employees."

ChoicePoint Chief Executive Derek Smith calls his company's dealings with the government "a natural extension" of its business of equipping insurers and other companies to check out prospective partners and clients. Similarly, he says, the company helps the government find criminals and uncover fraud that hurts taxpayers.

We do not get information from marketers.

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Indeed, some attorneys think the government's reliance on outside data collectors may violate citizens' rights to protection against unreasonable searches. Gerry Goldstein, a criminal defense lawyer in San Antonio, says that, "When the government actively encourages and solicits individuals to act on their behalf, those individuals, in effect, become government agents.

Mr. Gagne of the INS dismisses that argument. The government, he says, didn't solicit ChoicePoint or other data providers to build their databases. "They were doing this for quite some time" before the government started buying the data, he says.

Another concern cited by critics is that Uncle Sam historically has proved to be an unreliable safekeeper of private information. In 1993, an inquiry by the General Accounting Office, Congress's investigative arm, found that the FBI's own audits had repeatedly reported misuse of the agency's biggest internal database, the National Crime Information Center. Last year, the GAO said the federal government wasn't complying with privacy standards the Federal Trade Commission had proposed for businesses. And a recent House investigation gave the government's computer-security efforts a "D-minus" grade.

Moreover, the public data ChoicePoint and its rivals use to build their databases aren't always accurate — as ChoicePoint itself has found.

In January, the National Association for the Advancement of Colored People sued ChoicePoint and the state of Florida in federal court in Miami, accusing the company of supplying faulty data that led to thousands of citizens being wrongly purged from Florida voter rolls in the November election. ChoicePoint has admitted that some data it provided was inaccurate, but it says its DBT Online Inc. unit, which was hired by the state to compile lists of convicted felons still carried on the rolls, warned state officials that the data needed to be verified. Florida election officials have blamed their predecessors and county authorities for not following through.

In another incident, this time in the private sector, a Chicago-area woman was fired in 1998 from her technical job at a major computer maker after ChoicePoint told her employer that she was a convicted drug dealer and shoplifter. In fact, the woman had no criminal record. A ChoicePoint spokesman concedes the mistake. The woman's employer rehired her, but in a menial job. She sued both companies and reached a confidential settlement.

Until four years ago, ChoicePoint was part of Atlanta-based Equifax. Like other credit bureaus, Equifax's collection and sale of personal data on American consumers has been dogged by controversy over the years, leading regulators to put stricter rules on the companies' practices.

In 1993, Mr. Smith took the helm of Equifax's insurance-services division, which helped insurers evaluate the risks of taking on new policyholders. He says he quickly realized that the money-losing unit could serve another, potentially lucrative purpose. With society becoming more mobile, he says, he decided to pitch the division's database as a way for companies to feel more secure in dealing with relative strangers. The division's fortunes rebounded, with its operating income tripling in 1994. Equifax spun the division off in 1997, and Mr. Smith went along as CEO.

Meanwhile, the FBI and others started to appreciate the value of computerized databases and looking to the private sector for help in gathering records. Two companies, CDB Infotek and DBT, won much of this early business, because of their experience selling data to police departments.

ChoicePoint acquired CDB Infotek in 1996 and purchased DBT last year. It also bought up

This is true. We caution the FBI personnel not to "knock down any doors to make an arrest" based on this info. We stress the info should be treated as any other source and independently verified.

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Section 552

Section 552a

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1 Page(s) withheld for the following reason(s): CHOICEPOINT DOCUMENTS/FBI DOCUMENTS CONTAINING CHOICEPOINT INFORMATION

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more than a dozen other firms that bought police reports and records relating to drug tests, physicians' backgrounds, insurance fraud, and litigation. DBT brought in the biggest haul. The data DBT had collected from insurers, private eyes, law firms and government doubled ChoicePoint's data bank to 10 billion records.

The Asian Wall Street Journal  
Copyright (c) 2001, Dow Jones & Company, Inc.  
Thursday, April 19, 2001  
Marketing & Media  
U.S. Agencies Tap Outside Data Sources

ChoicePoint Specializes in Gathering Information That the FBI Is Discouraged From Obtaining

A Fugitive Rents a Mailbox  
By Glenn R. Simpson

Staff Reporter

NOTE: This is the same article that appears in the Wall Street Journal on April 13, 2001.

ABIX - Australasian Business Intelligence: Adnews  
Copyright (C) 2001 Business Intelligence Australia Pty Ltd.  
Friday, June 8, 2001

Direct marketer's diary - privacy from ATO and police.

Original Article By Ian Kennedy.

In early June 2001, the private sector in the US is selling information to US Government agencies. The level of personal information being acquired by the Internal Revenue Service, the FBI and other agencies may lead to privacy concerns. One company, ChoicePoint, is forming alliances with Government agencies, the US Department of Justice contract worth \$US8m to the company in 2000. ChoicePoint has high technology tools that allow the interrogation of database information from sources such as property registers, telephone listings and motor vehicle registers. The company's business revenue in its Government division increased by 24%, to \$US292m, in 2000

See above article

Denver Post  
Copyright 2001  
Sunday, May 20, 2001  
Business

Personal online data can be wrong

Jennifer Beauprez Kris Hudson TECH TOWN

I'm going to spill the beans about my esteemed colleague Kris Hudson. He stole 700 pounds of pumpkins with his fraternity brothers in college - and got caught.

But if an employer ever did a background check with a company called ChoicePoint, they would never have known about the prank that got him a shoplifting ticket in 1990.

ChoicePoint, based in Alpharetta, Ga., is among numerous companies that are making the Web a convenient place to buy vast databases of personal information found in public documents.

The scary part of it is that, while widely available, the information isn't always accurate.

When Kris and I called up ChoicePoint and ordered copies of our own files using our names, addresses and Social Security numbers, we found plenty of information - some of it we didn't know or remember.

The system reported home addresses of places I lived years ago that I couldn't recall if I wanted. It produced names and numbers of relatives, how much we paid for our houses, who our neighbors are and even how much they paid for their homes, too.

The general public can not buy someone else's information from CP. They have to meet strict guidelines imposed by the IRSG for access.

But the reports missed a lot of things, including Kris' pumpkin arrest. The search also yielded no record of where he lived in Boulder for four years and queried the wrong county's databases for traffic violations for the two years he lived in Florida.

My report also omitted traffic violations and misspelled my middle name. It even associated me with a couple of strangers - Tim Aldridge and Robert Aldridge - and included some inaccurate Social Security numbers. Those aren't serious concerns - unless Tim and Robert happened to be borrowing my Social Security number for their own pursuits. But errors in such databases led to serious problems for other people.

A Chicago woman reportedly got fired from her technical position at a major computer maker after ChoicePoint told her employer she was a convicted drug dealer and a shoplifter, The Wall Street Journal reported. In fact, the woman had no criminal record, and she sued both ChoicePoint and her employer. She was reinstated in her job and reached a confidential settlement, the newspaper reported.

In January, ChoicePoint was the target of another lawsuit filed by the National Association for the Advancement of Colored People. The lawsuit alleges that ChoicePoint supplied the state of Florida with faulty data that led to thousands of citizens being wrongly purged from voter rolls in the November election. The reports said they had criminal histories.

ChoicePoint admitted that some of the data it provided were inaccurate but said its DBT Online Inc. unit, which was hired by the state to compile the lists, warned state officials that the data needed to be verified.

'You could get in all this trouble and not even know it,' said Richard Smith, chief technology officer for the Privacy Foundation in Denver.

Smith paid ChoicePoint \$25 to search his name and Social Security number and wrote about the results in his privacy column on the foundation's Web site, [www.privacyfoundation.org](http://www.privacyfoundation.org) - which tipped us off to the issue.

Though he has a common name, Smith said his dossier suggested he might have been previously married to a woman named Mary. He might have died in 1976. And the report suggested a further search for 'Ricky Smith' and 'Rickie Smith,' since people under those names were sitting in prison.

'There's no upside for us to being in these databases,' Smith said. 'It's a multibillion-dollar business, and it's used for everything.'

ChoicePoint spokesman James Lee said Smith misinterpreted his report and that human resources managers doing a background check would see a different one. Lee also said that Social Security numbers that get transposed on public documents may be at fault for some of the problems.

People should be diligent about their personal information, Lee said. He also argued that the data do a lot of good.

For instance, the company's databases helped the FBI develop leads and nab at least 1,300 criminals and aided the Center for Missing and Exploited Children in finding 93 kids. The FBI relies so heavily on ChoicePoint that it paid the company \$8 million last year for the dossiers of nearly every single American. And ChoicePoint even set up a special Web site for the agency.

Any business or individual may get such a Web site, with proof of a legitimate need for the



information. They also must agree to random audits to ensure the service is being used as promised.

The data are compiled from public information that has always been available in courthouses, motor vehicle departments and county property tax records, Lee said.

But the catch is that none of us knows what information is out there about ourselves, and we can't opt out of the database. Neither do we have control over who uses the information.

ChoicePoint made a nice profit, \$45.3 million last year, distributing the computerized dossiers of Americans to law enforcement, newspapers and even HR managers doing background checks.

We can only hope they get things right.

Jennifer Beauprez writes on technology and the Internet. She can be reached at [jbeauprez@denverpost.com](mailto:jbeauprez@denverpost.com). Kris Hudson covers telecommunications and can be reached at [khudson@denverpost.com](mailto:khudson@denverpost.com).

Yahoo! Internet Life from ZDWire  
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Sunday, June 24, 2001  
0707  
Private Gumshoes Walk All Over Us  
Robert Scheer

Big Brother, it turns out, is a private dick.

Yes, you are being watched by the FBI, the IRS, the CIA, and just about every other government agency, federal and local. But guess what: They no longer do their own detective work. For the most part, the spying is now carried out by dozens of private online companies. And leading in the battle for snooper market share is an outfit called ChoicePoint [[www.choicepoint.net](http://www.choicepoint.net)], which boasts of possessing some 3 billion records it's willing to share with anyone who has the money to buy.

The Justice and Treasury departments estimate that together they spent \$20 million last year on ChoicePoint's services. In fact, so dependent is the FBI on ChoicePoint that a joint Web site, ChoicePoint Online for the FBI [[www.cpfbi.com](http://www.cpfbi.com)], features the company's logo right alongside the agency's official symbol. The going price for your personal data an initial \$250 fee and then \$50 for each quick search may seem high to some, but there are dozens of other companies offering your cranky neighbor or angry ex-lover some cheaper variation on this very intrusive service. What's more, newcomers are getting into the business at an alarming rate and buying up massive lists of data once buried safely in courthouse papers, in the files of medical insurance companies, and even in the records of your friendly corner bookstore.

The problem is that, as the laws are currently written, you have next to nothing in the way of privacy protection in this regard. Nor is there much hope for any immediate improvement, since a huge alliance of powerful industry lobbyists including IBM, AOL, and Microsoft, all champing at the bit to sell or purchase your private data is poised to pounce in fierce opposition to any privacy legislation that has a chance of passage.

How legal is it for the FBI to use private gumshoes? It would be ironic if the Feds, in paying for the data gathered by private companies, ran afoul of the Privacy Act passed by Congress in 1974. Drawn up in the aftermath of the Nixon era during which the president used the FBI and IRS to spy on journalists and others cited on his infamous "enemies list" the Privacy Act

mandates that government agencies may maintain files on individuals only if they're needed to pursue an ongoing case. So far, the FBI and other agencies have skirted that restriction by using the open-ended databases of private firms that are not restricted by the law. As The Wall Street Journal put it in a front-page story in April, "ChoicePoint and its rivals specialize in doing what the law discourages the government from doing on its own."

Clearly we citizens need protection from these private spymasters as much as we do from the government, and this loophole needs to be closed. One way to do so is to apply to these online "lookup services" the same rights that consumers now have to see and correct their ratings with credit-reporting agencies. Given the widespread public dissemination of their information, these new services have far more power to unfairly damage a person's reputation than do the old-line credit bureaus. Indeed, ChoicePoint a spin-off from Equifax, one of the top three credit bureaus is more powerful than its parent but not subject to the same legally required consumer protections.

Just how powerful is ChoicePoint? Well, it may have helped to decide the last presidential election. The state of Florida, aiming to exclude ineligible voters, had spent \$4 million purchasing a national list of convicted felons from one of ChoicePoint's subsidiaries. But it turns out that in Florida, voters convicted of felonies in other states can, under certain circumstances, legally vote though at least 2,20 of these potential voters were turned away. So unwarranted reliance on these lists, along with other documented errors by Florida officials, could have been enough to swing the election.

This is another example of why these snoopers need to operate within a regulatory framework. Letting private online dicks do the FBI's work just makes them all Untouchables and unreachable by private citizens.

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Federal News Service  
August 13, 2001, Monday

SECTION: PRESS CONFERENCE OR SPEECH

LENGTH: 3949 words

HEADLINE: JOHN MCLAUGHLIN'S "ONE ON ONE"

GUESTS: GERALD CERASALE, THE DIRECT MARKETING ASSOCIATION; MARC ROTENBERG, THE ELECTRONIC PRIVACY INFORMATION CENTER

SUBJECT: CONSUMER PRIVACY ISSUES

TAPED: BROADCAST: WEEKEND OF AUGUST 11-12, 2001

BODY:

MR. MCLAUGHLIN: The surveillance society.

Secret software, called "cookies," track your every move on the Internet and cyberspace. The Federal Bureau of Investigation's Carnivore program devours your e-mail. Roving police vans peer through walls into your home, using infrared sensors to track your every move. Video eyes in the sky feed images of faces in crowds so computers can compare mug shots of wanted criminals with passers-by.

Is this some futuristic science-fiction nightmare society? Guess again. It's America in the new millennium.

Is personal privacy pass? We'll ask Jerry Cerasale and Marc Rotenberg.

ANNOUNCER: Brought to you in part by the Philip Morris family of companies -- Kraft Foods, Philip Morris USA, Miller Brewing.

ANNOUNCER: Imagine a world where we're not diminishing resources, we're growing them. Ethanol, a cleaner-burning fuel made from corn. ADM: The nature of what's to come.

MR. MCLAUGHLIN: Marc Rotenberg, do you focus on government snooping, or do you focus more on commercial, non-government snooping?

MR. ROTENBERG: We examine both. We think both the government and the private sector, through the use of new technology, poses a significant threat to personal privacy. When businesses collect personal

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MR. MCLAUGHLIN: And can that be coordinated with a real identity?

MR. ROTENBERG: Yes. In fact, that was specifically the proposal of a company called DoubleClick

MR. MCLAUGHLIN: Right.

MR. ROTENBERG: -- which is a large network advertising firm that's trying to target advertising to Internet users. When they started this system, they said it wasn't of interest to them who the user was, they simply wanted to know where they were going. And we said at the time that if you weren't trying to target the actual user, maybe this would be okay from a privacy viewpoint.

MR. MCLAUGHLIN: Suppose I go to the Internet and I look at the pages of a moderately respected newspaper, let's say something that is as respected as the New York Times, moderately respected, you know?

MR. ROTENBERG: Right.

MR. MCLAUGHLIN: And I look up and I read a series of articles there, and that's my habit. Now, you could pretty much reconstruct what my interests are from what I read, correct? Whether they were business or sports or theater or whatever, correct?

MR. CERASALE: Yes, if the New York Times allows that, that's correct. The New York Times will do that so you don't have to register again. The cookies are used to make sure you don't have to type in all information again. If you subscribe to the New York Times and you go in there, a cookie will allow you to go straight in, just typing in a password, straight in to wherever you want on the Times, or purchasing the same kind of thing with pre-registering. That's what cookies are for.

MR. MCLAUGHLIN: We'll be right back.

(Announcements.)

MR. MCLAUGHLIN: The Federal Trade Commission began to look at the cookies practice last year. What happened, Marc Rotenberg?

MR. ROTENBERG: One of the things that the FTC found was because of the design of certain websites, sensitive information, like medical information and financial information, was literally leaking from these websites, so that a person who had gone to a medical website to obtain some information, by virtue of the cookie it was possible for others to find out what they were interested in.

MR. MCLAUGHLIN: What action was prescribed by the FTC, corrective action?

MR. ROTENBERG: Well, the FTC cracked down on these sites and said you really need to do a better job of protecting on-line privacy. For the network advertisers, they said you're going to have to put in place a better program so that people can get off some of these Internet profiling systems.

MR. MCLAUGHLIN: Is this self-enforced restraint?

MR. ROTENBERG: It is, and we think that --

MR. MCLAUGHLIN: It's the honor system, huh?

MR. ROTENBERG: Right.

MR. MCLAUGHLIN: And the honor system only works when you have nobody dishonorable involved.

MR. ROTENBERG: Well, that's part of it, of course. But even the standards that were set out by the FTC in this case we thought were too modest. We think there need to be stronger safeguards for Internet users so that they're not going to be profiled unless they're aware it's happening.

MR. MCLAUGHLIN: Isn't it true that the e-mail that your members send, the e-mail that your members send is involved in making possible the implantation of cookies?

MR. CERASALE: There are some -- our members, generally they don't send e-mail to non-customers because it angers them, and they want to try and get a relationship with a customer, so they don't do that.

There are programs, I understand, and technology that they can implant a cookie or something -- I don't know the specific terms any longer -- on a computer. And I think that we're working with technology to try and eliminate that, or make sure people know what's happening.

But our members don't send that. That's not the kind of thing that you want to send to a customer, because you don't want to tick him off.

MR. MCLAUGHLIN: What's an anonymizer?

MR. ROTENBERG: An anonymizer is a way for a person to surf on the Internet without disclosing their actual identity. And it's actually very popular for Internet users, in part because people are so concerned about protecting their privacy. They go to websites where they're able to continue on to other websites and have their identity protected. We really think it's critical for the future of online privacy that these services that allow people to remain anonymous be widely available.

MR. MCLAUGHLIN: We'll talk about that in a little bit, because that's a huge growth industry --

MR. ROTENBERG: Yes, it is.

MR. MCLAUGHLIN: -- in the upcoming decade, if not century. This is going to go on and on -- how you can develop a suit of armor to protect you, and that may be the ultimate answer, the ultimate repudiation, the ultimate rejection, the ultimate stone wall against invasions of privacy -- i.e., technology will go -- can go a long way in interrupting the intrusive and obnoxious searches that takes place in our lives.

But I want to read to you a list of the legislation that was introduced last year to meet the privacy challenge: Consumer Privacy Protection Act, the Privacy and Identity Protection Act of 2000, the Notice of Electronic Monitoring Act, the Consumer Internet Privacy Enhancement Act, the Secure Online Communications Enforcement Act of 2000, the Freedom from Behavior Profiling Act of 2000.

What became of all of this privacy legislation?

MR. ROTENBERG: Well, a lot of the members of Jerry's association lobbied very heavily against these bills, because businesses don't want to be regulated when they collect and use personal information, so that even though Congress is aware that the public wants legislation, wants some legal safeguards for their personal data, it's been an uphill struggle in Washington, because business is saying that they don't think they need to be regulated; they think they can solve this problem on their own.

MR. MCLAUGHLIN: But isn't it true that you are actually performing a service, in some regard, when you do get some kind of a marketing profile of an individual, a person of some substance, like yourself --

MR. CERASALE: (Chuckles.)

MR. MCLAUGHLIN: -- that that profile serves a useful advantage to you? For example, if you buy a book, some novel, an adventure novel, from Amazon.com, Amazon will put up on the screen, unsolicitedly, "You may also like to read 'Ben Hur,'" right?

MR. CERASALE: Yes.

MR. MCLAUGHLIN: And that is an accommodation to your taste and interest. Now people don't object to that, do they?

MR. CERASALE: No, they don't. They want relevant information, and that's what the -- that's what marketers are trying to get, is trying to get relevant information to provide you with choices that you would like. But we won't try --

MR. MCLAUGHLIN: You don't think they're trying to make a little money on the side, get a little bit more information, to make that available? You're trying to tell me all of your marketers are that high-minded?

MR. CERASALE: Well, marketers will share information with others, and our privacy promise says they have to tell you and give you a chance to say no.

But we've also -- one of the things on legislation is that you don't want to stay in today's technology. So you have to be careful on the Internet to make sure that legislation doesn't cut -- stick in old technology, because technology's creating some problems, but technology can also create some response to those problems very quickly and change fairly rapidly. We've supported P3P, which we may want to talk about a little bit later.

MR. MCLAUGHLIN: What is that?

MR. CERASALE: That's a privacy protection preference protocol --

MR. MCLAUGHLIN: You mean -- is this a form of opting out?

MR. CERASALE: Yeah --

MR. ROTENBERG: It's a very complicated, cumbersome, difficult system, and they're trying to propose this so as to avoid legislation. It's really not the way to go on --

MR. CERASALE: (Inaudible) -- browser.

MR. MCLAUGHLIN: Is it very fine-print, blue -- green eyeshade information that no one can really understand?

MR. CERASALE: No. What it does is you put in your preferences of what you want, whether information should be shared or not, and Web pages have to have in their headers whether -- what they do. And if there's a match, you can go to the Web page. If there isn't, you can't get to that Web page, and the screen --

MR. ROTENBERG: Right. In other words, if you value your privacy and you go online to a website, they'll just turn you away, because they're not going to protect your privacy when they try to do business with you.

MR. MCLAUGHLIN: We'll be right back.

(Announcements.)

MR. MCLAUGHLIN: We know that technology can invade privacy in many varied and disturbing ways, but can technology be used to protect and enhance privacy? We'll put that question to our guests in just a moment, but first here are their distinguished profiles:

Born: Boston. Forty-one years of age. Wife: Anna (sp). Two children. Jewish. Democrat.

Harvard College, B.A., cum laude. Stanford Law School, doctor of laws.

U.S. Senate Judiciary Subcommittee on Technology and the Law, Democrat counsel, two years.

Georgetown University Law Center, adjunct professor, 10 years and currently.

Electronic Privacy Information Center, EPIC, director, seven years and currently.

Awards: Year 2000 Norbert Wiener Award for Professional and Social Responsibility. Named one of the 50 Most Influential People on the Internet by Newsweek and one of the 25 Leaders of the New Economy by Business Week.

Editor, two books, including "Technology and Privacy."

Tournament chess player, one of the top players in the nation's capital.

Marc Rotenberg.

Born: Meriden, Connecticut. Fifty-three years of age. Wife: Jan (sp). Three children. Democrat.

Wesleyan University, B.A. U.S. Army, specialist, two years. University of Virginia School of Law, doctor of laws.

U.S. Postal Service, Office of Rate and Classification Law, three years. Postal Rate Commission, numerous positions, 12 years.

Federal Trade Commission, attorney advisor to Chairman Janet Steiger, worked on antitrust and advertising issues, one year.

U.S. House of Representatives Committee on Post Office and Civil Service, deputy general counsel, three years.

Direct Marketing Association, senior vice president, six years and currently.

Gerald Edward Cerasale.

The city of Tampa, Florida, has installed video cameras which remotely monitor the faces of people in crowds in the downtown district, and those are sorted out against the database of known criminals. So you have video monitors backed up by computer recognition technology.

This leads Dick Arney, who is the majority leader in the United States House of Representatives, to say with great passion, "This is a full-scale surveillance system. Do we really want a society where one cannot walk down the street without Big Brother tracking our every move?"

Is Arney right? I ask you, Marc Rotenberg.

MR. ROTENBERG: I think Mr. Arney is absolutely right on this one. I think we need to take immediate steps to suspend the use of these cameras in public places and also to understand the role of the Department of Defense in funding the research on monitoring American citizens on our own soil.

MR. MCLAUGHLIN: What about the FBI Carnivore program? I believe that Mr. Arney is opposed to that, too.

MR. ROTENBERG: Yes, as are we. In fact, we're in the midst right now of litigation with the FBI over this. We do not --

MR. MCLAUGHLIN: What's the flap?

MR. ROTENBERG: The question is whether the bureau can use a system of surveillance that captures all traffic moving across the Internet without satisfying the appropriate standard under the federal wiretap statute. We don't think that they're complying with the law.

MR. MCLAUGHLIN: And what is the present state of affairs?

MR. ROTENBERG: Well, so far, the best that they can do is rename the program, but, of course, that doesn't make the problem go away. This is another area where we think Congress should get involved, look closely, and decide if it's appropriate for the U.S. government to continue--

MR. MCLAUGHLIN: This is not really your area of concern, is it, either the Carnivore or those cameras in Tampa?

MR. CERASALE: No, it's not, but we don't think the government should be using that information -- that's a special thing with a power of the state and a police power, and that's why we fight government getting marketing data.

MR. MCLAUGHLIN: It's been a fast half hour. I want to thank you both for being here -- Jerry Cerasale and Marc Rotenberg.  
LOAD-DATE: August 14, 2001

ROCKY MOUNTAIN NEWS (Denver CO)  
May 21, 2001, Monday

SECTION: Business; Ed. Final; Pg. 2B

LENGTH: 223 words

HEADLINE: FBI HAS EYES ON YOUR CREDIT FILES

BYLINE: By Darrell Proctor, Mile High Tech Editor

BODY: I recall one of my high school teachers who told us the FBI was all-seeing and all-knowing.

But just what do they see and what do they know?


Richard Smith, the Massachusetts-based chief technology officer of the Denver-based Privacy Foundation ([www.privacyfoundation.org](http://www.privacyfoundation.org)), said the Federal Bureau of Investigation spent \$8 million last year with ChoicePoint, an Alpharetta, Ga., database firm.

Smith said the FBI was buying dossiers on almost every adult living in the United States.

ChoicePoint formerly was part of Equifax, one of the three U.S. credit bureaus. The company uses Social Security numbers as an identifier as it compiles information about people from credit reports and public records (property tax documents, professional license applications, court files, etc.). It then sells that information to businesses, governmental and other agencies.

Smith said he obtained his report from ChoicePoint. It was more than 60 pages long with information about him and his wife. He also said it contained more misinformation than true facts, making him question how the FBI could use it in any meaningful way.

If you want to see your own dossier, you can order it (the cost is \$20) through CDB InfoTek, which is owned by ChoicePoint, at [www.cdb.com/public/companyinfo/privacy.html](http://www.cdb.com/public/companyinfo/privacy.html)

**ba**  
  
Our investigative personnel were cautioned to treat public record database information as you would any other source. Verify the information before you "bust down any doors to make an arrest".



# *Gramm-Leech-Bliley Act*

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- **Limits access to Credit Header information.**
  - It does have a law enforcement exception, however at least one of the credit bureaus has stated they will no longer make credit header information.
- **Lawsuit of IRSG and TransUnion versus FTC**



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Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

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(b)(7)(D)

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(b)(7)(E)

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(b)(7)(F)

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(b)(9)

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(k)(7)

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19 Page(s) withheld for the following reason(s): CHOICEPOINT DOCUMENTS/FBI DOCUMENTS CONTAINING CHOICEPOINT INFORMATION

- The following number is to used for reference regarding these pages:  
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SUBJECT: CHOICEPOINT

FILE NUMBER: \_\_\_\_\_

ACTUAL PAGES 33 REVIEWED PAGES 1

DUPLICATE PAGES 7 RELEASED PAGES 0

REFERRED PAGES 0

WITHHELD PAGES 25

EXEMPTIONS CITED b5, b7c

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(k)(3)

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3 Pages were not considered for release as they are duplicative of DOCUMENT # 85

Page(s) withheld for the following reason(s): \_\_\_\_\_

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