

108TH CONGRESS  
2D SESSION

# H. R. 4414

To require designation of a senior official within the Office of Management and Budget as the Chief Privacy Officer, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2004

Mr. MEEK of Florida (for himself, Mr. TURNER of Texas, Mr. THOMPSON of Mississippi, Ms. LORETTA SANCHEZ of California, Mr. MARKEY, Mr. DICKS, Mr. FRANK of Massachusetts, Mr. ANDREWS, Ms. NORTON, Ms. LOFGREN, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, Mr. LANGEVIN, Mr. SANDLIN, Mr. MATSUI, Mr. SKELTON, Mr. HASTINGS of Florida, Mr. GREEN of Texas, Mrs. CAPPS, Mr. NADLER, Ms. ROYBAL-ALLARD, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. WYNN, and Ms. KILPATRICK) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To require designation of a senior official within the Office of Management and Budget as the Chief Privacy Officer, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Strengthening Home-  
5       land Innovation to Emphasize Liberty, Democracy, and  
6       Privacy Act” or the “SHIELD Privacy Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The protection of our Nation's civil liberties  
4 and privacy is fundamental to the American way of  
5 life.

6 (2) Strengthening our homeland security en-  
7 sures that our way of life and the rights protected  
8 by the Constitution remain intact.

9 (3) In developing homeland security initiatives,  
10 our Government must take care to protect funda-  
11 mental constitutional rights and strive to minimize  
12 unnecessary impositions on the freedoms and privi-  
13 leges enjoyed in the United States.

14 (4) As governments develop and employ new  
15 technologies and gather information from the private  
16 sector for homeland security efforts, they must en-  
17 sure that our society's constitutional guarantees re-  
18 lating to privacy, due process, and civil liberties are  
19 protected.

20 **SEC. 3. CHIEF PRIVACY OFFICER.**

21 (a) DESIGNATION.—The President shall designate a  
22 senior official within the Office of Management and Budg-  
23 et as the Chief Privacy Officer, who shall have primary  
24 responsibility for privacy policy throughout the Federal  
25 Government.

1 (b) SPECIFIC RESPONSIBILITIES.—The responsibil-  
2 ities of the Chief Privacy Officer shall include the fol-  
3 lowing:

4 (1) Assuring that the technologies procured and  
5 use of technologies by the Federal Government sus-  
6 tain, and do not erode, privacy protections relating  
7 to the use, collection, and disclosure of personally  
8 identifiable information.

9 (2) Assuring that personally identifiable infor-  
10 mation contained in systems of records (as that term  
11 is defined in section 552a of title 5, United States  
12 Code, popularly known as the “Privacy Act of  
13 1974”) is handled in full compliance with fair infor-  
14 mation practices required under that section.

15 (3) Evaluating legislative and regulatory pro-  
16 posals involving collection, use, and disclosure of  
17 personally identifiable information by the Federal  
18 Government.

19 (4) Exercising responsibility currently vested in  
20 the Director of the Office of Management and Budg-  
21 et with respect to privacy impact assessment rules,  
22 regulations, and oversight under section 208 of the  
23 E-Gov Act of 2002 (44 U.S.C. 3501 note).

24 (5) Preparing an annual report to the Congress  
25 containing an agency-by-agency analysis of Federal

1 activities that affect privacy, including complaints of  
2 privacy violations, implementation of section 552a of  
3 title 5, United States Code, internal controls, and  
4 other matters.

5 (c) AGENCY INFORMATION.—The head of each Fed-  
6 eral agency shall provide to the Chief Privacy Officer such  
7 information as the Chief Privacy Officer considers nec-  
8 essary for the completion of the annual reports under sub-  
9 section (b)(5).

10 (d) REPORT BY SECRETARY OF HOMELAND SECU-  
11 RITY.—Section 222(5) of the Homeland Security Act of  
12 2002 (6 U.S.C. 142(5)) is amended by striking “Con-  
13 gress” and inserting “the chief Privacy Officer of the Of-  
14 fice of Management and Budget”.

15 **SEC. 4. PRIVACY POLICY OF DEPARTMENTS AND INDE-**  
16 **PENDENT AGENCIES.**

17 (a) OFFICIALS RESPONSIBLE FOR PRIVACY POL-  
18 ICY.—The head of each department and each independent  
19 agency in the executive branch shall appoint a senior offi-  
20 cial of the department or independent agency, respectively,  
21 to assure primary responsibility for privacy policy, includ-  
22 ing the following:

23 (1) Assuring that technologies procured and use  
24 of technologies sustain, and do not erode, privacy

1       protections relating to the use, collection, and disclo-  
2       sure of personally identifiable information.

3           (2) Assuring that personally identifiable infor-  
4       mation contained in systems of records (as that term  
5       is defined in section 552a of title 5, United States  
6       Code, popularly known as the “Privacy Act of  
7       1974”) is handled in full compliance with fair infor-  
8       mation practices required under that section.

9           (3) Evaluating legislative and regulatory pro-  
10      posals involving collection, use, and disclosure of  
11      personally identifiable information by the Federal  
12      Government.

13          (4) Conducting privacy impact assessments  
14      under subsection (b).

15          (5) Ensuring that the department or agency  
16      protects personally identifiable information and in-  
17      formation systems from unauthorized access, use,  
18      disclosure, disruption, modification, or destruction in  
19      order to provide—

20           (A) integrity, by—

21               (i) guarding against improper infor-  
22               mation modification or destruction; and

23               (ii) ensuring information nonrepudi-  
24               ation and authenticity;

1 (B) confidentiality, by preserving author-  
2 ized restrictions on access and disclosure, in-  
3 cluding means for protecting personal privacy  
4 and proprietary information;

5 (C) availability, by ensuring timely and re-  
6 liable access to and use of that information; and

7 (D) authentication, by utilizing digital cre-  
8 dentials to assure the identity of users and vali-  
9 date their access.

10 (6) Submitting an annual report to the Director  
11 of the Office of Management and Budget on activi-  
12 ties of their agencies that affect privacy, including  
13 complaints of privacy violations, implementation of  
14 section 552a of title 5, United States Code, internal  
15 controls, and other matters.

16 (b) PRIVACY IMPACT ASSESSMENTS.—

17 (1) REQUIREMENT.—The official appointed  
18 under subsection (a) for a department or inde-  
19 pendent agency shall—

20 (A) assess the impact on privacy of each  
21 proposed action of the Department or agency  
22 that will require collecting, using, or accessing  
23 personally identifiable information from 10 or  
24 more persons; and

1 (B) make the results of such assessments  
2 publicly available through the World Wide Web  
3 site of the Department.

4 (2) MATTERS CONSIDERED.—Each assessment  
5 under this subsection regarding a proposed action  
6 shall consider the following:

7 (A) The type of any personally identifiable  
8 information to be collected, used, or accessed by  
9 the Department.

10 (B) Why such information will be collected,  
11 used, or accessed.

12 (C) The intended use of such information.

13 (D) The persons with whom such informa-  
14 tion will be shared.

15 (E) What notice or consent will be pro-  
16 vided to individuals regarding such information  
17 to be collected or accessed, and how that infor-  
18 mation will be shared.

19 (F) How such information will be secured.

20 (G) Whether a system of records will be  
21 created for purposes of section 552a of title 5,  
22 United States Code.

23 (H) The method by which, extent to which,  
24 and rate at which such collected information  
25 will be destroyed or returned.

1 **SEC. 5. COMMISSION ON PRIVACY, FREEDOM, AND HOME-**  
2 **LAND SECURITY.**

3 (a) ESTABLISHMENT.—There is established a com-  
4 mission to be known as the “Commission on Privacy,  
5 Freedom, and Homeland Security”.

6 (b) DUTIES OF COMMISSION.—

7 (1) IN GENERAL.—The Commission shall con-  
8 duct a comprehensive legal and factual study relat-  
9 ing to United States efforts to further homeland se-  
10 curity in a manner that protects privacy, civil lib-  
11 erties, and individual freedoms.

12 (2) MATTERS TO BE STUDIED.—The matters  
13 studied by the Commission under paragraph (1)  
14 shall at a minimum include the following:

15 (A) A review of whether Federal agencies  
16 are properly assessing the privacy implications  
17 of new homeland security technologies before  
18 implementing and deploying such technologies.

19 (B) The impact of existing Federal and  
20 State privacy statutes and regulations, legisla-  
21 tion pending before the Congress, and privacy  
22 protection efforts undertaken by the Federal  
23 Government, State governments, foreign gov-  
24 ernments, and international governing bodies on  
25 homeland security.

1 (C) The impact of Federal legislation en-  
2 acted since September 11, 2001, or pending be-  
3 fore the Congress, on civil liberties.

4 (D) The likely effectiveness of existing  
5 technologies for analyzing public and private  
6 sources of data and information to identify ter-  
7 rorists and prevent terrorist acts.

8 (c) FIELD HEARINGS.—

9 (1) IN GENERAL.—The Commission shall con-  
10 duct at least 2 field hearings in each of the 5 geo-  
11 graphical regions of the United States.

12 (2) DETERMINATION OF REGIONS.—For pur-  
13 poses of this subsection, the Commission may deter-  
14 mine the boundaries of the 5 geographical regions of  
15 the United States.

16 (d) REPORT.—

17 (1) IN GENERAL.—No later than 24 months  
18 after the date on which the Commission first meets,  
19 the Commission shall submit to the President and  
20 the Congress a comprehensive report of the Commis-  
21 sion's findings, recommendations, and conclusions.  
22 Such report shall include a summary of the report  
23 submitted to the Commission by the National Re-  
24 search Council under subsection (g)(9), and a sum-

1       mary of any other material relied on by the Commis-  
2       sion in the preparation of its report.

3           (2) RECOMMENDATIONS.—The report under  
4       paragraph (1) shall include recommendations re-  
5       garding the following:

6           (A) Steps Federal agencies should take  
7       when considering new homeland security tech-  
8       nologies to ensure that privacy implications are  
9       adequately considered before such technologies  
10      are implemented.

11          (B) Whether additional legislation is nec-  
12      essary to reform or augment current laws and  
13      regulations relating to privacy and homeland se-  
14      curity, including specific reform proposals and  
15      an analysis of the financial costs of any pro-  
16      posed changes.

17          (C) Safeguards and protection that should  
18      be in place when the Federal Government uses  
19      an individual's personally identifiable informa-  
20      tion obtained from a commercial database or a  
21      list for counterterrorism and homeland security  
22      purposes.

23          (3) ADDITIONAL REPORT.—The Commission  
24      shall submit to the Congress and the President, with  
25      the report under paragraph (1), any additional re-

1 port of dissenting opinions or minority views by any  
2 member of the Commission.

3 (4) INTERIM REPORT.—The Commission may  
4 submit to the Congress and the President interim  
5 reports approved by a majority of the members of  
6 the Commission.

7 (e) STRUCTURE OF COMMISSION.—

8 (1) MEMBER AND APPOINTMENT.—The Com-  
9 mission shall be composed of 10 members appointed  
10 as follows:

11 (A) 1 member appointed by the President,  
12 who shall be the chairperson of the Commis-  
13 sion.

14 (B) 1 member appointed jointly by the mi-  
15 nority leader of the House of Representatives  
16 and the minority leader of the Senate, who shall  
17 be the vice chairperson of the Commission.

18 (C) 2 members appointed by the majority  
19 leader of the House of Representatives.

20 (D) 2 members appointed by the minority  
21 leader of the House of Representatives.

22 (E) 2 members appointed by the majority  
23 leader of the Senate.

24 (F) 2 members appointed by the minority  
25 leader of the Senate.

1           (2) QUALIFICATIONS OF MEMBERS.—The ap-  
2           pointing authorities under subsection (1) shall seek  
3           to ensure that the membership of the Commission  
4           has a diversity of views and experiences on the mat-  
5           ters to be studied by the Commission, including  
6           views and knowledge of law, civil rights and liberties,  
7           privacy matters, homeland security, information  
8           technology, security, database integration, and law  
9           enforcement.

10          (3) DATE OF APPOINTMENT.—The appointment  
11          of the members of the Commission shall be made not  
12          later than 30 days after the date of the enactment  
13          of this Act.

14          (4) TERMS.—Each member of the Commission  
15          shall be appointed for the life of the Commission.

16          (5) VACANCIES.—Any vacancy in the Commis-  
17          sion shall be filled in the same manner in which the  
18          original appointment was made.

19          (6) COMPENSATION; TRAVEL EXPENSES.—  
20          Members of the Commission shall serve without pay,  
21          but shall receive travel expenses, including per diem  
22          in lieu of subsistence, in accordance with sections  
23          5702 and 5703 of title 5, United States Code.

24          (7) QUORUM.—A majority of the members of  
25          the Commission shall constitute a quorum for pur-

1 poses of conducting business, except that 2 members  
2 of the Commission shall constitute a quorum for  
3 purposes of conducting a hearing.

4 (8) MEETINGS.—

5 (A) IN GENERAL.—The Commission shall  
6 meet at the call of the Chairperson or a major-  
7 ity of its members.

8 (B) INITIAL MEETING.—Not later than 45  
9 days after the date of the enactment of this  
10 Act, the Commission shall hold its initial meet-  
11 ing.

12 (f) DIRECTOR; STAFF; EXPERTS AND CONSULT-  
13 ANTS.—

14 (1) DIRECTOR.—

15 (A) APPOINTMENT.—Not later than 60  
16 days after the date of the enactment of this  
17 Act, the Commission shall appoint a Director,  
18 without regard to the provisions of title 5,  
19 United States Code, governing appointments to  
20 the competitive service.

21 (B) PAY.—The Director shall be paid at  
22 the rate payable for level III of the Executive  
23 Schedule established under section 5314 of such  
24 title.

25 (2) STAFF.—

1           (A) APPOINTMENT.—The Director may  
2           appoint such staff as the Director determines  
3           appropriate, without regard to the provisions of  
4           title 5, United States Code, governing appoint-  
5           ments in the competitive service.

6           (B) PAY.—The staff of the Commission  
7           shall be paid in accordance with the provisions  
8           of chapter 51 and subchapter III of chapter 53  
9           of title 5, United States Code, relating to classi-  
10          fication and General Schedule pay rates, but at  
11          rates not in excess of the maximum rate for  
12          grade GS–15 of the General Schedule under  
13          section 5332 of that title.

14          (3) EXPERTS AND CONSULTANTS.—The Direc-  
15          tor may procure temporary and intermittent services  
16          under section 3109(b) of title 5, United States Code.

17          (4) DETAILEES.—

18               (A) IN GENERAL.—Upon request of the  
19               Director, the head of any Federal department  
20               or agency may detail, on a reimbursable basis,  
21               any of the personnel of that department or  
22               agency to the Commission to assist it in car-  
23               rying out this Act.

24               (B) NOTICE.—Before making a request  
25               under this paragraph, the Director shall give

1 notice of the request to each member of the  
2 Commission.

3 (g) POWERS OF COMMISSION.—

4 (1) HEARINGS AND SESSIONS.—The Commis-  
5 sion may, for the purpose of carrying out this Act,  
6 hold hearings, sit and act at times and places, take  
7 testimony, and receive evidence to carry out its du-  
8 ties under subsection (b). The Commission may ad-  
9 minister oaths or affirmations to witnesses appear-  
10 ing before it.

11 (2) POWERS OF MEMBERS AND AGENTS.—Any  
12 member or agent of the Commission may, if author-  
13 ized by the Commission, take any action which the  
14 Commission is authorized to take by this section.

15 (3) OBTAINING OFFICIAL INFORMATION.—

16 (A) REQUIREMENT TO FURNISH.—Except  
17 as provided in subparagraph (B), if the Com-  
18 mission submits a request to a Federal depart-  
19 ment or agency for information necessary to en-  
20 able the Commission to carry out this Act, the  
21 head of that department or agency shall furnish  
22 that information to the Commission.

23 (B) EXCEPTION FOR NATIONAL SECU-  
24 RITY.—If the head of a Federal department or  
25 agency determines that it is necessary to with-

1 hold requested information from disclosure to  
2 protect the national security interests of the  
3 United States, the department or agency head  
4 shall not furnish that information to the Com-  
5 mission.

6 (4) **MAILS.**—The Commission may use the  
7 United States mails in the same manner and under  
8 the same conditions as other departments and agen-  
9 cies of the United States.

10 (5) **ADMINISTRATIVE SUPPORT SERVICES.**—  
11 Upon the request of the Director, the Administrator  
12 of General Services shall provide to the Commission,  
13 on a reimbursable basis, the administrative support  
14 services necessary for the Commission to carry out  
15 this section.

16 (6) **GIFTS AND DONATIONS.**—The Commission  
17 may accept, use, and dispose of gifts or donations of  
18 services or property to carry out this Act, but only  
19 to the extent or in the amounts provided in advance  
20 in appropriation Acts.

21 (7) **CONTRACTS.**—The Commission may con-  
22 tract with and compensate persons and government  
23 agencies for supplies and services, without regard to  
24 section 3709 of the Revised Statutes (41 U.S.C. 5).

25 (8) **SUBPOENA POWER.**—

1           (A) IN GENERAL.—If a Federal depart-  
2           ment or agency or any other person fails to  
3           supply information requested by the Commis-  
4           sion, the Commission may require by subpoena  
5           the production of the information. The Commis-  
6           sion shall transmit to the Attorney General a  
7           written notice at least 10 days in advance of  
8           the issuance of any such subpoena. A subpoena  
9           under this paragraph may require the produc-  
10          tion of materials from any place within the  
11          United States.

12          (B) INTERROGATORIES.—The Commission  
13          may, with respect only to information necessary  
14          to understand any materials obtained through a  
15          subpoena under paragraph (A), issue a sub-  
16          poena requiring the person producing such ma-  
17          terials to answer, either through a sworn depo-  
18          sition or through written answers provided  
19          under oath (at the election of the person upon  
20          whom the subpoena is served), interrogatories  
21          from the Commission regarding such informa-  
22          tion. A complete recording or transcription shall  
23          be made of any deposition made under this  
24          paragraph.

1           (C) CERTIFICATION.—Each person who  
2           submits materials or information to the Com-  
3           mission pursuant to a subpoena issued under  
4           subparagraph (A) or (B) shall certify to the  
5           Commission the authenticity and completeness  
6           of all materials or information submitted.

7           (D) TREATMENT OF SUBPOENAS.—Any  
8           subpoena issued by the Commission under sub-  
9           paragraph (A) or (B) shall comply with require-  
10          ments for subpoenas issued by a United States  
11          district court under the Federal Rules of Civil  
12          Procedure.

13          (E) FAILURE TO OBEY A SUBPOENA.—If a  
14          person refuses to obey a subpoena issued by the  
15          Commission under subparagraph (A) or (B),  
16          the Commission may apply to a United States  
17          district court for an order requiring that person  
18          to comply with such subpoena. The application  
19          may be made within the judicial district in  
20          which that person is found, resides, or transacts  
21          business. Any failure to obey the order of the  
22          court may be punished by the court as civil con-  
23          tempt.

24          (9) ARRANGEMENTS WITH NATIONAL RE-  
25          SEARCH COUNCIL.—

1 (A) IN GENERAL.—In carrying out its du-  
2 ties under subsection (b), the Commission shall  
3 arrange with the National Research Council of  
4 the National Academy of Sciences for assist-  
5 ance in conducting the studies required by the  
6 Commission under subsection (b)(2), including  
7 performance of the analysis required under sub-  
8 section (b)(2)(C).

9 (B) REPORT.—The arrangements entered  
10 into under (A) shall require that the National  
11 Research Council submit a report to the Com-  
12 mission detailing the results of its efforts no  
13 later than 15 months after the date on which  
14 the Commission first meets.

15 (C) USE OF FUNDS.—Of amounts appro-  
16 priated to carry out this section, up to  
17 \$750,000 shall be available to the Commission  
18 to carry out this paragraph.

19 (h) BUDGET ACT COMPLIANCE.—Any new contract  
20 authority authorized by this section shall be effective only  
21 to the extent or in the amounts provided in advance in  
22 appropriation Acts.

23 (i) PRIVACY PROTECTIONS.—

24 (1) DESTRUCTION OR RETURN OF INFORMA-  
25 TION REQUIRED.—Upon the conclusion of the mat-

1       ter or need for which individually identifiable infor-  
2       mation was disclosed to the Commission, the Com-  
3       mission shall either destroy the individually identifi-  
4       able information or return it to the person or entity  
5       from which it was obtained, unless the individual  
6       that is the subject of the individually identifiable in-  
7       formation has authorized its disclosure.

8               (2) DISCLOSURE OF INFORMATION PROHIB-  
9       ITED.—Any individual employed by an individual,  
10      entity, or organization under contract to the Com-  
11      mission shall be considered an employee of the Com-  
12      mission for the purposes of section 1905 of title 18,  
13      United States Code.

14              (3) PROPRIETARY BUSINESS INFORMATION AND  
15      FINANCIAL INFORMATION.—The Commission shall  
16      protect from improper use, and may not disclose to  
17      any person, proprietary business information and  
18      proprietary financial information that may be viewed  
19      or obtained by the Commission in the course of car-  
20      rying out its duties under this section.

21              (4) INDIVIDUALLY IDENTIFIABLE INFORMATION  
22      DEFINED.—For the purposes of this section, the  
23      term “individually identifiable information” means  
24      any information, whether oral or recorded in any  
25      form or medium, that identifies an individual, or

1       with respect to which there is a reasonable basis to  
2       believe that the information can be used to identify  
3       an individual.

4       (j) TERMINATION OF COMMISSION.—The Commis-  
5       sion shall terminate 30 days after submitting a report  
6       under subsection (d)(1).

7       (k) AUTHORIZATION OF APPROPRIATIONS.—

8               (1) IN GENERAL.—There is authorized to be  
9       appropriated to the Commission \$4,750,000 to carry  
10      out this Act.

11             (2) AVAILABILITY.—Any sums appropriated  
12      pursuant to the authorization in subsection (a) shall  
13      remain available until expended.

○