

**REPORT OF THE COLORADO TASK FORCE  
ON INFORMATION TECHNOLOGY**

**DECEMBER 2001**

I.	INTRODUCTION.....	3
II.	PREPARATION OF THE REPORT .....	4
III.	FACTORS GUIDING THE TASK FORCE’S CONSIDERATION OF ISSUES .....	5
IV.	RECOMMENDATIONS .....	7
V.	TASK FORCE MEMBERS .....	9
VI.	LISTING OF PRESENTERS AND MATERIALS.....	10
VII.	CONTRIBUTORS TO COLORADO TASK FORCE ON INFOMRATION TECHNOLOGY.....	13

## I. INTRODUCTION

On May 23, 2000, the Colorado Legislature enacted Section 24-37.5-301, et seq., creating the Task Force on Information Technology (“Task Force”). The Task Force was created as an arm of the Department of State. The Task Force, chaired by Secretary of State Donetta Davidson, was mandated to recommend legislation and administrative policies by year end for the 2002 Legislative Session governing the appropriate collection, storage and transfer of data by and among information systems both public and private. In the course of its work, the Task Force considered significant policy issues relating to the rights of the Citizens of the State of Colorado to privacy of personal information in the public and private sectors.

## II. PREPARATION OF THE REPORT

The Task Force was made up of 21 members, including the Secretary of State, a designee of the Attorney General's Office, representatives of the Executive Branch, government agencies, a representative of the judicial branch, and 15 representatives of the private sector representing various industry groups and consumers. The Task Force conducted monthly public meetings and maintained minutes. The minutes were posted to the Secretary of State's website.

In preparing its report, the Task Force strategy was to first develop information relating to the collection, storage and transfer of information and the appropriate uses of that information as it may affect citizens of Colorado. While limited by its resources and time, the Task Force attempted a broad and comprehensive approach to the development of its knowledge in relevant areas. The Task Force solicited and obtained information from individuals and entities with a variety of backgrounds and perspectives as it collected the information which formed the basis for its recommendations.

In the course of the preparation of the report for the Legislature, the Task Force sought and established factors which guided its consideration of issues. These factors were developed over a period of time as a result of the input from various presenters. These factors directly influenced the recommendations provided to the Legislature in this report.

The Task Force concluded from its efforts that a wealth of issues exist with respect to the impact on the citizens of Colorado of the explosive growth of technology permitting the collection, storage and transfer of information regarding the state's citizens. Rather than identifying every issue and providing a solution to each issue, the Task Force identified those issues over which the State could have the greatest impact and move quickly to achieve measurable results. The Task Force also concluded that the landscape of information gathering and use is rapidly changing and that the Task Force's observations and recommendations are time specific to the current landscape.

### III. FACTORS GUIDING THE TASK FORCE'S CONSIDERATION OF ISSUES

The Task Force utilized its monthly meetings to develop its perspectives on issues and recommendations. These monthly meetings provided a forum in which individuals and entities were able to make presentations and Task Force members were able to share their industry-diverse experience with fellow Task Force members. These meetings developed certain findings which guided the Task Force in its ultimate recommendations.

The findings which the Task Force utilized in its recommendations included the following:

- A. Colorado has an extensive body of law relating to the right to privacy, deceptive trade practices, medical privacy, and open records laws. [add citations] When addressing the impact of technology on the privacy rights of Colorado citizens any legislation or policy must be considered in the context of all of these statutes. Additionally, legislation and policy must recognize the relationship between state legislation/regulation with that of the federal legislation/regulation. The use, collection, storage and transfer of information and the ability to reasonably protect Colorado citizens from the inappropriate use of such information must be considered in the context of both state and federal laws and regulations.
- B. The collection, storage, transfer and use of information occurs across jurisdictional and geographical boundaries. By way of example, the size and diversity of the internet makes it virtually impossible for a state to legislate internet activity because of the state's limited or nonexistence jurisdiction over activities on the internet. Additionally, care must be exercised in implementing legislation or policies which would inhibit technological innovation that may benefit the citizens of the State of Colorado.
- C. In enacting legislation or policies the State must proceed in a manner which is "technology neutral" to avoid a preference for a particular technology or to limit technological growth or applications.
- D. The federal government has taken a significant role in both the privacy and internet areas. Federal statutes such as Gramm-Leach- Bliley ("G-L-B"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the role of federal agencies such as the FTC, all indicate significant Federal regulation of important privacy and technology areas. These federal statutes and regulations provide a testing ground for appropriate governmental response to ongoing issues. Much will be learned from the success or failure of federal statutes and regulations. The State will have an opportunity to move promptly to protect Colorado citizens if voids in existing federal statutes or regulations are identified.
- E. With the rapid changes that are occurring in the private sector relating to technology and the handling of personal information, it is difficult to identify

unintended consequences of statutes or regulations. Unintended consequences can significantly hinder the ability of the public/private sector to properly deploy technology and hinder the development of products and services that benefit consumers.

- F. Compliance with statutes, regulations or policies can impose a significant cost on industry and government. Outward appearances suggest, for instance, that state agencies, offices and departments, have taken a diverse and inconsistent approach to the collection, storage, transfer and use of information collected by those offices, agencies and departments. While a uniform approach to the collection, storage, transfer and use of information by the state is important, the cost impact of any legislation, regulation or policies implementing a uniform approach must be carefully considered.
- G. Consumers have the perception that they lose control of personal data resulting from technological developments, including the internet. At the same time, consumer demand for legislation or regulation in this area appears muted. Consumers recognize that significant benefits are gained as a result of the free market development of the Internet and that these benefits outweigh liabilities at this time. There additionally appears to be a generational distinction regarding the level of concern relating to privacy and technology. Younger citizens and frequent users of the Internet express less concern regarding privacy and technological issues than do older, non-technology oriented citizens.
- H. Legislation, regulation or policies developed by the state must consider the competitive effect of such on the private sector. The development of compliant systems can be extraordinarily costly if legislation or regulations mandate that the systems be complex beyond that reasonably required to be achieve the legislative or regulatory goal. Such added complexities may also limit the ability of small entrepreneurs to provide technological services in a competitive manner, thus ceding the marketplace to only the largest providers.
- I. The resolution of issues relating to information collection, transfer, storage and use naturally implicates individual and commercial free speech.
- J. Consideration of issues relating to information collection, storage, transfer and use among governmental agencies must recognize the multiple governmental layers. Common standards for the collection, storage, transfer and use of information should be implemented at the state, county, city and district levels.
- K. In addition to legislation, regulation and policy, the state can provide a benefit to Colorado citizens by increasing their awareness of technology issues so that citizens can better protect themselves in this new technological era.

#### IV. RECOMMENDATIONS

The Colorado Task Force on Information Technology considered the factors identified above in developing its various recommendations for the Legislature's consideration in the 2002 Legislative Session. The Task Force recommends legislative and administrative policies to be adopted by the Legislature and state agencies regarding the collection, storage, transfer and use of information as follows:

- A. The state should immediately adopt by legislation, regulation and policy a uniform State Privacy Policy for the purposes of standardizing the collection, storage, transfer and use of personally identifiable information ("PII"). That policy shall provided:
1. Declare a policy of protection for individual privacy;
  2. Minimize data collected to the least information required to complete a particular transaction;
  3. Provide clear notice of the State Open Records Act and its effect on privacy;
  4. Include a method for feedback from the public on compliance to the Privacy Policy;
  5. Ensure that contracts between the State and third party providers comply with the State Privacy Policy;
  6. Adopt a unitary policy among different agencies with the least amount of deviation;
  7. Establish a unitary policy for the collection of all data regardless of the source or medium;

In adopting a uniform State Privacy Policy, the State should incorporate fair information practice principles and provide for audit and enforcement of those principles within governmental entities. An office or agency within the state should be empowered to audit and ensure compliance with the State's Privacy Policy and fair information practice principles. Fair information practice principals which should be incorporated into any legislation, regulation, or policy include:

- a. A notice principle that provides clear and conspicuous notice of information practices before any personal information is collected through any medium.
- b. A choice principle which allows the information giver options as to how that information may be used if at all, beyond the use necessary to complete the contemplated transaction.
- c. Consideration of whether an access principle should be adopted which allows an individual to access data about himself or herself and to contest its accuracy.

- d. A security principle which obligates the collector of the information to protect the personal information against unauthorized access, use or disclosure.

The Privacy Policy would limit governmental agencies from providing PII to third parties unless specifically required by statute or the Colorado Public Records Act. The Privacy Policy would permit PII to be shared among other agencies or entities to the extent that the sharing is required for the agencies to accomplish their statutorily mandated goals.

- B. In the foreseeable future, the State should recognize that the federal government has assumed a lead role in matters relating to a number of significant industries or services. Colorado should refrain from enacting legislation or regulations in those areas where federal legislation or regulation have preempted the fields such as the financial services industry (Gramm-Leach-Bliley Act), medical services (Health Insurance, Portability and Access Act), and educational areas (Federal Education Right and Privacy Act). While the Task Force recognized that states may enact legislation that is more restrictive than the federal legislation relating to privacy, it was felt by the Task Force that current federal efforts in this area should be allowed to play out to determine the effectiveness of the federal legislation or regulation in protecting the privacy expectations of Colorado citizens.
- C. Colorado should refrain from enacting legislation or regulations impacting internet commerce at this time. Reliance should be placed on existing statutes relating to privacy in consumer protection and action taken only when the state identifies actual needs that can be effectively addressed within the enforcement ability of the state.

## V. TASK FORCE MEMBERS

Chair: Donetta Davidson, Colorado Secretary of State  
Ken Gordon, Colorado State Senator  
Matt Smith, Colorado State Representative  
Kathy Krause, Senior Counsel, Qwest Communications  
David Baker, Executive Vice President, First Banks of Colorado  
Bill Mitchell, Heritage Bank  
Jay Keyworth, Board Member, Hewlett Packard  
Ron Binz, President, Competition Policy Institute  
Sara Rosene, Grand County Clerk & Recorder  
Rick O'Donnell, Director of Policy and Initiatives, Governor's Office  
Larry Wolk, Vice President and Senior Medical Director, CIGNA Healthcare  
Jamie Hamilton, President and CEO, Home Loan Investment Company  
Al Dominguez, Weld County District Attorney  
Spencer Guthrie, Glaxosmithkline  
Joe Dickerson, Dickerson Financial Investigation Group  
Amy Redfern, Executive Director, StorageTek  
Dr. Stephen Lucas, Privacy Council  
Jim Ginsburg, Jones Intercable  
Mary Pat Adams

VI. LISTING OF PRESENTERS AND MATERIALS

<u>Meeting Date</u>	<u>Presenter/Organization</u>	<u>Materials Presented</u>
February 16, 2001	John J. Byrne American Bankers Association Washington, D.C.	Slide presentation on Federal Statutory and Regulatory Scheme relating to Gramm- Leach-Bliley Financial Services Modernization Act of 1999 (See Tab A)
February 16, 2001	Alex Brittin, Esq. McKenna & Cuneo, L.L.P. Washington, D.C.	Slide presentation on Federal Statutory and Regulatory Scheme relating to the Health Insurance Portability and Accountability Act of 1996 (See Tab B)
February 16, 2001	Stephen Keating Richard Smith Privacy Foundation Denver, Colorado	Led discussion on Overview of Privacy Issues and Current Legislation/Regulatory Responses at the Federal and State Level (No materials)
March 30, 2001	Theodore D. Hotham Regional Director of Government Relations POLK Southfield, Michigan	Address to Task Force members clarifying correspondence dated 3/26/01 from Polk (See Tab C)
March 30, 2001	Representatives of Direct Marketing Association	Spoke on the issues of identity theft and data collected by direct marketers
May 21, 2001	Patricia Faley, Vice President Emily Hackett Direct Marketing Association, Inc. Ethics and Consumer Affairs	Presentation on privacy issues relating to consumers and the direct marketing industry (Presentation materials and brochures are too voluminous to include with this report)

May 21, 2001		Documentation was submitted, without presentation, by Harris Interactive, Inc. on The Privacy Leadership Initiative, Inc. (Tab D)
July 31, 2001	Terry Huffine, Deputy Director Governor's Office Of Innovation and Technology	Led discussion on draft of Website Data Collection Privacy Policy (Tab E).  Colorado Statewide Portal – Survey Information and Potential Project TimeFrames (Tab F)
July 31, 2001	Natalie Hanlon-Leh, Esq. Faegre & Benson, LLP	Privacy Policies and Audits for State Agencies and a Summary of the Colorado Open Records Act (See Tab G)
July 31, 2001		Responses received from various State Departments to Ms. Davidson's request to inform her office of the Department's Internet Privacy Statements (Tab H)
September 17, 2001	Eric J. Ellman, Director Government Relations Associated Credit Bureaus, Inc.	Correspondence of September 14, 2001, commenting on Colorado's proposed set of principles for the collection, storage and dissemination of consumer information from government websites (Tab I)
September 17, 2001	Privacy Foundation	Analysis on Workplace Surveillance (Tab J)
September 17, 2001	Faegre & Benson LLP	Follow-up report to Ms. Hanlon-Leh's 7/31/01 presentation  Drafting an Internet Privacy Policy for the State of

Colorado – Explanation of  
Issues Particular to State  
Government Privacy Policies  
Together with Trends from  
Other States and Comments  
on Secretary of State and  
Draft State of Colorado  
Privacy Policies

VII. CONTRIBUTORS TO COLORADO TASK FORCE  
ON INFORMATION TECHNOLOGY

1. The Bank  
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Balance: \$13,765