

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (74) 29

ON THE PROTECTION OF THE PRIVACY OF INDIVIDUALS VIS-A-VIS ELECTRONIC DATA BANKS IN THE PUBLIC SECTOR

*(Adopted by the Committee of Ministers on 20 September 1974
at the 236th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Desiring to contribute to public understanding and confidence with regard to new administrative techniques which public authorities in the member states are using in order to ensure the optimal performance of the tasks entrusted to them;

Recognising that the use of electronic data banks by public authorities has given rise to increasing concern about the protection of the privacy of individuals;

Considering that the adoption of common principles in this field can contribute towards a solution of these problems in the member states and can help to prevent the creation of unjustified divergencies between the laws of the member states on this subject;

Recalling its Resolution (73) 22 on the protection of privacy of individuals vis-à-vis electronic data banks in the private sector;

Bearing in mind Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

Recommends the governments of member states :

a. to take all steps which they consider necessary to give effect to the principles set out in the annex to the present resolution;

b. to inform the Secretary General of the Council of Europe in due course of any action taken in this field.

ANNEX
to Resolution (74) 29

The following principles apply to personal information stored in electronic data banks in the public sector.

For the purposes of this resolution, "personal information" means information relating to individuals (physical persons) and "electronic data bank" means any electronic data processing system which is used to handle such information.

1.

As a general rule the public should be kept regularly informed about the establishment, operation and development of electronic data banks in the public sector.

2.

The information stored should be :

- a. obtained by lawful and fair means,
- b. accurate and kept up to date,
- c. appropriate and relevant to the purpose for which it has been stored.

Every care should be taken to correct inaccurate information and to erase inappropriate, irrelevant or obsolete information.

3.

Especially when electronic data banks process information relating to the intimate private life of individuals or when the processing of information might lead to unfair discrimination,

a. their existence must have been provided for by law, or by special regulation or have been made public in a statement or document, in accordance with the legal system of each member state ;

b. such law, regulation, statement or document must clearly state the purpose of storage and use of such information, as well as the conditions under which it may be communicated either within the public administration or to private persons or bodies ;

c. that data stored must not be used for purposes other than those which have been defined unless exception is explicitly permitted by law, is granted by a competent authority or the rules for the use of the electronic data bank are amended.

4.

Rules should be laid down to specify the time-limits beyond which certain categories of information may not be kept or used.

However, exceptions from this principle are acceptable if the use of the information for statistical, scientific or historical purposes requires its conservation for an indefinite duration. In that case, precautions should be taken to ensure that the privacy of the individuals concerned will not be prejudiced.

5.

Every individual should have the right to know the information stored about him.

Any exception to this principle or limitation to the exercise of this right should be strictly regulated.

6.

Precautions should be taken against any abuse or misuse of information. For this reason :

a. everyone concerned with the operation of electronic data processing should be bound by rules of conduct aimed at preventing the misuse of data and in particular by a duty to observe secrecy;

b. electronic data banks should be equipped with security systems which bar access to the data held by them to persons not entitled to obtain such information and which provide for the detection of misdirections of information, whether intentional or not.

7.

Access to information that may not be freely communicated to the public should be confined to the persons whose functions entitle them to take cognisance of it in order to carry out their duties.

8.

When information is used for statistical purposes it should be released only in such a way that it is impossible to link information to a particular person.