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Interagency Information Sharing: A Legal Vacuum

Wm. Edward Baugher

INTERAGENCY INFORMATION SHARING: A LEGAL VACUUM

Federal, state, and local governments are making increasing demands for better information in order to plan, operate, and evaluate programs to meet public needs.[1] As these needs become more complex, many programs are taking the form of cooperative arrangements involving joint action and the sharing of resources by several governmental levels.[2] This development, spurred in recent years by the dramatic increase in federal aid, is creating a whole new set of working relationships among governments as well as within governments.[3] Intergovernmental approaches to the solution of public problems require that information be readily available to those agencies which share responsibility. Such information flow allows concerted action to broaden educational opportunities, help economically depressed areas, provide health and medical care, improve transportation facilities, and transform blighted neighborhoods.[4]

A recent study reported that information systems operated by local governments were seriously deficient in providing essential information to local agency officials. The main reason cited for this deficiency was the present inability of local governments to escape from the shackles of outdated methodology.[5]

Modern computerized systems of information storage and retrieval may eliminate these shortcomings. Such a system has been initiated in at least one county in California.[6] That program envisions a total information system, including ten subsystems in a comprehensive integrated data bank, which realizes the increasing interdependencies and interrelationships among departments. The objectives of the system include reducing duplication in the collection, storage, and processing of data and increasing the accessibility and usefulness of this data.[7] A system envisioning such a compre-

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[1] LOCKHEED MISSILES AND SPACE CO., CALIFORNIA STATEWIDE INFORMATION SYSTEM STUDY 4-6 (1965).

[2] *Id.* at 4-18.

[3] *See* The President's Intergovernmental Task Force on Information Systems, The Dynamics of Information Flow, April 1968.

[4] *Id.* at 1.

[5] *Id.* at 13.

[6] *See generally* The Santa Clara County Executive, Local Government Information Control: An Inventory of Data Processing for the County of Santa Clara, April 1965 [hereinafter referred to as L.O.G.I.C.].

[7] Letter from Howard W. Campen (Santa Clara County Executive) to the Santa Clara County Board of Supervisors, April 14, 1965, in *Foreword* to L.O.G.I.C.

hensive scheme of information storage and retrieval must take into consideration what information can be legally exchanged between local agencies.

This comment will provide guidelines for determining the legality of exchanging information protected by confidentiality requirements. Although there is a paucity of case law and statutes directly in point, relevant policy considerations will be drawn from the analogous area of public access to government meetings[8] and information.[9] Public access to governmental information advances the general policy against secrecy in government proceedings. However, carte blanche access to information is restricted by the governmental privilege and the individual's right to privacy.[10] These limiting factors on the public's right to free access to government records will be examined to determine their application to interagency exchange of information. From this general background specific sources of information will be explored. Areas which are not only limited by the general policy considerations, but are additionally protected by confidentiality statutes will serve as useful examples in ascertaining the nature and extent of the information which may be exchanged. Such examples include juvenile and welfare records,[11] and materials protected by professional privilege.[12]

Although evaluation of the mechanical safeguards adaptable to computerized information is beyond the scope of this article, present technology seems able to cope with the problem of unauthorized disclosure.[13]

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8 CAL. GOV'T CODE § 54953 (West 1966).

9 CAL. GOV'T CODE § 6250-60 (West Supp. 1968).

10 *See* pp. 305-08 *infra*.

11 CAL. WELF. & INST'NS CODE § 781 (West Supp. 1968); CAL. WELF. & INST'NS CODE § 10850 (West 1966).

12 *See* CAL. EVID. CODE § 992 (West Supp. 1968) (doctor-patient privilege); CAL. EVID. CODE §§ 950, 951, 953, 955-62 (West 1966), 952, 954 (West Supp. 1968) (attorney-client privilege); CAL. EVID. CODE §§ 1030-34 (West 1966) (clergyman-penitent); CAL. EVID. CODE §§ 1011, 1013-16, 1018-26 (West 1966), 1010, 1012, 1017 (West Supp. 1968) (psychotherapist-patient relationship).

13 *See generally The Computerization of Government Files: What Impact on the Individual?*, 15 U.C.L.A.L. REV. 1374, 1438-52 (1968). This section of the article ponders the effectiveness of proposed safeguards and considers the methods now employed. The available techniques indicate much improvement over existing manual safeguards. One system would involve a plastic card with electronic impulses recorded on it designating what information would be disclosed. A more sophisticated procedure involves the computer's ability to recognize different voice patterns. The individual would speak into a microphone and his voice would be transformed into impulses, which in turn would open the computer memory bank to that information authorized to be disclosed to the speaking individual. A system presently in use at U.C.L.A. computer complex is the alphanumeric access number system. Under such a scheme only the recipient of the number knows the code; although this is a simple concept the numbers are easily changed if any unauthorized person learns of the number. *Id.* at 1445-47.

BACKGROUND POLICY CONSIDERATIONS

Although somewhat different considerations prevail in inter-agency sharing, the policies guiding the public's access to government meetings and records seem to be seminal principles. Public access to government meetings advances the general policy of openness in government affairs; however, subsequent cases and statutory provisions provide a series of limitations on this policy of openness.[14] These limitations revolve around either a governmental interest in nondisclosure, such as the interest of national security,[15] or the individual's right to privacy.[16] Similarly, when the public seeks access to government records[17] it is limited as to what information can be obtained.[18] The inhibiting considerations revolve around

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[14] All meetings of legislative bodies at a local agency shall be open to the public, and such persons shall be permitted to attend these meetings. CAL. GOV'T CODE § 54953 (West 1966). This is known as the Ralph M. Brown Act and was intended to enable the public to attend government meetings which concerned public business. CAL. GOV'T CODE § 54950 (West 1966). Openness of meetings is controlled by a restrictive clause in the chapter. Although which meetings will be closed to public participation is not clearly delineated by the chapter, the act does contain two express exceptions. CAL. GOV'T CODE § 54957 (West 1966). The first occurs when the governing board takes personal action concerning the employment or dismissal of an officer or employee. Matters of national security are also excepted.

Under an analysis by exclusion, other meetings of administrative agencies would seem to be open to the public. When these boards are discussing matters guarded by confidentiality statutes a conflict is apparent. CAL. EVID. CODE § 952 (West Supp. 1968) (attorney-client privilege); CAL. WELF. & INST'NS CODE § 781 (West 1966) (juvenile records). The conflict between the confidentiality statutes and the Brown Act is resolved in favor of confidentiality. A statutory example of this is, when a school board is discussing a pupil, no one except those with the consent of the parent or guardian can attend the meeting. CAL. EDUC. CODE § 10751 (West 1969). Case law also supports this reasoning. In Sacramento Newspaper Guild v. Sacramento Co. Bd. of Supervisors, 263 A.C.A. 43, 69 Cal. Rptr. 480 (1968), the court discussed at considerable length the right of the local agencies to hold meetings with counsel and to prohibit the public attendance. The court's holding was that the Evidence Code provisions relating to the attorney-client privilege were not superceded by the Brown Act. These are a few examples in which the general policy of openness of administrative meetings is subordinated to a policy provision designed to protect either a governmental interest in nondisclosure or an individual's personal interest in privacy.

[15] CAL. GOV'T CODE § 54957 (West 1966).

[16] *See* note 14 *supra.*

[17] CAL. GOV'T CODE §§ 6250-60 (West Supp. 1968).

[18] The legislature, mindful of the right of individuals to privacy, declared that access to information concerning the conduct of people's business is a fundamental and necessary right of every citizen. CAL. GOV'T CODE § 6250 (West Supp. 1968). Although the public has the right to inspect government records, the grant itself contains a limitation where the individual's right to privacy might be breached. CAL. GOV'T CODE § 6254(c) (West Supp. 1968).

Both the extent to which personal information is protected by an individual's right to privacy and, conversely, the extent to which the public has a valid interest in governmental records may be determined from judicial and legislative history prior to the Public Records Act.

California Code of Civil Procedure section 1894 gave the citizen the right to

the same concepts of advancing the public welfare through exercising the governmental privilege, and maintaining the individual's right to privacy.[19]

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inspect and take a copy of public writings except as otherwise provided by statute. California Code of Civil Procedure sections 1888 and 1894 defined the term "public writings." CAL. CODE CIV. PROC. § 1888 (West 1955), *repealed*, ch. 1473, § 24, [1968] Cal. Stats. CAL. CODE CIV. PROC. § 1894 (West 1955), *repealed*, ch. 1473, §§ 25-27, [1968] Cal. Stats. Accordingly, they included written acts or records of the acts of government functions in this state or sister states, or of a foreign country. Also included in this definition were public records of private writings. The public had a right to any information coming within these categories. Another statutory provision added much to the right of public inspection. California Government Code section 1227 made "other matters" subject to public inspection. CAL. GOV'T CODE § 1227 (West 1966), *repealed*, ch. 1473, § 38 [1968] Cal. Stats. The courts have interpreted this phrase as meaning matters in which the whole public may have an interest. Whelan v. Superior Court, 114 Cal. 548, 46 P. 468 (1896); Coldwell v. Board of Pub. Works, 187 Cal. 510, 202 P. 879 (1921). An early case applied the above reasoning to determine whether a citizen of Los Angeles had the right to inspect accounts kept by a municipal corporation. They determined that the records did not come within the code provisions defining public writings, and, to qualify as "other matter" within the statute's meaning, the interest must be such that the whole public could be interested. Since the seeking individual represented a competing corporation this "whole public interest" was not present. Mushet v. Department of Pub. Serv., 35 Cal. App. 630, 170 P. 653 (1917). The case represents one of the first applications of the policy consideration that, in certain instances, the benefit to government efficiency might outweigh the public's right to inspect.

California Code of Civil Procedure section 1881(5) provided that when the public interest would be best served by nondisclosure the official may deny inspection. CAL. CODE CIV. PROC. § 1881 (West 1955), *repealed*, ch. 299, §§ 62-64, [1965] Cal. Stats. This has come to be termed the governmental privilege of nondisclosure and was codified in the Public Records Act. An agency can justifiably withhold any record when, on the facts of the particular case, the public interest served by not revealing the record clearly outweighs the public interest served by disclosure of the record. CAL. GOV'T CODE § 6255 (West Supp. 1968). The governmental privilege can only be invoked by the state and not by the person whose records are under consideration. Markwell v. Sykes, 173 Cal. App. 2d 642, 648-49, 343 P.2d 769, 773 (1959). The privilege is for the benefit of the state; the public interest rather than that of the informer must be endangered by disclosure. People v. Denne, 141 Cal. App. 2d 499, 512, 297 P.2d 451, 459 (1956). While this is a governmental privilege and the officer makes the initial decision, the court weighs the interests and makes the final decision.

The new Public Records Act recognizes the citizen's right to privacy by expressly enumerating exceptions to the general inspection right. Personal, medical, or similar files are exempted if disclosure would constitute an unwarranted invasion of personal privacy. CAL. GOV'T CODE § 6254(c) (West Supp. 1968). Another express exception relates to the provisions of the California Evidence Code relating to privileged communications. CAL. GOV'T CODE § 6254(k) (West Supp. 1968). Such exceptions preserve the ability of the government to seek and obtain full disclosure, thus directly benefiting the public welfare by more efficient government. This also protects individuals from personal harm and embarrassment should the information get into the wrong hands.

The Public Records Act and the history behind it indicates two dominant policy considerations inhibiting the free flow of information. The governmental privilege and the individual's right to privacy are these limiting factors.

[19] For a comprehensive discussion see Comment, *Access to Governmental Information in California*, 54 CALIF. L. REV. 1650 (1966).

The Governmental Privilege

After an individual has disclosed information in confidence to a government official and a third party has sought the same information, the official may assert the privilege of nondisclosure basing it on the interest of the public welfare.[20] This is termed the governmental privilege of nondisclosure and the interest protected is that of the public; that is, where more harm would be done by disclosing the information than accomplished by free flow of this information, the official may deny disclosure. This balancing of interests is within the discretion of the official but the courts are the final arbiters.[21]

Richards v. Superior Court,[22] a recent case involving a subpoena designed to reach public records of the Department of Unemployment, such records being guarded by a confidentiality statute,[23] denied disclosure of such records to a party whose interests were adverse to the applicant. The records concerned the extent of the applicant's injuries. Where the disclosure is contrary to the applicant's interest, the public agency has a real interest in nondisclosure since the honesty and thoroughness of the applicant's report should not be impeded by his fear that it may be used against him in some future lawsuit. Thus exercise of the governmental privilege, by insuring against arbitrary future disclosure, benefits the agency. Nevertheless, the agency may waive its privilege and the accompanying benefits.

Coldwell v. Board of Public Works[24] holds that documents in custody of a public officer lose their confidential character when disclosed. This holding suggests that information guarded by the governmental privilege might be deemed waived if disclosed to other agencies. In *Coldwell*, the disclosure was to the public but the court discussed whether disclosure to the city attorney *in his official capacity* would also be a waiver of the confidentiality.[25] The argument can thus be made that there would be no waiver of the privilege (the shield of confidentiality remaining intact) if the disclosure is made only to other officials with an official interest in the records, especially if the officials functioned within a local information sharing system with built in confidentiality safeguards.

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[20] Chronicle Publishing Co. v. Superior Court, 54 Cal. 2d 548, 568, 354 P.2d 637, 647 (1960).

[21] Markwell v. Sykes, 173 Cal. App. 2d 642, 343 P.2d 769 (1959).

[22] 258 Cal. App. 2d 635, 65 Cal. Rptr. 917 (1968).

[23] CAL. UNEMP. INS. CODE §§ 2111 (West 1956), 2714 (West Supp. 1968).

[24] 187 Cal. 510, 202 P. 879 (1921).

[25] *Id.* at 521, 202 P. at 884.

A public officer's privilege with respect to communications made to him in official confidence is for the benefit of the state or its agencies.[26] The disclosure to other agencies would not constitute a waiver of this privilege so long as the information was safeguarded and the recipient official had an official interest.[27] Therefore, the computerization and exchange of authorized information would be consonant with the policy of limiting the free flow of information where the public welfare demands. Indeed, the agencies would be able to perform at a higher level of efficiency.

The Individual's Right to Privacy

Another limitation to the interagency exchange of all information lies in ascertaining to what extent an individual's records and contacts with the government should be held in secrecy. Such a determination is quite difficult as the right to privacy is an amorphous doctrine. In the United States a tort remedy for the invasion of privacy was recognized a mere eighty years ago.[28] Moreover, some ill-defined right to privacy exists as a matter of constitutional law.[29]

The plea for judicial recognition was voiced in 1890 in a law review article which generated much reaction.[30] Warren and Brandeis made the plea that the protection of society must come mainly through a recognition of the rights of the individual; and, that the community has an interest sufficiently strong to justify the introduction of a tort remedy to protect the individual's right to privacy.[31]

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26 Markwell v. Sykes, 173 Cal. App. 2d 642, 343 P.2d 769 (1959).

27 The seeking agency will need to demonstrate an interest that is consonant with the individual's right to privacy. The concept of the individual's right to privacy as a limitation on access to information is discussed in the next section. *See* pp. 306-08 *infra*.

28 Marks v. Jaffa, 6 Misc. 290, 26 N.Y.S. 908 (1893).

29 York v. Storey, 324 F.2d 450 (9th Cir. 1963), represents the first federal court decision holding that privacy was a protected constitutional right predicated upon the due process clause. In *York*, the plaintiff had gone to a police station to file a complaint of assault. The defendant police officer took pictures of her in certain indecent nude positions under the pretense that they were necessary to the investigation. He then circulated these pictures within the police department. *York* is significant in that it does not consider privacy as a fourth amendment right. *See* Katz v. United States, 389 U.S. 347, 350-52 (1967). Instead, the court interprets the "liberty" secured by the due process clause as encompassing the right to privacy as a fundamental right. The Supreme Court in *Griswold v. Connecticut*. 381 U.S. 479 (1965), rested the majority opinion upon a novel doctrine of protecting the right of privacy as a fundamental right by virtue of the fact that it came within the penumbras of the other enumerated rights. This doctrine suggests that the right to privacy is a fundamental right; but, the application of this concept is left vague and hazy. *See* Comment, *Privacy After Griswold: Constitutional or Natural Law Right?*, 60 Nw. U.L. Rev. 813 (1966).

30 Warren & Brandeis, *The Right of Privacy*, 4 Harv. L. Rev. 193 (1890).

31 *Id.* at 219.

Today, a new facet of the individual's right to privacy is in jeopardy of intrusion. Government functions and programs touch every person and vast amounts of personal information are on government files.[32] The advent of the computer makes it economically feasible to build complete dossiers of all persons having contact with the government at all levels.[33] The California statutes have recognized the danger to the individual's right to privacy, but an adequate definition does not exist.[34] California has taken the view that the right to privacy is predicated upon the constitutional guarantee that all men are by nature free and independent, and have certain inalienable rights, among which is the right to pursue and obtain safety and happiness without improper infringements thereon by others.[35] The United States Supreme Court has voiced the opinion that the right to privacy is a constitutional guarantee in and of itself. Although not specifically an enumerated right, it emanates from the penumbra of other enumerated rights.[36]

The theory that it is the "social obligation" of every person to give up a degree of privacy in order that he reap the benefits organized society imparts could be applied to the problem of information sharing.[37] The two concepts, the individual's right to privacy and his corresponding social obligation, may provide the bases for determining what information will be the proper subject of exchange. For governmental assistance the person consents to allow the personal information divulged to be released to other agencies in ascertaining the best method of assistance. This balancing test will have to be applied to each individual case to determine to what extent this is a waiver of the individual's right to privacy in the

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[32] On the federal level, excluding all of the extensive records on business and other organizations, the records on individual persons number 3,111,467,000. SUBCOMM. ON ADMINISTRATIVE PRACTICE AND PROCEDURE OF THE SENATE COMM. ON THE JUDICIARY, 90TH CONG., 1ST SESS., GOVERNMENT DOSSIER 19 (Comm. Print 1967).

[33] *See* L.O.G.I.C. (by implication).

[34] *See, e.g.*, CAL. GOV'T CODE §§ 6254(c), (k) (West Supp. 1968), which exempts from general inspection rights:

> Personal, medical, or similar files, the disclosure of which would constitute an *unwarranted invasion* of personal privacy. (emphasis added).
>
> Records the disclosure of which is exempted or prohibited pursuant to provisions of *federal or state* law, *including, but not limited to*, provisions of the Evidence Code relating to privilege. (emphasis added).

[35] Melvin v. Ried, 112 Cal. App. 285, 297 P. 91 (1931). This is the first case in California to recognize the right of privacy as a protectable right. The plaintiff complained that her private life was displayed before the public by a motion picture company and was granted relief on a tort theory. The language of the court establishes the right as a constitutional guarantee in California. *See also* Comment, *The Right of Privacy in California*, 7 SANTA CLARA LAW. 242 (1967).

[36] Griswold v. Connecticut, 381 U.S. 479 (1965). *See* note 28 *supra*, and accompanying text.

[37] Nizer, *The Right of Privacy*, 39 MICH. L. REV. 526, 528-29 (1940). An individual's social obligation is discussed as it relates to the right of privacy.

disclosed information. Considerations will include such important elements as the psychological impact upon the individual[38] and the official interest in seeking the information. The final decision revolves around where the public welfare will be most advanced.

The right to privacy has been recognized as a fundamental right of every citizen; but, it has never been tested in the intergovernmental exchange of information. The right to privacy developed in response to the problems created by modern complexities. In 1941, when the mass media was threatening the personal security of man's privacy, the right to privacy was called the bulwark built up against the threatened annihilation of man's personal life by unprecedented advances in communication and transportation.[39] By 1971 the computer could well be this threat and the defensive armament will again be the "right to be let alone."

STRONG PUBLIC POLICY AND STATUTES DENOUNCING DISCLOSURE

Juvenile Records

Besides the general policies of preserving the public welfare and protecting the individual's privacy, specific confidential privileges are imposed by statute. For example, a juvenile hearing is closed to the public, and a juvenile's records are often expunged or sealed so that the individual may face adulthood with a clean record.[40] California Welfare and Institutions Code section 781[41] provides that a former ward of the court or probation officer may petition the court to seal by order all the records of the juvenile court and records of other officials named in the order. If the court orders the records sealed the events shall be deemed never to have occurred.[42] This section has been called a clear statement of the legislative policy to grant the errant juvenile a clean slate if he grows into a law-abiding adult.[43] Prescinding from any clear legislative mandate, when the general disclosure policies are balanced by weighing both public welfare[44] and privacy rights[45] against the policy of

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[38] *See generally The Computerization of Government Files: What Impact on the Individual?*, 15 U.C.L.A.L. REV. 1374, 1411-22 (1968). An extensive discussion of the effects disclosure could have on the individual according to various theories is presented by the author.

[39] Nizer, *The Right of Privacy*, 39 MICH. L. REV. 526, 559 (1940).

[40] L.O.G.I.C., *supra* note 8, at 20-21. Santa Clara County has computerized its juvenile records and intends to share this information as far as consonant with legal principles.

[41] CAL. WELF. & INST'NS CODE § 781 (West Supp. 1968).

[42] Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 Wash. U.L.Q. 147, 175.

[43] 40 OPS. CAL. ATT'Y GEN. 50, 52 (1962).

[44] *See* pp. 305-06 *supra*.

[45] *See* pp. 306-08 *supra*.

openness and the theory of social obligation, the outcome is heavily in favor of nondisclosure. This reasoning should limit the disclosure of juvenile records to those who are within the reach of the expunging order. Since the statutory expunging order uses language that indicates that other officials besides the court and juvenile authorities will have to seal their records when so ordered,[46] it is within the purview of legislative intent that officials with a direct interest in benefiting the juvenile could be authorized to have access to the computerized juvenile information so long as they were within the reach of the expunging order.[47]

In such areas where the legislative intent favoring confidentiality is so pronounced the information must be safeguarded to a greater extent. The seeking agency will have to demonstrate a greater interest and need; and, this need will have to be for the direct benefit of the individual involved. Considerations of agency efficiency and lower expense will carry little weight in balancing the interests in favor of disclosure.

Welfare Records: Protected by a Strict Confidentiality Statute

Welfare information is also guarded by a strict confidentiality statute.[48] The statute makes any unauthorized disclosure of such information a misdemeanor and limits authorized persons to those directly involved with the Welfare Service. Only the District Attorney is excepted and he can only use this information in his official capacity. At first blush it would seem that no one else could have authorized access to this information. However, in 1968 the legislature amended this section,[49] in order to recognize the power of the individual to waive the privileged nature of his welfare records by written consent to the department. The legislature also added a limitation to this waiver by forbidding any list or names obtained through such access to be used for any commercial or political purposes.[50] This legislative action is susceptible to evaluation via a balancing of policies. At first glance, the waiver authorization seems to permit indiscriminate release of information which

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[46] CAL. WELF. & INST'NS CODE § 781 (West Supp. 1968): The petitioner may: [p]etition the court for sealing of the records, including records of arrest, relating to such person's case, in custody of the juvenile court and probation officer and *such other agencies* . . . as petitioner alleges . . . to have custody of such records. (Emphasis added).

[47] The language of the expunging statute is indefinite as to whom is within the reach of the order. This results from the legislative intent to confine the records only to those officials with a direct interest in the juveniles.

[48] CAL. WELF. & INST'NS CODE § 10850 (West 1966).

[49] CAL. WELF. & INST'NS CODE § 10850.1 (West Supp. 1968).

[50] CAL. WELF. & INST'NS CODE § 10850.1 (West Supp. 1968).

is no longer privileged. Although this danger may be rationalized as a social obligation and promotive of openness, it is outweighed by considerations of public welfare and privacy rights.[51] The waiver provision seems to permit interagency exchange of confidential information if the individual consents. Furthermore such exchange does not seem to be for a "commercial or political purpose," and thus would not be forbidden by the limitation clause. These conclusions seem justified by weighing the relevant policy considerations as applied to a particular agency. The legislature has apparently provided for this interpretation in the 1968 amendment[52] to the welfare confidentiality statute.[53]

To be authorized the seeking agency will have to demonstrate that the records will be used in a positive fashion, such as to provide the ability to identify by geographic area, ethnic group, or socio-economic group particularly high incidence rates of such problems as health and sanitation, dependency, school dropouts, and crime rates.[54] Such practical benefits are determining factors in a balancing of the relevant policies. On the one hand the utility to the seeking agency suggests a strong social obligation in addition to the general principle of openness. On the other hand are considerations of public welfare and privacy. Since the latter are minimized because the information would be exchanged only between those with an official interest, whose access was limited by mechanical safeguards, the balance falls in favor of disclosure. This reasoning should be applicable to other areas guarded by similar statutes.

Privileged Communications Arising Out of a Professional Relationship

One information sharing system envisions computerized hospital information.[55] Inclusion of such items as billing, ordering supplies and general information raises no confidentiality problem; but, disclosure of individual patients' histories to other interested agencies, presents the problem of privileged communications.

The American Medical Association prohibits a physician from revealing the confidence entrusted to him in the course of medical attendance, or the deficiencies that he may observe in the character of patients.[56] This ethical principle has been given statutory

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51 *See* pp. 303-08 *supra.*

52 CAL. WELF. & INST'NS CODE § 10850.1 (West Supp. 1968).

53 CAL. WELF. & INST'NS CODE 10850 (West 1966).

54 *Cf.* L.O.G.I.C., *supra* note 6, at 3.

55 *Id.* at 29.

56 Hippocratic Oath: Principles of Medical Ethics of the American Medical Association, ch. II § 1 (1943); *see* C. DEWITT, PRIVILEGED COMMUNICATIONS BETWEEN PHYSICIAN AND PATIENT 22-24 (1958).

recognition in California Evidence Code section 992.[57] Confidential communication between patient and physician includes any information necessary for the accomplishment of the purpose for which the physician is consulted. An exception to this privilege is made when the disclosure is in a proceeding to commit the patient or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition.[58] The rationale for this exception is that the information in a commitment proceeding is used for the person's benefit. The New Jersey Supreme Court in *Hague v. Williams*[59] gave this exception judicial recognition by holding that, when the public interest or the private interest of a patient demands, disclosure may be made to a person with a legitimate interest in the patient's health.

Analogously, officials with an interest could gain at least background information from a centralized data bank. Furthermore, the Attorney General's Office decided that a local health department and the State Department of Public Health could disclose to blood banks the identities of persons known to them to be infected with viral hepatitis, so long as the information disclosed is guarded by a confidentiality directive.[60] The privilege is also circumvented in situations where the public health demands, such as contagious diseases.[61] An early case[62] substantiates this reasoning so long as the disclosure is not made with the intent to injure the individual. Disclosure of privileged communications is permissible when the interest of the individual is advanced and the interest of the seeking agency is sufficiently strong and closely related to the benefit of the individual so as to outweigh the consideration of the individual's right to privacy.

Similar reasoning could be applied to other privileged relationships.[63] The interest required to authorize disclosure is the protection of the individual's right to privacy and this protection seems

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[57] CAL. EVID. CODE § 992 (West Supp. 1968).

[58] CAL. EVID. CODE § 1004 (West 1966).

[59] 37 N.J. 328, 181 A.2d 345, 349 (1962). In this case the parents of an infant sued his physician, alleging humiliation and unrecovered insurance benefits due to the doctor's unauthorized disclosure of the child's fatal heart defect to his insurer. The court affirmed dismissal of this cause of action reasoning that, in this case, the sanctity of physician-patient confidences was outweighed by the public's interest in establishing the veracity of insurance claims. *See also* Schwartz v. Thiele, 242 Cal. App. 2d 799, 51 Cal. Rptr. 767 (1966).

[60] 51 OPS. CAL. ATT'Y GEN. 217 (1968).

[61] *Id.*

[62] McPheeters v. Board of Medical Examiners, 103 Cal. App. 297, 301, 284 P. 938, 940 (1930).

[63] CAL. EVID. CODE §§ 950, 951, 953, 955-62 (West 1966), 952, 954 (West Supp. 1968) (attorney-client privilege); CAL. EVID. CODE §§ 1030-34 (West 1966) (clergyman-penitent); CAL. EVID. CODE §§ 1011, 1013-16, 1018-26, (West 1966), 1010, 1012, 1017 (West Supp. 1968) (psychotherapist-patient relationship).

to be satisfied when the courts can see that the interests of the individual are advanced, not jeopardized.

CONCLUSION

The benefits to be derived from computer systems are many. Yet, a governmental system of computerized information storage and exchange conjures, in some minds, visions of a sardine society where individuality is curtailed for the sake of administrative convenience. But the realization of such a society requires more than mere technological change; it necessitates total rejection of traditional democratic ideals. Such ideals are preserved by broad policies such as the right of privacy and the doctrine of governmental privilege, as well as by legislative mandate in specific confidentiality statutes. Balancing these principles to solve the conflict of interest which arises when government agencies seek to exchange information seems a sufficiently flexible test to assuage those haunted by Orwellian specters.[64]

Wm. Edward Baugher

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[64] G. ORWELL, NINETEEN EIGHTY-FOUR (1949).