

Keep Your Friends Close and Your Enemies Closer

Modern Day Issues on an Old Problem



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The New York Times

Iran and China Use Private Detectives to Spy on Dissidents in America

The U.S. investigators are hired under false pretenses by authoritarian governments to do their “dirty work,” the F.B.I. says.



 An official website of the United States government [Here's how you know](#) ▾



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FOREIGN AGENTS REGISTRATION ACT

FARA

Foreign Agents Registration Act





FARA Exemptions?

Legal representation of a disclosed foreign principal before any court or law or agency of the United States government.

Tip: You can ask for an advisory opinion. But, don't hold your breath.

PROFESSIONAL RULES



Minnesota Rules of Professional Conduct

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule [1.4](#), shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(Amended effective October 1, 2005.)

CFE Code of Professional Conduct

2. *Prior to accepting the fraud examination, Certified Fraud Examiners shall investigate for actual, potential, and perceived conflicts of interest. CFEs shall disclose any such conflicts of interest to potentially affected clients or to their employers.*

Guidance

An actual *conflict of interest* exists when a Member's ability to act objectively, or in the best interests of the client and/or employer, is impaired by any current, prior, or anticipated relationship with parties relevant to the fraud examination. Similarly, a potential conflict of interest exists when the Member's objectivity is reasonably likely to be impaired due to a potential event or situation. For example, a conflict of interest might exist if a Member is asked to conduct a fraud examination of someone with whom they have strong personal or business ties, such as a relative, a friend, a business partner, an entity the Member has a financial interest in, or—in the case of a potential conflict—someone with whom the Member reasonably foresees having a strong personal or business relationship. A perceived conflict of interest exists when a situation would cause a neutral and informed third party to reasonably conclude that a CFE's ability to conduct a fraud examination in an objective manner could be hindered.

CFE Code of Professional Conduct

D. Understanding with Client or Employer

- 1. At the beginning of a fraud examination, Certified Fraud Examiners shall reach an understanding with those retaining them (client or employer) about the scope and limitations of the fraud examination and the responsibilities of all parties involved.*

Guidance

At the outset of a fraud examination, the CFE should communicate with their client/employer to ensure that there is mutual understanding regarding the scope, expectations, subject matter, compensation, deliverables and other key issues concerning the examination. This Standard is designed to help preclude disagreements or confusion as to the nature, or the expected outcome, of an engagement.

Issues to be addressed in reaching an understanding about the scope and limitations of the fraud examination will vary, but might include the following:

- The matter to be investigated
- Timeliness or urgency of the engagement
- Compensation
- Requirements for status updates and ongoing communication
- Guidelines for the final report
- The format for the final report
- Confidentiality requirements



Driver's Privacy Protection Act of 1994

NCISS FIX

NCISS CODE OF ETHICS

Preamble

The National Council of Investigation & Security Services has adopted a Code of Ethics and Professional Standards to be adhered to by its regular members and our leadership. In addition, these ethics are set as a standard bearer for the investigative and security industry. These principals will guide the association in accountability and expectations amongst its members, the profession and leadership. NCISS members should be mindful of their responsibilities in their respective capacities to represent the association and their profession when they fulfill their duties as they serve their individual clients and as they collectively represent their profession. NCISS members are expected to be the standard for quality and professionalism. Further, NCISS members are to treat all others respectfully, professionally, and above reproach.

Members of NCISS are encouraged to participate in ongoing professional development and continuing education to maintain their competency.

Officers, Board Members and Committee Members are expected to be informed and appraised of the association's mission, services, and policies. Officers, Board Members and Committee Members shall meaningfully participate in the positions to which they were elected, appointed, or volunteered.

Client-Member Relationship.



NCISS RESOLUTION, Now Rule.

- **Rule 2.04 Locate of Individuals.** A member shall, prior to providing a person any personally identifying or location information of an individual, conduct appropriate due diligence to ensure that the person has a legitimate business or legal interest in obtaining that information. When such due diligence is not possible or appropriate, or if the person appears to not have a legal or business interest, the person shall be informed that their contact information will be provided to the subject they are seeking and the personal identifying information of the subject they are seeking will only be provided to the person if that party consents.

Press Test

- Criminal
- Civil
- Professional Ethics Codes V What Do You Get?
- Tribunal
- N. Y. Times



Your New Ethical / Legal Obligations

15

Jan
2018

Record Fines for Insurance Company, Management and Contractors for Breach of UK Data Protection Laws

Following an inquiry by the Information Commissioner's Office (ICO), insurance firm Woodgate & Clark Ltd has been given a record fine for breaching the UK's Data Protection Act. The firm itself was fined £50,000 while a former director and senior employee were fined £75,000 and £30,000 respectively for their involvement.

The firm had hired two private detectives to illegally obtain the banking information of an insurance claimant whose nightclub had burned down, in order to determine if the claimant could afford to pursue a legal challenge against them. The private detectives used a 'blagging' technique to obtain the information which involved contacting the insurance claimant's bank and pretending they worked in a different department of the bank in order to trick employees of the bank into divulging personal information of the insurance claimant. The private detectives were able to obtain information in relation to the claimant's private personal accounts, loans and mortgages and this information was then passed on to the insurance company, who were aware it had been obtained illegally.

Big Money, Big Problems.

GDPR Quick Brief

- General Data Protection Regulation (GDPR)
 - Broad scope and extraterritorial reach-applies to
 - Organizations **established** in the EU
 - Also if **goods or services offered** in the EU
 - Also if behavior of individuals in the EU is being **monitored** (profiling)
 - Replaces EU Data Protection Directive 95/46/EC
 - Went into force May 25, 2018
- EU approach to privacy and data protection
 - Privacy is a fundamental human right which is enshrined in human rights and privacy law
 - Harmonize EU member state privacy laws and allow free flow of information
 - Binds all 27 EU member states



What Information?

Personally Identifiable Information.

- PII – Almost any information relating to an identified or identifiable individual name, address, email address, phone number, financial information, images and video, unique identifiers, IP addresses and geolocation, health data, genetic information or biometric information, race/ethnicity, sex life or sexual orientation, religious or political beliefs, trade union membership, criminal convictions and offenses.

How do you do an investigation under GDPR?

- Exemptions (“Derogations”) for specific situations (e.g., explicit consent, and a lot of others):
 - See Recital 45 – Legal Obligations – You can rely on this lawful basis if you need to process the personal data to comply with a common law or statutory obligation.
 - See Recital 52 - A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.
- Compelling legitimate interests of controller (i.e., limited number; not override data subjects interests/rights). Probably OK, if current litigation, or suspected litigation, or suspected fraud, etc.
 - See Recital 47. Legitimate Interest - “The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned.”

<https://gdpr.eu/>

Data Leaving the EU

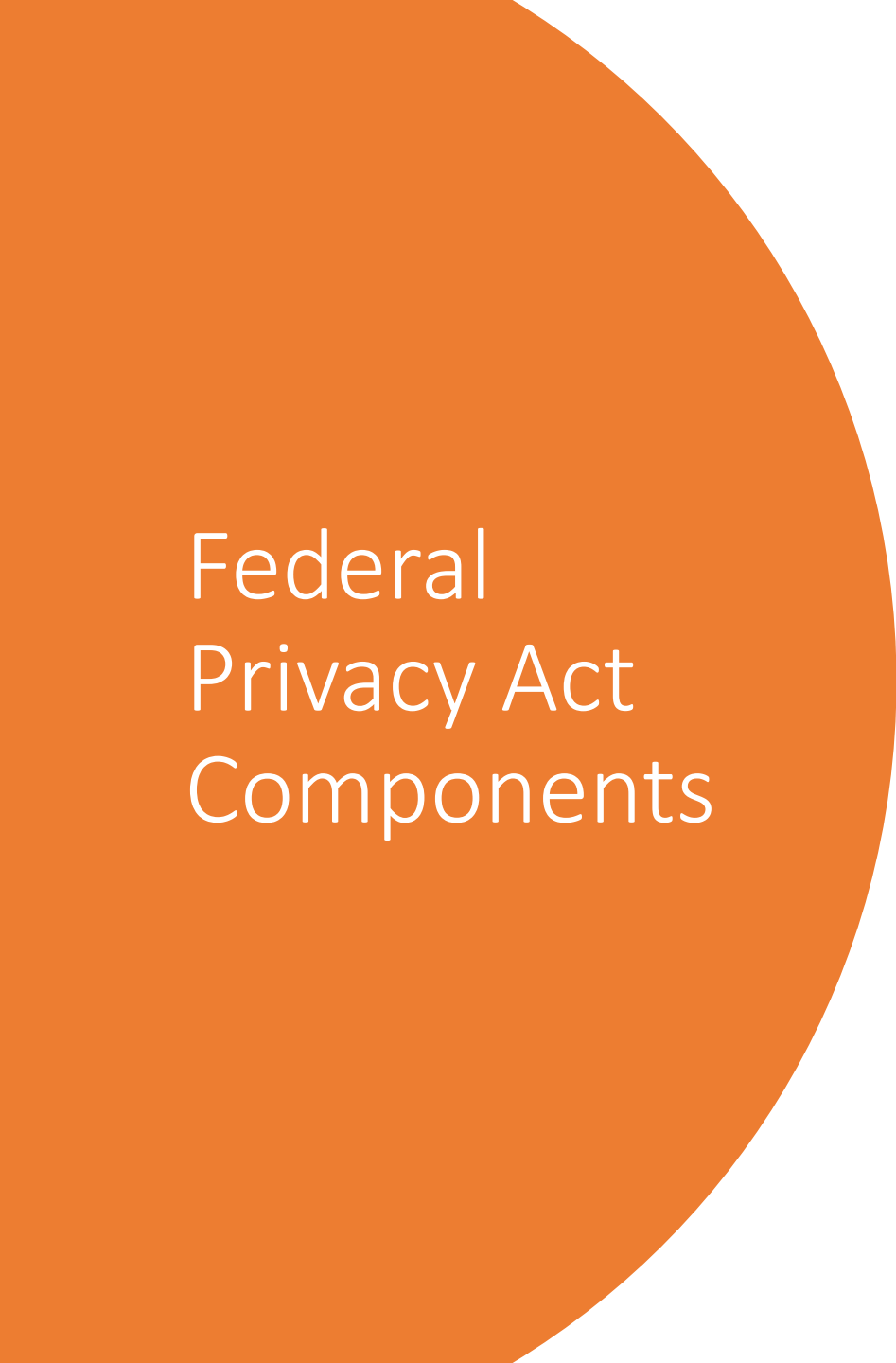


- GDPR creates a “wall” around the perimeter of Europe for EU citizen data to stay in EU. Generally, what happens in Europe, stays in Europe.
- When data leaves the EU, it has to do so by a limited door. Such as US Privacy Shield.
- In essence the Privacy Shield was a way for transfer of data that allegedly had the same protections as GDPR for EU citizens.
- US Privacy Shield was the method for transatlantic movement of data.



Federal Privacy Bill

- CCPA – Mimics GDPR but, on a limited scale.
- NY, TX, VA – Currently state proposals on state, CCPA like, privacy bills.
- VA has passed its bill!

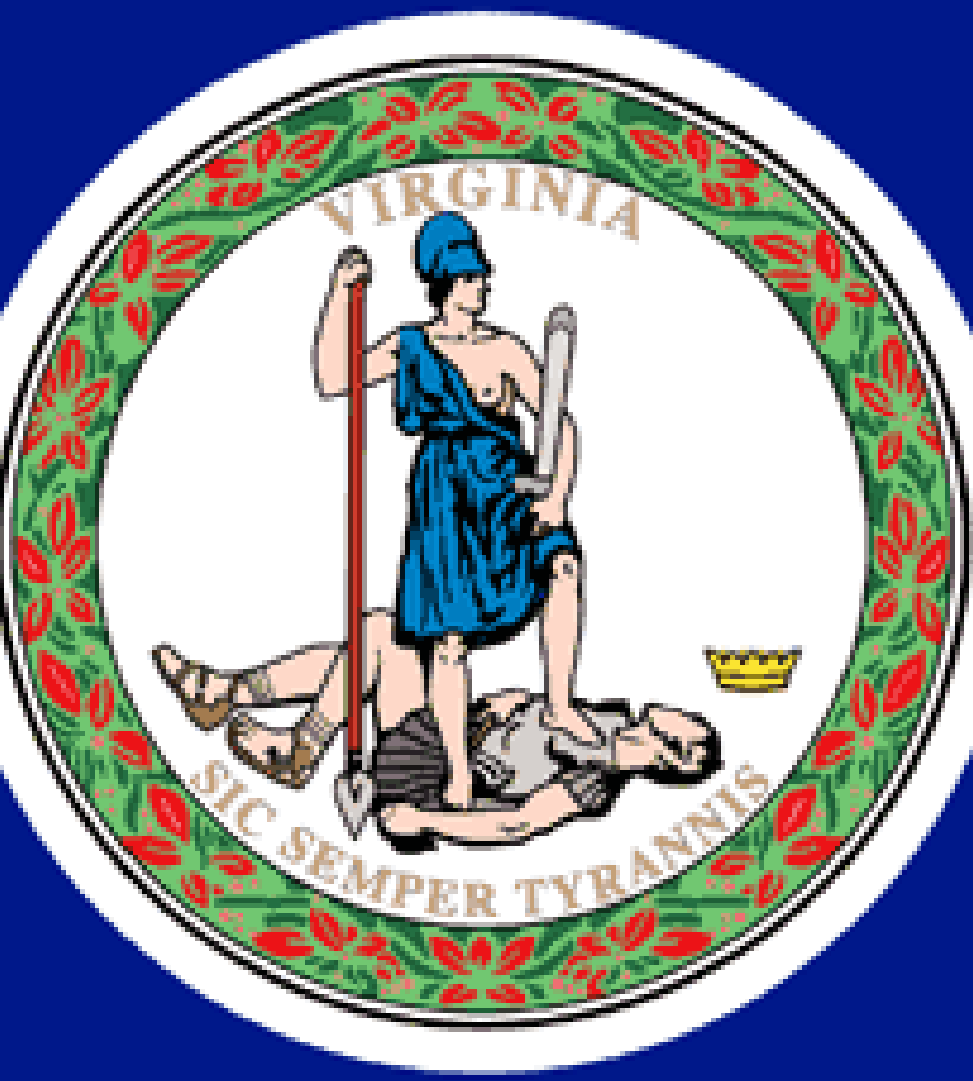
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Federal Privacy Act Components

Social Media – Use, Access, Policing.

Privacy – Individual Rights.

Specific Add On – Think DPPA, Think GPS Tracking, Think DNA, Think Genetic Material Regulations, etc...



Virginia Consumer Data Protection Act

- Passed with favorable positions:
- Only applies if processing 100k “consumers” or 20k consumer with 50% income from that processing.
- FCRA and HIPPA regulations OK.
- No private cause of action.
- Chapter allows a processor or controller ability to “investigate, establish, exercise, prepare for or defend legal claims.”

2 Big Issues that are Close to Decided.

#1 – Private
Right of
Action

#2 –
Preemption of
State Acts



State Data Privacy Bills

- Alabama
- Arizona
- Connecticut
- Florida
- Kentucky
- Minnesota
- New York
- Oklahoma
- Texas
- Utah
- Washington