

# Surveillance and Privacy

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Board-member of the Australian Privacy Foundation, 1987-

U3A – Ainslie – 19 October 2021

<http://rogerclarke.com/DV/SandP-U3A> {,html, .pdf}

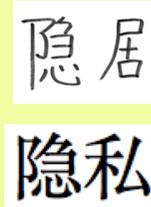
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# Privacy

The interest that individuals have  
in sustaining 'personal space'  
free from interference by  
other people and organisations



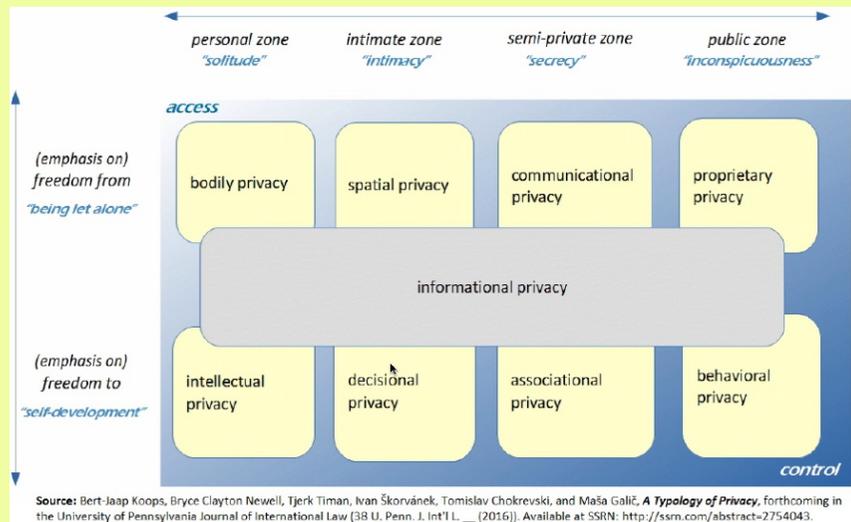
Very different from Security, and from  
Inaccessibility / 'Confidentiality' / Secrecy / Non-Disclosure

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Morison (1973)  
<http://www.rogerclarke.com/DV/Privacy.html>  
<http://www.rogerclarke.com/DV/Intro.html>

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## 8 Privacy Types and 1 Aspect

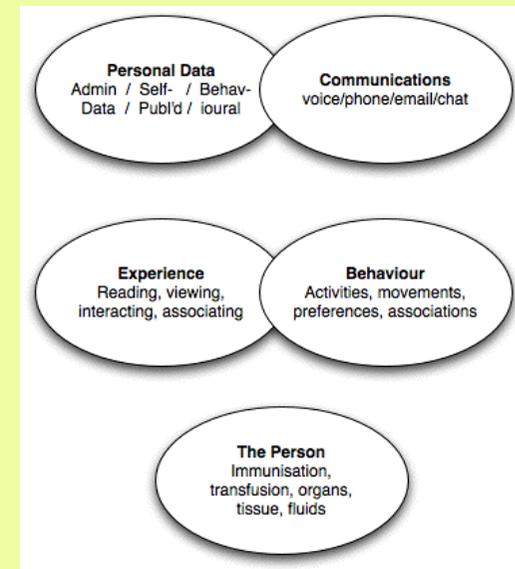
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Koops et al. (2016)  
<http://rogerclarke.com/DV/PIyp-1701.html>

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## Privacy Dimensions



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<http://www.rogerclarke.com/DV/Intro.html#Priv> (1997)

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## Why Privacy ?

- Human Dignity / Autonomy
- Political Needs
- Economic Needs / Asset Protection
- Social / Sociological Needs
- Psychological Needs
- Physical Needs / Safety

cf. the Maslowian Hierarchy of Needs

[https://en.wikipedia.org/wiki/Maslow%27s\\_hierarchy\\_of\\_needs](https://en.wikipedia.org/wiki/Maslow%27s_hierarchy_of_needs)

<http://www.rogerclarke.com/DV/Biel15.html#PM>

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## Types of Harm from Privacy Invasions

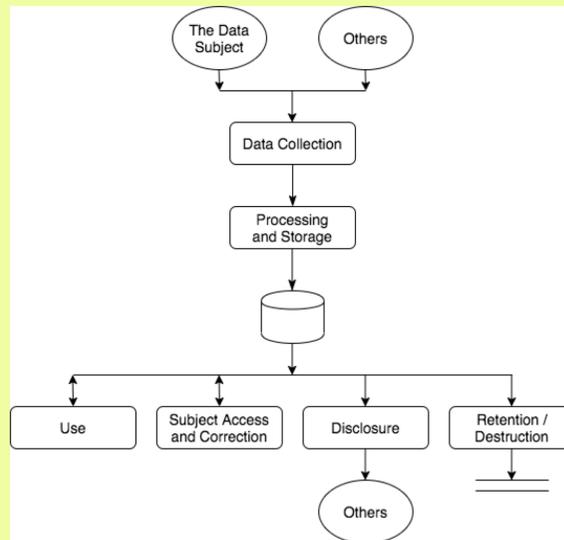
- **Physical**  
Discovery of identity or location leads to *assault* and worse
- **Psychological**  
Closed doors, drawn curtains, 'jumping for joy'; loss of control over one's life, *image*, and *respect*, undermining social cohesion
- **Economic**  
*Stifling* of non-conformist, risk-taking, *inventive and innovative behaviour*, undermining cultural, scientific and economic change
- **Political**  
Embarrassments, stigmas; self-repression (the '*chilling effect*'); political *repression*; a reduced pool of political contributors
- **Philosophical**  
Autonomy, *self-determination*, human dignity, personal integrity

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## The Life-Path of Personal Data



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## Privacy Protection

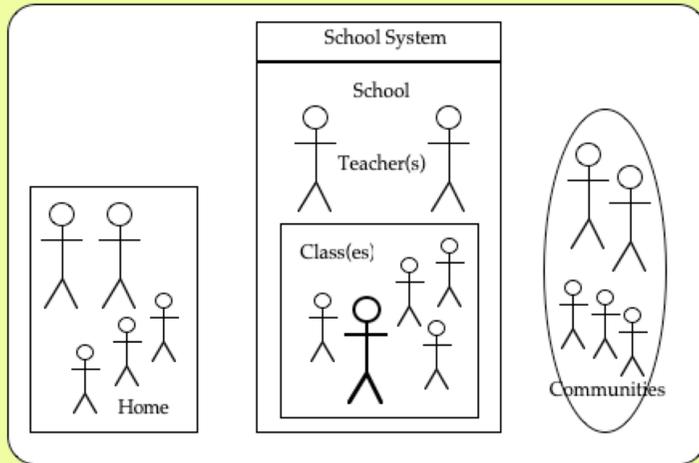
- Privacy is one interest among many
- Privacy may conflict with other interests:
  - of the person themselves
  - of another person
  - of a group or community
  - of an organisation
  - of society as a whole
- Privacy Protection is a process of **finding appropriate balances between privacy and multiple competing interests**

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## Stakeholders and Trade-Offs



'Handholding or Handsets:  
School-Children's Tablets and Privacy'  
<http://rogerclarke.com/DV/PTedPh.html>

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## 'If there's one thing I can't stand, it's intolerance'



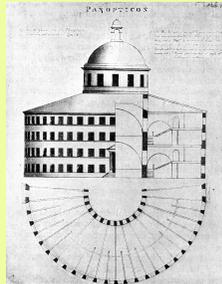
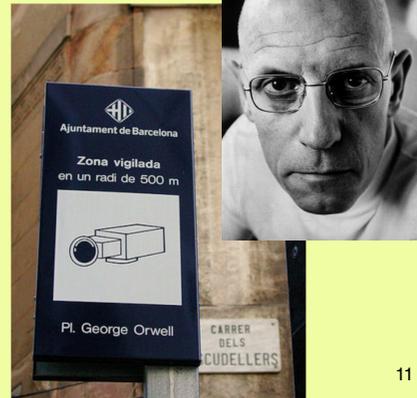
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## Surveillance Visual and Spatial

- Veiller  
Observe, watch (out for), ...
- Sur-  
On, about, to, over, ...
- Surveillance  
Watching over, supervision
- France – 1790s
- UK – 1810s
- France – 1970s
- Spain – 2010s



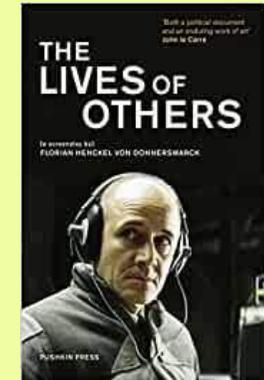
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## Extensions Geo-Spatial and Beyond

- Aural
- Tele-
- Retrospective
- Electronic



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## Surveillance

- The systematic investigation or monitoring of the actions or communications of one person ('personal surveillance') or many people ('mass surveillance')

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## Dataveillance

- The consolidation of personal data from multiple sources, and the use of information technologies to exploit that data

## Surveillance

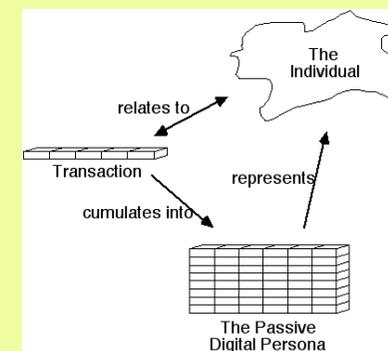
- The systematic investigation or monitoring of the actions or communications of one person ('personal surveillance') or many people ('mass surveillance')

## Dataveillance

- The consolidation of personal data from multiple sources, and the use of information technologies to exploit that data
- **Less expensive. Even in 1986, nearly as good**
- **More efficient watching of more people**
- **More efficient behaviour-influence and control**

## The Digital Persona

A model of a human entity, or of one of their identities, based on data, maintained by transactions, and intended for use as a proxy for the individual





## The Textbook Message

*"[marketers'] strategy should be to bribe users to give [marketers] the appropriate demographics, which in turn can be passed onto advertisers ...*

*"[The game is about] inducing consumers to give [marketers] the information they want.*

*"we expect that many consumers will be happy to sell information about themselves for a nominal amount ..."* (pp. 35-36)

Shapiro C. & Varian H.R. (1999)

'Information Rules: A Strategic Guide to the Network Economy'  
Harvard Business School Press, 1999

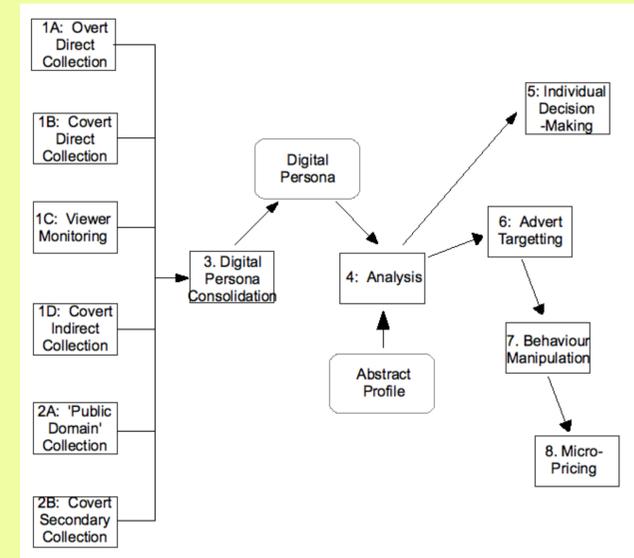
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## Business Processes

## in the Digital Surveillance Economy



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<http://rogerclarke.com/EC/DSE.html>

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## Kinds of Privacy Safeguards

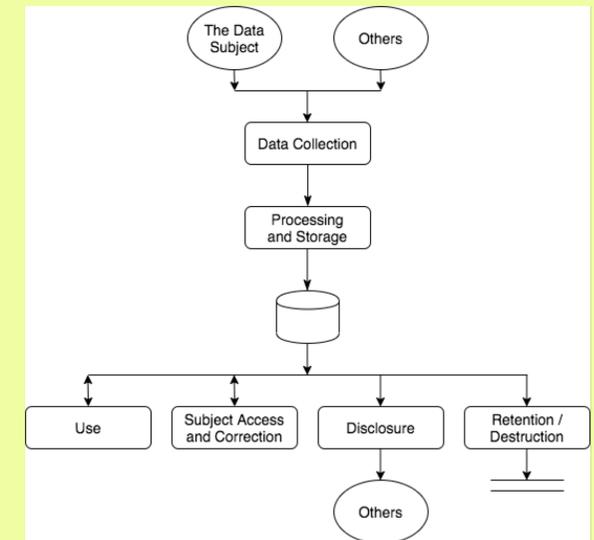
- **Legal, or 'Regulatory'**
  - Laws
  - Codes
  - Standards
  - 'Guidelines'
- **Organisational**
  - Policies, Procedures, Practices
  - Training
  - Incident and Complaints Systems
- **Technical**
  - 'Privacy-Enhancing Technologies' (PETs)

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## The Life-Path of Personal Data



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# Privacy Act (Cth) and APPs

- The Australian Privacy Principles (APPs)  
<https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference>  
 [And that's the shortened version!]
  - The law is full of designed-in loopholes
  - The law lacks specific guidance  
 e.g. OAIC 'Guide to securing personal information' provides limited assistance, and sets no baseline
  - The law is largely unenforced
- ## The EU GDPR
- European General Data Protection Regulation (GDPR)

### Exemptions and Exceptions in the Privacy Act as at December 2016

- s.6A - Fully Exempted Activities**
  - archival evaluation
  - act or practice outside Australia
  - act of practice required by an applicable law of a foreign country (also s. 13D)
- s.7 - Fully Exempted Entities**
  - FOI Act Schedule 1 (3 courts)
  - FOI Act Schedule 2 Part I Div 1 (9 agencies)
  - FOI Act Schedule 2 Part II Div 1 (3 agencies)
  - a federal court
  - a Minister
  - several Commissioners or Commissions
  - in relation to a record that has originated with, or has been received from (list of intelligence and similar agencies)
- s.7B - Fully Exempted Activities**
  - Individuals in non-business capacity
  - Employee records
  - Journalism by a media organisation (minor condition re 'standards')
  - Organisation acting under State contract
- s.7C - Political Acts and Practices**
  - Members of a Parliament etc.
  - Contractors for political representatives etc.
  - Subcontractors ...
  - Volunteers ...
- s.12A - State banking or insurance within that State**
- s.13B - disclosures to related bodies corporate**
- s.13C - transfer of data from a partnership to a successor partnership**
- s.13D - act of practice required by an applicable law of a foreign country (also s.6A)**
- s.16 - personal data held for Personal, family or household affairs**
- s.16A - Substantial Exemption for Permitted General Situations**
  - emergency: impracticable to gain consent and serious threat to life ...
  - protection of own legal interests: reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities
  - missing persons: to assist any APP entity, body or person to locate a person who has been reported as missing
  - protection of (any entity's) legal interests: the establishment, exercise or defence of a legal or equitable claim
  - resolution processes for (any?) dispute: for the purposes of a confidential alternative dispute resolution process
  - diplomatic or consular functions or activities

- for war, peacekeeping or civil emergency outside Australia
- s.16B - Substantial Exemption for Permitted Health Situations**
  - to provide a health service to the individual
  - research relevant to public health or public safety
  - the compilation or analysis of statistics relevant to public health or public safety
  - the management, funding or monitoring of a health service
  - third party's genetic data re health of genetic relatives
  - patient incapable of giving consent
- s.20A - Credit Reporting**
  - The Australian Privacy Principles do not apply to a credit reporting body ...
- s.20C - Credit Reporting**
  - Authorisation of non-consensual disclosure and use of personal data for credit reporting ...
- s.72 - Public Interest Determinations**
  - the Commissioner is satisfied that the public interest in an act or practice substantially outweighs the public interest in adhering to that code or principle
- s.80A - Temporary public interest determinations**
  - As to s.72 plus the issues require an urgent decision
- s.80G - Emergencies (see also ss.80P, 80Q)**
  - for a purpose that directly relates to the Commonwealth's response to an emergency or disaster in respect of which an emergency declaration is in force, incl.
  - identifying individuals injured, missing, dead or involved
  - assisting such individuals
  - assisting law enforcement
  - informing 'responsible persons' for such individuals
- s.95 - Medical Research [enormous power granted to the NH&MRC]**
- s.95A - Health Information [enormous power granted to the NH&MRC]**
  - research
  - the compilation or analysis of statistics, relevant to public health or public safety
- s.95AA - Genetic Information [enormous power granted to the NH&MRC]**
  - lessening or preventing a serious threat to the life, health or safety of an individual who is a genetic relative of the individual to whom the genetic information relates
- s.100 - Regulations, incl.**
  - necessary or convenient for carrying out or giving effect to this Act

### Exceptions and Exemptions in the APPs as at December 2016:

- [http://www.austlii.edu.au/au/legis/cth/consol\\_act/pa1988108/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/sch1.html)
- APP2.2 - anonymity and pseudonymity**
    - if the APP entity is required or authorised to deal with individuals who have identified themselves
    - if it is impracticable
  - APP3 - collection of solicited personal information**
    - consent and reasonably necessary for, or directly related to, one or more of the agency's functions or activities
    - consent and reasonably necessary for one or more of the organisation's functions or activities
    - required or authorised by law
    - a permitted general situation exists
    - a permitted health situation exists
    - an enforcement body ...
    - a non-profit organisation ...
  - APP6 - use or disclosure of personal information**
    - [Usual long list similar to APP3]
  - APP7 - Direct Marketing**
    - Despite the nominal prohibition, [Authorisation of non-consensual, opt-out use of personal data for direct marketing]
    - Despite the nominal prohibition, [Authorisation of non-consensual use of personal data by contracted service providers for a Commonwealth contract]

- APP8 - cross-border disclosure of personal information**
  - [even longer list of loopholes]
- APP9 - adoption, use or disclosure of government related identifiers**
  - [Usual long list similar to APP3]
  - any organisation can be authorised by Regulation
- APP10 - quality of personal information**
  - ... such steps (if any) as are reasonable in the circumstances ...
- APP11 - security of personal information [and destruction]**
  - ... such steps (if any) as are reasonable in the circumstances ...
- APP12 - access to personal information**
  - agencies retain the scope to use all FOI and other exemptions
  - organisations have a long list of loopholes available
  - ... give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so
  - organisation may charge a fee
- APP13 - correction of personal information**
  - ... such steps (if any) as are reasonable in the circumstances ...

[https://www.salon.com/2022/10/18/what-is-fog-reveal-police-use-new-app-to-track-people-without-a-warrant\\_partner/](https://www.salon.com/2022/10/18/what-is-fog-reveal-police-use-new-app-to-track-people-without-a-warrant_partner/)

# What is Fog Reveal? Police use new app to track people without a warrant

New tool shows where and when people work and live, with whom they associate and what places they visit

By ANNE TOOMEY MCKENNA

PUBLISHED OCTOBER 18, 2022 4:00AM (EDT)

## Why is so much activity Exempt from Basic Principles??

### Pre-Conditions

1. Evaluation
2. Consultation
3. Transparency
4. Justification

### Design

5. Proportionality
6. Mitigation
7. Controls

### Post-Condition

8. Audit

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<https://privacy.org.au/policies/meta-principles/>

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## The Primary Advocacy Organisation

Active since 1987, and with the world's longest track-record



<https://privacy.org.au/policies/>  
<https://privacy.org.au/publications/by-date/>

<https://privacy.org.au/media-release-archive/>



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But also CCLs, EFA, DRW, ...

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## Some Recent Activities

- Government Disasters



- OAIC's 'Guide to Securing Personal Information' (Way too weak, sets no baseline)



- COVID Contact Tracing App ('COVIDUnSafe')



- Unis' Surveillance of Employees' Social Media



- Online Exam Invigilation / 'Proctoring' / Surveillance



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[{.html, .pdf}](http://rogerclarke.com/DV/SandP-U3A)

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