

# PRIVACY

Privacy - the right to be left alone - is one of our most cherished rights. The right to privacy protects personal information, reproductive choices, medical decisions, and freedom from intrusion in one's home. The notion of privacy - that there are some areas into which the government cannot enter - is deeply ingrained in this nation's heritage. While the right to privacy is not explicitly laid out in our Constitution, the Supreme Court has recognized that constitutionally protected "zones of privacy" are inherent in the Fourteenth Amendment. Today, many courts often evaluate privacy issues by considering whether the person would have a "reasonable expectation of privacy" in the issue at stake.

## TAPE RECORDING CONVERSATIONS

Pursuant to state law (T.C.A. §39-13-601, *et seq*) and federal law (18 USC 2511), it is a felony to knowingly intercept or disclose the contents of any wire or cellular communication without first obtaining the consent of one of the participants in the communication. Any person who violates this law is guilty of a crime and is subject to civil suits (T.C.A. §39-13-603). However, unintentional interception of a private conversation is not illegal, and many cellular and cordless telephone conversations can be accidentally overheard. Current state law allows taping of conversations if one party to the conversation consents (T.C.A. §39-13-601(4)).

## SOCIAL SECURITY NUMBERS

Social security numbers were originally created to number personal accounts for Social Security, tax collection, but now they have become an almost universal identifier. Most people don't know that in many instances, they do **not** have to disclose their social security numbers. The Federal Privacy Act of 1974 prohibits states from enacting laws that require social security number disclosure, except in certain circumstances, including the existence of a federal law mandating such disclosure. Under the Privacy Act, government agencies are *required* to tell you why your social security number is necessary, whether disclosing it is mandatory or voluntary, and how your social security number will be used.

Motorists are required to provide their social security number in order to obtain a driver's license.

A recent federal law intended to better enforce child support obligations led to a Tennessee law that now requires the disclosure of social security numbers in order to obtain a professional license (T.C.A. §35-5-1301). Federal law also requires social security number disclosure for passport applicants.

## SCHOOL RECORDS

School records contain information on students' grades, discipline, medical problems, social behavior, ethnic background, economic circumstances, attitudes, extracurricular interests and more.

Students over age 18 have a right to see their records from public schools under the Family Educational Rights and Privacy Act, also known as the Buckley Amendment. Parents have a right to the records of students under age 18. Schools that receive government funding must make public a list of the types of records it maintains. Students have a right to challenge inaccurate information.

## WORKPLACE PRIVACY

In most cases, an employer may monitor an employee's telephone or electronic conversations conducted on company premises, during company time and with company equipment. The same holds true for electronic and voice mail messages when the company owns the system. Any information an employee wishes to keep confidential should not be transmitted through company phones or company e-mail accounts. Additionally, computer monitoring allows an employer to view any file on the hard drive, even personal files, and allows supervisors access to an employee's computer screen display at any time. Tennessee state laws do not address workplace electronic privacy rights, so be cautious about using company computers or phones for personal matters. However, if an employer has a stated policy regarding electronic communications, that policy is legally binding.

Except for polygraph testing, the law covers few areas of workplace activities. Accordingly, employers have broad leeway in collecting data on employees, regulating access to personnel files, and disclosing file contents to



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outsiders. If the employer is a federal agency, the Federal Privacy Act of 1974 makes most employment records confidential. It permits disclosure of federal employee records without the employee's consent only for "routine uses," in response to a written request from a law enforcement agency or in compliance with a court order.

## DRUG TESTING

ACLU opposes workplace drug testing as an invasion of privacy. Employers have a right to expect that workers are not under the influence of drugs or alcohol on the job, but they should not require workers to prove their innocence by subjecting them to a highly invasive and humiliating procedure. Public sector employees have greater protection against drug testing in the workplace. Under Stein v. Davidson Hotel Company, 1996 WL 230196 (Tenn.Ct.App.) (unpublished case), affirmed on other grounds, 945 S.W.2d 714 (Tenn. 1997) the Tennessee Court of Appeals determined that the Tennessee constitution did not provide a right to privacy for *private* sector employees because a drug-free workplace was priority.

## CRIMINAL RECORDS

Many employers ask about arrest and conviction records of prospective employees, though most states prohibit disclosure of arrest records outside of law enforcement. Employers can, however, obtain conviction records of prospective employees. People have a right to access their own criminal records. A person can obtain his FBI rap sheet by writing directly to the FBI Identification Division, Washington DC 20537. The request must be accompanied by name, date and place of birth, and a set of fingerprints as well as a \$5 fee.

## LIE DETECTORS

The ACLU opposes the use of lie detectors (polygraphs, voice stress analyzers, etc.) by employers as a violation of the individual's privacy rights. In addition, lie detector test results are often inaccurate and cannot be considered an accurate measure of "truth." The polygraph records physiological reactions, such as breathing rate and blood pressure, while a person is questioned. The polygraph operator must interpret the test results, which vary greatly, and decide what they mean.

## POLYGRAPHS IN EMPLOYMENT

The Employee Polygraph Protection Act of 1988 is the federal law limiting polygraph tests. It protects most private sector employees and applicants from lie detector tests, including polygraphs, deceptographs, and voice stress analyzers. It does not prohibit drug tests or written honesty tests. Under the EPPA employers may not "directly or indirectly require, request, suggest or cause" an applicant or employee to submit to a lie detector test, nor may they discharge, discipline or discriminate against any employee or applicant for refusing to take such a test, for "failing" such a test, or for filing a complaint or exercising any other rights created by the polygraph law. Employers must post a notice informing employees of the Act's provisions in a conspicuous place at the work site.

The law makes an exception to the outright ban on polygraph testing for workers in both the pharmaceutical industry and industries engaged in national security-related activities; however, the federal law prescribes standards that protect these workers from the worst abuses of lie detector tests. Government employees are also exempted from the federal law (though they still have the benefit of the protective standards referred to above). Under the federal law, employers may administer lie detector tests during an investigation of economic loss, such as theft, embezzlement, misappropriation, or acts of industrial espionage or sabotage. (See Federal Employer Polygraph Protection Act, 29 U.S.C. sections 2006 and 2007).

### Workers required to submit to testing under the federal law have the right:

- To stop the test at any time.
- Not to be asked questions in a degrading or needlessly intrusive manner.
- Not to be asked questions about beliefs, opinions or affiliations in the areas of religion, racial matters, politics, sexual behavior, or the lawful activities of labor organizations.
- To decline to take the test based on evidence that a medical or psychological condition might cause abnormal test responses.



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**In addition, employees have the right to the following:**

- Prior notice of the date, time and location of the test.
- Notice of the right to consult legal counsel or an employee representative before each phase of the test.
- A list of all questions to be asked.
- Information about the nature and characteristics of the test and instruments involved.
- Information about the design of the testing area (whether the subject can be observed).
- Notice that the employee or the employer may record the test with the other party's consent.

The examiner may not ask questions that were not presented in writing to the employee. After the test, the employer must interview the employee on the basis of the test results and provide a written copy of the test results.

This information will be kept on file to document whether employers comply with the law. People with complaints should write to the Wage and Hour Division of the U.S. Department of Labor (see **Resources** below).

**RESOURCES – NATIONAL AND STATE**

ACLU-TN provides the following list of resources for informational purposes only. ACLU-TN does not endorse any of the organizations listed.

**National Organizations**

- [Direct Marketing Association Telephone Preference Service](#)

1120 Avenue of the Americas  
New York, NY 10036  
Phone: (212) 768-7277

Individuals can write to this address to request that their phone numbers be removed from telemarketers' phone lists.

- [Electronic Privacy Information Center \(EPIC\)](#)

1718 Connecticut Ave., NW  
Suite 200  
Washington DC 20009  
Phone: (202) 483-1140  
Fax: (202) 483-1248

A thorough listing of privacy web sites, information and publications.

**Nashville District Office**

US Dept. of Labor, ESA Wage & Hour Division  
1321 Murfreesboro Rd., Suite 511  
Phone: 1-866-4-USWAGE  
Local Phone: (615) 781-5344

**Knoxville Area District Office**

US Dept. of Labor, ESA Wage & Hour Division  
John J. Duncan Federal Building  
710 Locust Street, Room 101  
Knoxville, TN 37902-2557  
Phone: 1-866-US-4-WAGE  
Local Phone: (865) 545-4619

**Memphis Area Office**

Federal Office Bldg  
167 North Main Street  
Room 484  
Memphis, TN 38103-1814  
Phone: 1-866-US-4-WAGE  
Local Phone: (901)544-3418

Accepts complaints about employment polygraph testing.

- **Health Privacy Project**

1120 19<sup>th</sup> St NW, 8<sup>th</sup> Floor  
Washington DC 20036  
Phone: (202) 721-5614  
Fax: (202) 530-0128

- [National Do Not Call List](#)

1-888-382-1222



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- [Privacy International](#)

**Washington Office:**

*1718 Connecticut Ave., NW*

*Suite 200*

*Washington DC 20009*

*(202) 483-1217 Fax (202) 483-1248*

*privacyint@.privacy.org*

Human rights group formed as a watchdog on surveillance by governments and corporations.

- **United States Department of Labor**

**Wage and Hour Division**

*(866) 4US-WAGE*



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