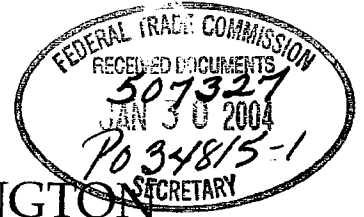




Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100



January 16, 2004

Federal Trade Commission
Office of the Secretary, Room 159-H
Pennsylvania Avenue NW
Washington, DC 20580

RE: Alternative Forms of Privacy Notices, Project No. PO34815

I am writing to comment on the proposed rule to improve privacy notices financial institutions provide to consumers under the Gramm-Leach-Bliley Act. I applaud your efforts to improve the readability and clarity of privacy notices.

The Washington State Attorney General's Office has been active on consumer privacy issues since 1999. That year my Office led a task force on consumer privacy that included consumer and privacy advocates, business leaders, legislators and concerned others. The task force produced a report that highlighted growing consumer concerns over how their personal information was being used by businesses. The report also noted the importance of balancing consumer concerns with the legitimate needs of business to market their products.

Since that time, the Attorney General's Office has responded to the privacy issue by sponsoring and supporting legislative solutions and by taking enforcement actions where appropriate. In addition, the Attorney General's Office in conjunction with the University of Washington's Shidler Center for Law Commerce and Technology released a report in 2002 containing suggested "best practices" for protecting personal information collected by businesses. The report analyzed the then state of federal and state law, self-regulatory industry practices, and consumer concerns. It all also included principles to guide businesses that will increase consumer confidence.

I have enclosed the best practices portion of the report as the Washington State Attorney General's Office public input submission. The entire report can be downloaded from our website at www.atg.wa.gov. If we can be of further assistance please feel free to contact my office. Please contact Special Assistant for Policy and Government Relations, Brian Smith, at 360-664-4953 or by email at BrianS1@atg.wa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Christine Gregoire".

CHRISTINE O. GREGOIRE
Attorney General

Enclosure



information, they won't leave anything to question, and won't be targeted by regulators. Some decide to disclose nothing, operating on the theory that if they make no assurances about protecting the privacy of consumers' private information, they won't be accused later of making misrepresentations, should information inadvertently slip out, or should their privacy policy change.

Neither over-disclosure nor non-disclosure serves businesses or consumers well. If a business chooses overwhelming disclosure, as was seen in the recent disclosure and opt-out program mandated by the Graham-Leach-Bliley Act, consumers simply do not read the information. Thus, the right to opt out becomes meaningless. Likewise, if the consumer is given no disclosure, and no right to exercise a choice about the use or sharing of personal information, he or she has no knowledge, and no control over personal information.

However, a middle ground exists. While businesses, regulators, and consumers may disagree over the exact details of what should be included in a privacy policy, there is an area where agreement can be reached at least in terms of how businesses can provide meaningful disclosure. When a business chooses to afford privacy protections to consumers, it should describe those protections in a way that consumers can understand.

The balance of this report discusses a menu of "best practices." It emphasizes the need for meaningful disclosure. The report suggests a two-step approach for privacy policies--a one-page summary for consumers highlighting the privacy policy and a more comprehensive explanation of the policy attached or hyperlinked to the one-page summary. It discusses the importance of creating a policy that most Americans are able to read and understand. It does not mandate that the most protective policy be adopted, but gives businesses a number of options based on their own decisions about the necessary level of protection.

The "best practices" suggested in the balance of this report are applicable to both the online and the "brick and mortar" world.

A. PRIVACY POLICY GUIDELINES – GENERAL OVERVIEW¹⁰¹

Introduction:

These guidelines are provided as an example for businesses to utilize when developing their own privacy policies. Each business should take into consideration the needs of their own business practices vis-à-vis their customers' preferences when developing a privacy policy. Business models vary, as do data use and retention practices. The differences in business

¹⁰¹ The skeleton of this guideline was adopted from the Better Business Bureau Online Privacy Seal Program Requirements. See www.bbbonline.org

