

# The Right to Information and Privacy:

Two Sides of the Same Coin

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ARTICLE 19



# Privacy - “Right to be Left Alone”

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- UK Calcutt Committee - “The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.”
- Westin - desire of people to choose freely under what circumstances and to what extent they will expose themselves, their attitude and their behavior to others
- European Ct Human Rights - the right to respect for private life ... comprises also, to a certain degree, the right to establish and develop relationships with other human beings, especially in the emotional field for the development and fulfillment of one’s own personality.

# International Recognition

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## ■ ICCPR §17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attack

## ■ IACHR § 11

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

## ■ OAS Charter

Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his family life

Article VI Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

Article IX. Every person has the right to the inviolability of his home

Article X. Every person has the right to the inviolability and transmission of his correspondence

# Types of Privacy

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- **Information privacy**
- **Bodily privacy**
- **Privacy of communications**
- **Territorial privacy**

# Information Privacy

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Establishes rules governing the collection and handling of personal data

- credit information
- medical records
- government records
- electronic commerce

Also known as “fair information practices” & “data protection”

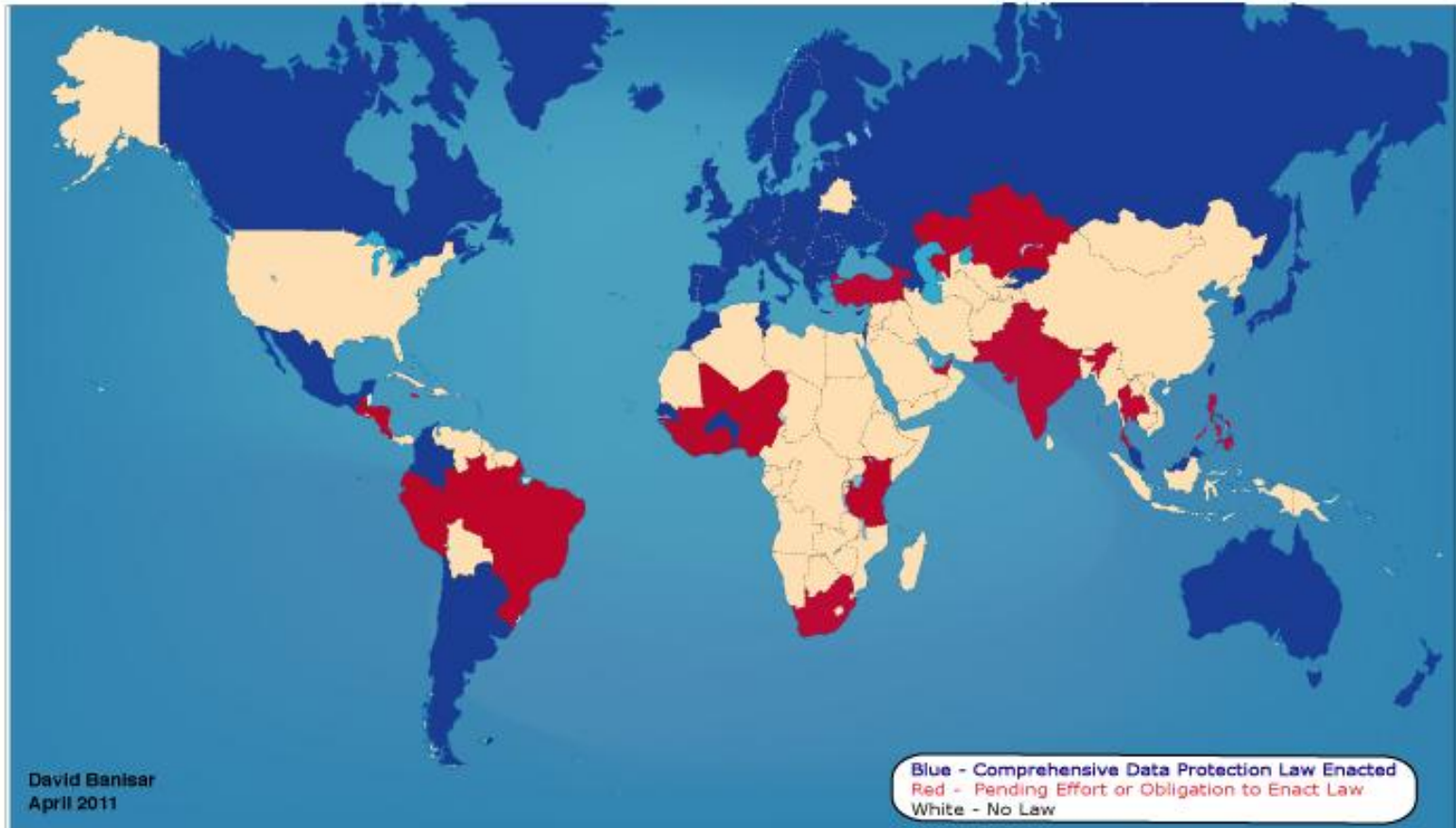
- 1974 US Code of Fair Information Practices
- 1981 OECD Guidelines
- 1982 CoE Convention
- 1990 UN General Assembly Guidelines
- 1995 EU Directive on Data Protection

# Fair Information Practices

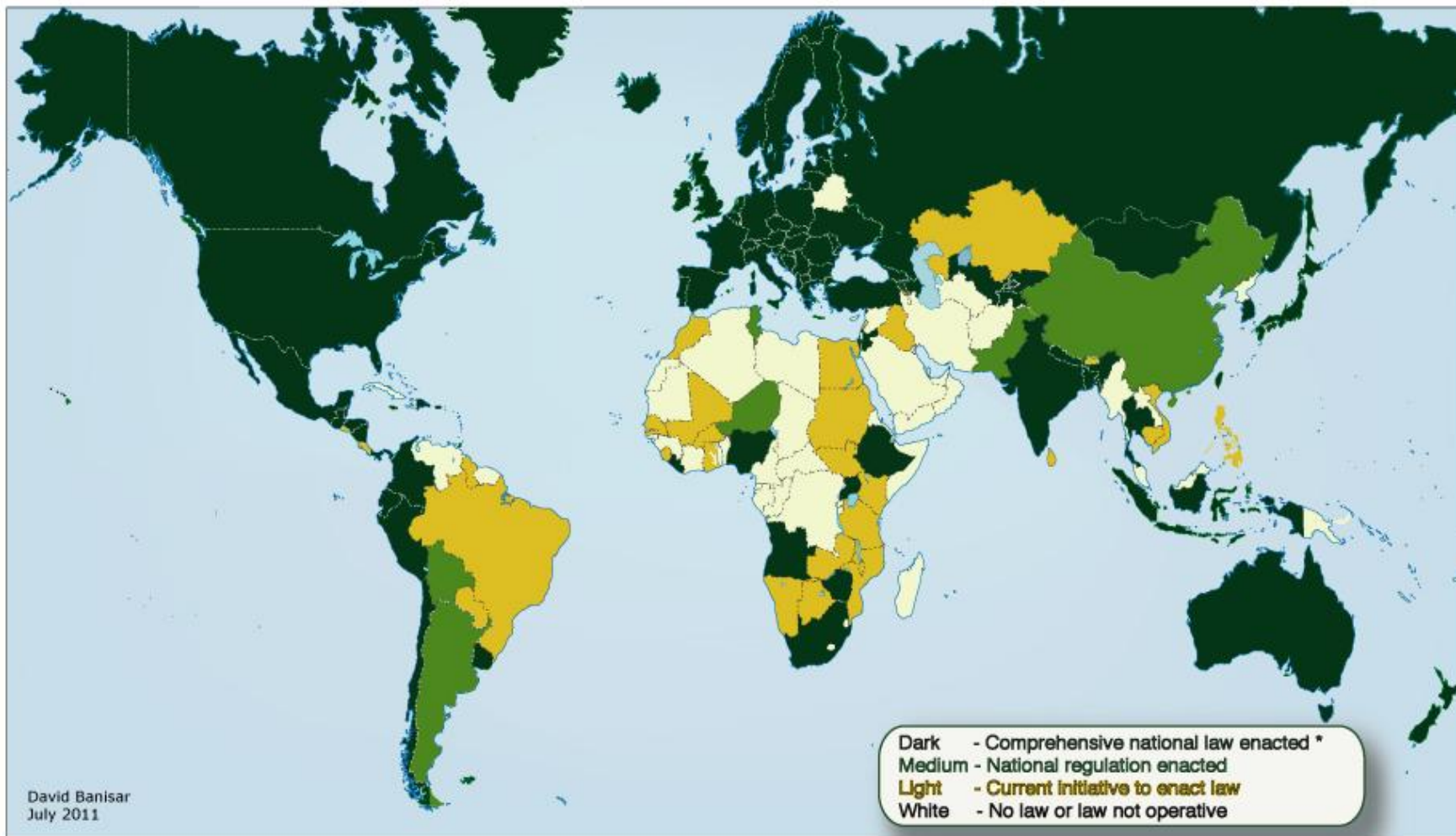
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- Obtain information fairly and lawfully;
- Used only for the original specified purpose;
- Adequate, relevant and not excessive to purpose;
- Accurate and up to date;
- Accessible to the subject;
- Kept secure; and
- Destroyed after its purpose is completed.

## Data Protection Laws Around the World



## National Right to Information Laws, Regulations and Initiatives 2011



\*Not all national laws have been implemented or are effective. See <http://www.article19.org/>



# Definition of Privacy

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- 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

- EU Data Protection Directive 95/46

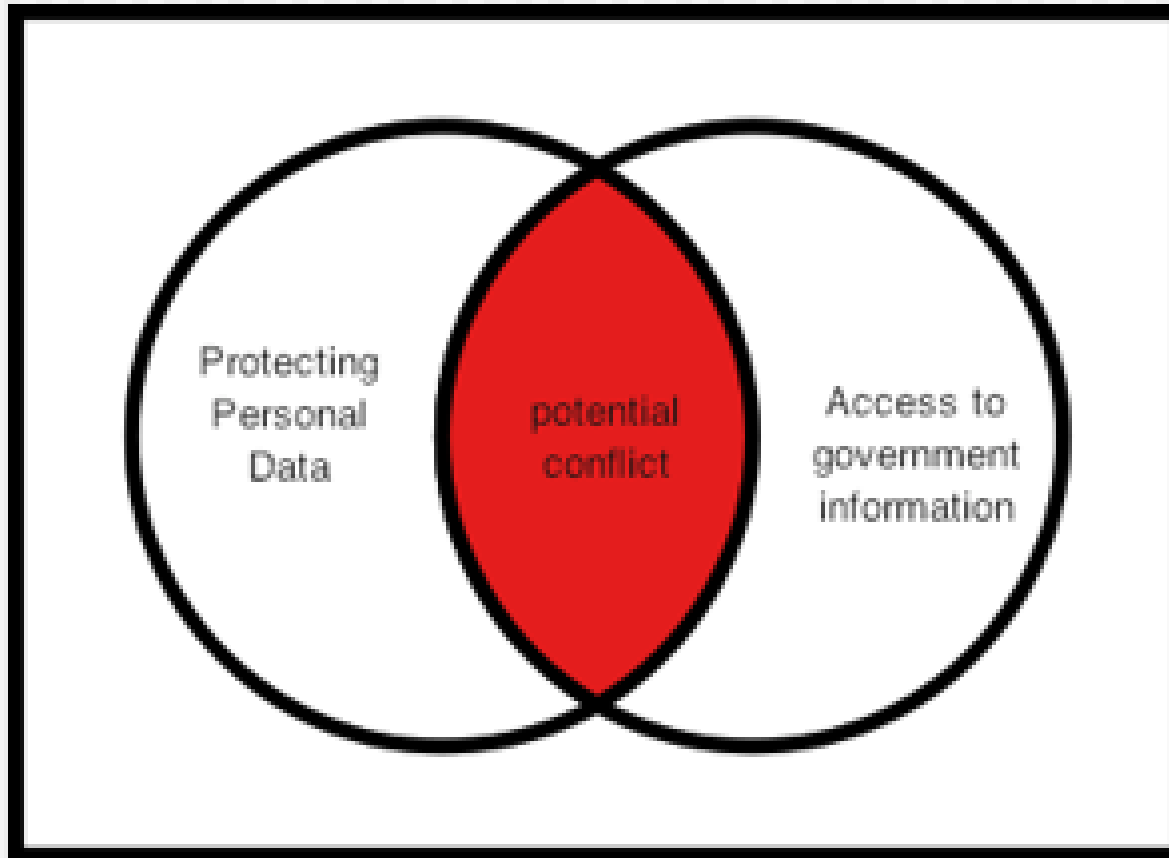
# Privacy and RTI

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- Complimentary rights
  - “not mutually distinct but form part of the overall information policy in society.” - COE
  - “two forms of protection against the Leviathan state that have the aim of restoring the balance between the citizen and the state” - French Privacy Commissioner
  - to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparent of the state. - Hungarian Info Commissioner
- 50+ Countries have both laws

# Intersection of Privacy and RTI

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# Privacy and the Right to Information

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- Enhancing the Right to Information
  - The right to obtain information that govt and private bodies hold about you or affects you and disclosure of what they are doing with it.
  - Limits on collection of information by governments intended to chill individuals and groups to use their human rights such as freedom of expression

# Conflicts

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- Access to records which contain personal information
  - Public officials
    - Identified in documents, decisions, employment records, salaries
  - Private individuals
    - Subsidies, assistance, education, voting rolls, public registers, licenses, court files, medical records

# Exemptions in RTI Laws

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- All RTI laws have exemption for personal data
- Primary Issues
  - Application to officials and official acts
  - Relationship with privacy laws
  - Public interest test
  - Oversight body

# Defining Privacy in Laws

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- Official Acts which identify officials
  - Does not apply to internal government decisionmaking
  - Does not apply to names of officials in meetings, memorandum
- Govt officials have somewhat less privacy in personal lives
  - Asset disclosures, health of senior officials
- Information about citizens held by government
  - Strong privacy for sensitive records
  - Balancing test for others – differs from society
  - Strong public interest regarding govt accountability
  - No privacy right for corporations

# Managing Conflicts

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- Obtain consent at time of collection
- Provide notification to persons that information will be released
- Limit unnecessary collection of information
- Technical measures
  - statistics



# Public Interest Test

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## ■ Public Interest test

### ■ Public interest in information balanced against personal privacy

### ■ Factors

- where the disclosure will assist public understanding of an issue of current national debate,
- where the issue has generated public or parliamentary debate,
- where proper debate cannot take place without wide availability of all relevant information,
- where an issue affects a wide range of individuals or companies
- where the issue affects public safety or public health
- where the release of information would promote accountability and transparency in decision making,
- and where the issue concerns the making or spending of public money

# Oversight body

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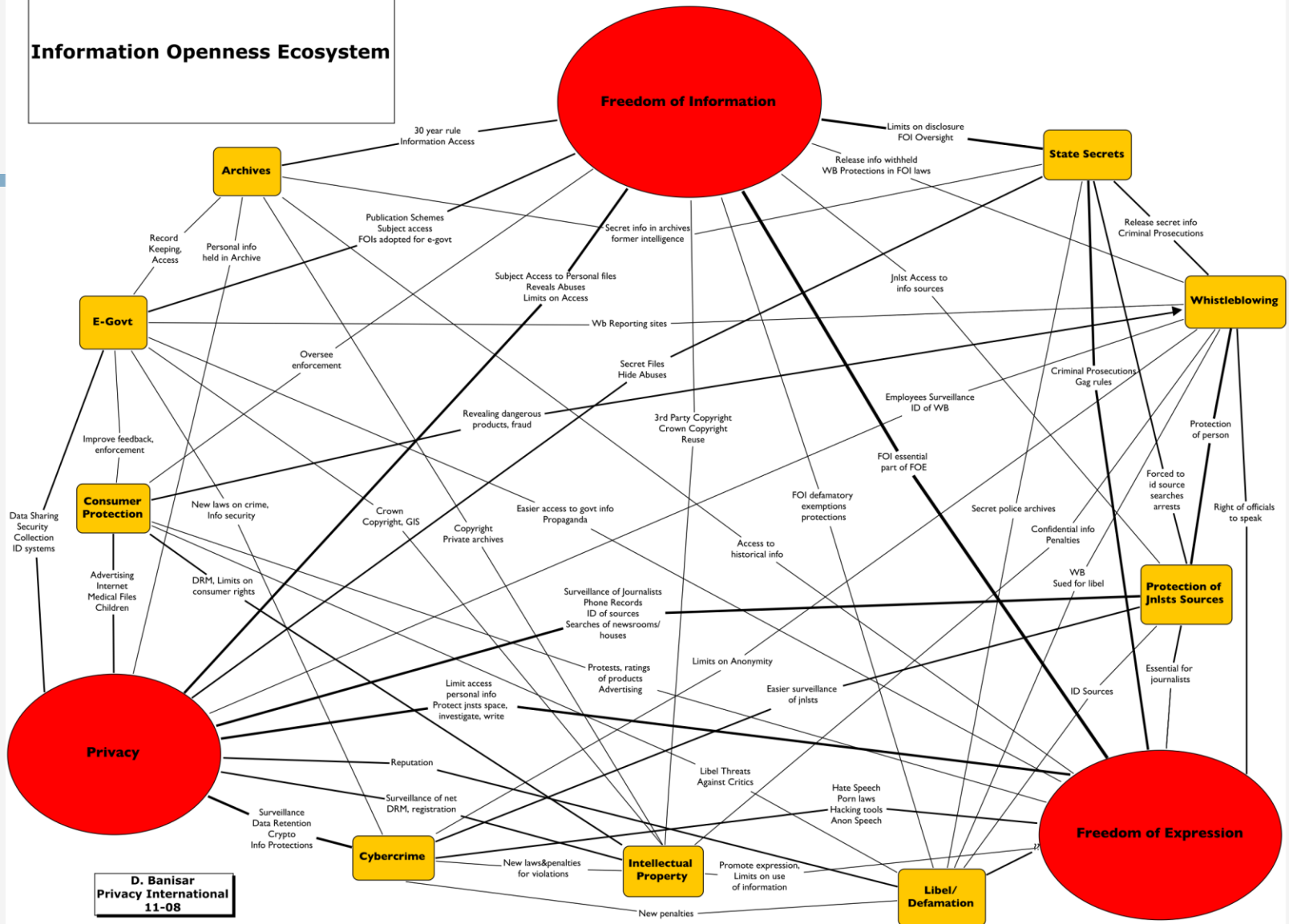
- Oversight body required for privacy/data protection
- Joint oversight body which can regulate privacy and RTI together – Mexico, UK, Australia, Germany
    - Advantages – expert in both issues, less confusion, saves costs
    - Disadvantages – internal discussion, no separate champion
  - Separate Bodies – Canada, France, Spain
    - Advantages – independent champion for each
    - Disadvantages – conflicts, additional costs

# Information Rights Ecosystem

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- Freedom of expression
- Freedom of information
- Privacy/data protection
- State secrets/classified information
- Electronic Government
- ICT policy
- Media rights
- Whistle-blowing
- Environmental Protection/Sustainable Development
- Other
  - Financial disclosure, political funding

# Information Openness Ecosystem



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**Privacy International**  
**11-08**

# More information

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## **THE RIGHT TO INFORMATION AND PRIVACY: BALANCING RIGHTS AND MANAGING CONFLICTS**

World Bank Institute 2011

<http://ssrn.com/abstract=1786473>