

# PRIVACY AND LEGAL VIRES FOR DATA SHARING ISSUES

BEING A PAPER PRESENTED AT:

THE IDENTITY MANAGEMENT CONFERENCE

*"Delivering Nigeria's Identity Management System"*

September 21-23, 2008,

TRANSCORP HILTON HOTEL ABUJA, NIGERIA.

BY: **D. D. DODO (SAN), D. D. DODO & CO.**

# **PRIVACY:**

Privacy is the ability of an individual or group to seclude themselves or information about themselves and thereby reveal themselves selectively.

It is related to being anonymous or a desire to remain unnoticed or unidentified in the public realm.

# LEGAL RIGHT TO PRIVACY

The desire for privacy in humans is innate and as such it is recognised as part of the Fundamental Rights. The right to privacy is therefore recognised by S. 37 of the Constitution of the Federal Republic of Nigeria 1999. The right has also been judicially recognised by Nigerian Courts. The right to privacy was affirmed in the case of **Medical And Dental Practitioners Disciplinary Tribunal Vs Dr. John Emewulu Nicholas Okonkwo (2001) 7 NWLR Pt. 711 p. 206 @ 244 para E.**

There are limits imposed by law on a person's rights to privacy. Examples are laws dealing with taxation which provide for certain specific disclosures by the individual.

These laws require the sharing of information regarding the individual.

Privacy may also be voluntarily sacrificed by a person for a variety of reasons. An example is when an applicant fills out a form that requires personal information to be shared. This can also extend to submitting oneself for a physical examination as part of the condition attached to an application. The NIMCA allows an individual to authorise the Commission to approve a third party's to share his information.

The law recognises two kinds of privacy,  
and they are;

- Physical Privacy; and
- Informational Privacy

For the purpose of this paper,  
we are limited to Informational  
Privacy.

Given that a person's rights to privacy is guaranteed by law all demand requiring that a person shares information regarding himself must either derive from a law or must be voluntarily surrendered by the individual.

The constitution further provides in S. 45 that laws which deal with the rights to privacy amongst other fundamental rights shall not be declared unconstitutional where such a law is reasonably justifiable in a democratic society

- a) In the interest of defence, public safety, public order, public morality or public health; or
- b) For the purpose of protecting the rights and freedom of other persons

Laws like the NIMCA which has placed an obligation on individuals to share information regarding themselves notwithstanding a person's fundamental rights to privacy still enjoy the legal vires and are enforceable because part of the advantages of the chip based identity management system is that it will aid law and order, National planning, economic stability detection and reduction of crimes etc.

# DATA SHARING

Data sharing is fundamental to the operation of civilised societies since they depend on law and order to function smoothly. Civilised societies have very complex institutional arrangements which happen to be interdependent on one another. For these systems to work, a heavy reliance is placed on data sharing.

Societies have over the centuries understood the unique position of the individual within the system of governance and law and order. However given the massive nature of information that requires to be processed if the system has to identify every individual within it, governments have traditionally limited data sharing on individuals to tax matters, population matters and general heuristic statistics.

With the advent of very powerful technologies, the tools are now available to governments and its institutions to account for every citizen on an individual by individual basis and not just as anonymous statistics. These technologies enable the government to accumulate this information in the form of a data base that can be efficiently processed and shared.

The NIMCA therefore relates to technologies that allow for Human Identification. This is the association of electronic data with a particular human being (Roger Clarke).

## **What Is Data Sharing:**

It is the capacity to provide or offer access to information that is or should otherwise be unavailable to the recipient from a permanent source.

## **Who To Share Data With:**

As noted earlier law tax laws require an individual to share data concerning the individual with a public tax body for the purpose of carrying out a specific function regarding that person.

Data sharing with respect to NIMCA however is not limited to the commission just issuing Chip Imbedded Identity Cards to persons. The Commission is intended to share that Data with certain specific government agencies (and to others subject to certain preconditions) in order to meet with the following objectives:

- National Security.
- Prevention and Detection of Crime.
- Authentication of Financial Transactions, Credit and Tax.
- Authentication of Human Identification.

The Commission therefore, given certain circumstances is allowed to share information on its data base with the following:

- Judicial Authorities.
- Nigerian Police Force.
- Where a regulation enacted by the Commission provides for the sharing of information.
- A person may also permit the Commission to make available information on him/her to other third parties who apply to the Commission for such information.

# **Benefits Of Data Sharing:**

- Enhanced Security.
- Better National Planning.
- Detection of Crimes.
- Authentication of Financial Transactions, Credit and Tax.
- Authentication of Human Identification.

# **Concerns Of Data Sharing:**

- Potential Risks for Invasion of Privacy/Loss of Anonymity of Personal Information
- Reduced anonymity of financial, land, insurance, pension and credit transactions.
- Reduced anonymity of registered voters.
- Mishandling of Data Base/Unauthorised access to the data base. Eg. Identity theft, invasion of privacy, etc.

# RELEVANT ISSUES

The Act has empowered the Commission to make rules regarding the operation of the NIMCA. The Commission must therefore ensure an effective balance between the guaranteed right of individual to privacy and its statutory responsibilities to share data.

The Commission should enact rules which clearly provide that a particular government institution can have access to only specific kinds of information relating to its statutory function from the Commission's data base and not any other kind.

Private bodies must satisfy very stringent rules enacted by the Commission intended to ensure that an individual has either authorised or consented to the sharing of his/her information with them.

Clear backed up records must exist regarding any access into the data base by any institution or anyone in permanent form.

The NIMCA contains very clear provisions intended to protect the National Identity Data Base. The letter and spirit of that provision would imply that where the Commission has to share data in instances where it does not require the authority or consent of an individual's information on its data base, it must enact rules about the end storage and sanctity such shared information.

It must ensure that even though such information is outside the Commission's data base, it should remain subject to the stringent controls the Commission handles information on its own data base. (Note S. 5 (g), (h), (i), (j) and (p) of the NIMCA))

In this regard, the Commission should consider incorporating into its rule, a blanket ban on any raw publication of the contents of the data base. When the content of the data base is used by the Police, it should be strictly restricted to its own investigation and no more. Where the Police deem it necessary that the a case be charged to court or if in any circumstance the matter becomes a judicial one, any information required for adjudication should at the instance of the judicial authority directly to the Commission and not through a recourse second hand to the one already obtained by the Police.

The Commission must also enact rules regarding the handling of such information when shared with the judicial authorities so as to ensure their continued sanctity.

The chip based identity cards must be versatile in its programming to ensure that its holder can authenticate it. Where it is presented can only be accessed for the specific information relevant to the particular institution or where the holder has to present it to a third party, can place some restriction on the information to be obtained from it.

On the whole it must be realised that if the NIMCA is effectively implemented, it will ensure that Nigeria will be much better organised with regard to individual credit rating, enhancement in the detection and tracking of crime and a more effective national planning.

The immediate impact of this will be to remarkably improve the standards of living of the citizenry.