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Volume 35 | Issue 3 Article 14

1990

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Christopher W. Wasson, *Privacy Law - The Routine Use Exception to the Privacy Act: A Clarification on Compatibility*, 35 Vill. L. Rev. 822 (1990).
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PRIVACY LAW—THE ROUTINE USE EXCEPTION TO THE PRIVACY ACT: A CLARIFICATION ON COMPATIBILITY

Britt v. Naval Investigative Service (1989)

I. INTRODUCTION

In 1974, Congress enacted a comprehensive piece of legislation known as the Privacy Act (the Act) in an effort to restrict the ability of government agencies to collect and maintain personal information on individual citizens.[1] The operative portion of the Act places a general prohibition upon the unauthorized release by government agencies of personal information about an individual.[2] The Act then allows for twelve statutory exceptions to the general rule prohibiting unauthorized disclosures.[3] One such exception is known as the "routine use" exception.[4] The Act defines a "routine use" as "the use of [a] record for a purpose which is compatible with the purpose for which it was collected."[5] Before an agency may invoke the exception, it must have previously published a list of any such routine uses in the Federal Register.[6] Practically, therefore, an agency seeking to justify an unauthorized disclosure under the routine use exception must meet the requirements of compatibility of purposes and publication of routine uses.

In applying the compatibility requirement of the exception, most courts use only a simple mechanical analysis of the relationship between

1. *See* 5 U.S.C. § 552a (1988). In the Senate Report on the Act, the intent of Congress was stated as follows: "The purpose of [the Privacy Act] is to promote governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerization, collection, management, use, and disclosure of personal information about individuals." S. REP. NO. 1183, 93d Cong., 2d Sess. 1, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 6916, 6916.

2. *See* 5 U.S.C. § 552a(b) (1988). Section 552a(b) provides that "[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains." *Id.* Any disclosure made without the consent of the individual would be considered an unauthorized disclosure.

3. *See id.* § 552a(b)(1)-(12).

4. *See id.* § 552a(b)(3). This exception permits an unauthorized disclosure "for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section." *Id.*

5. *Id.* § 552a(a)(7).

6. *See id.* § 552a(b)(3) (requiring routine use to comply with description under subsection (e)(4)(D) of the Act). Under subsection (e)(4)(D) of the Act, an agency must publish "each routine use of the records contained in the system, including the category of users and the purpose of such use." *Id.* § 552a(e)(4)(D).

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the disclosed information and the routine use published by the agency in the Federal Register.[7] If the information disclosed fits within the description of the published routine use, then the disclosure is deemed compatible with the purpose for which it was collected.[8] On the other hand, if the information does not fit within the routine use description, then the disclosure is deemed incompatible.[9] Implicit in such an analysis is the court's acceptance of the published routine use as the "purpose for which [the information] was collected."

In *Britt v. Naval Investigative Service*,[10] the Court of Appeals for the Third Circuit sought to clarify what it understood to be the requirement of a more intricate process for determining compatibility under the routine use exception.[11] The court first held that the "purpose for which it was collected" language of the Act[12] referred to the specific purpose for which the information about the individual was collected and not to the routine use purpose published in the Federal Register.[13] The court then attempted to define the degree of compatibility required between the purpose for disclosure and the purpose for which the information was collected.[14] The Third Circuit utilized a thorough dissection of the

7. *See, e.g.*, NLRB v. United States Postal Serv., 841 F.2d 141, 145 n.3 (6th Cir. 1988) (if routine use published in Federal Register, any information falling within such use disclosable without consent); Doe v. DiGenova, 779 F.2d 74, 86 (D.C. Cir. 1985) (disclosure not allowed because not related to routine use published in Federal Register); United States v. Miller, 643 F.2d 713, 715 (10th Cir. 1981) (disclosure of information complied with published routine use in Federal Register); Ely v. Department of Justice, 610 F. Supp. 942, 945-46 (N.D. Ill. 1985) (court focused only on compliance with description of routine use published in Federal Register), *aff'd*, 792 F.2d 142 (7th Cir. 1986).

8. *See, e.g., NLRB*, 841 F.2d at 145 n.3. In analyzing the routine use exception, the court focused on the published routine use which stated that information necessary for the postal workers' union to properly perform its collective bargaining duties would be released. *Id.* The court then determined that information indicating which postal employees were applying for management positions was necessary information for the union to have in performing its duties. *Id.* at 145-46.

9. *See, e.g., DiGenova*, 779 F.2d at 86. In this case, the published routine use stated that records which on their face indicated any criminal violation would be released to the appropriate agency. *Id.* The information disclosed, however, was medical information about the individual. *Id.* The court found no relationship between records indicating criminal violations and records containing medical information, thus the information released did not fit within the routine use exception. *Id.*

10. 886 F.2d 544 (3d Cir. 1989).

11. For a discussion of the routine use exception and the compatibility requirement, see *supra* notes 4-9 and accompanying text.

12. *See* 5 U.S.C. § 552a(a)(7) (1988).

13. *See Britt*, 886 F.2d at 548-49. The court rejected the government's position that a disclosure need only be compatible with a routine use purpose published in the Federal Register, finding it "unaccountable" that the government could misinterpret the "clear statutory language." *Id.* at 548.

14. *Id.* at 549-50. The court determined that mere relevance was not the standard Congress intended under section 552a(a)(7). *Id.* For a further discus-

routine use exception to reach its holdings.

II. Discussion

Stephen Britt, the plaintiff in *Britt v. Naval Investigative Service*, was an officer in the Marine Corps Reserves.[15] Britt's problems began when the home of one of his subordinate officers was searched by local and federal authorities.[16] The search produced various items of military ordnance, such as grenades and ammunition, and requisition forms signed by Britt and his subordinate.[17] The Naval Investigative Service (NIS) made an initial determination that Britt was not authorized to requisition the ordnance found and thereafter commenced an investigation of Britt to determine if criminal prosecution was warranted.[18] The investigation did not lead to any charges, nor was any disciplinary action taken against Britt.[19] At the outset of the investigation, however, NIS contacted Britt's employer, the Immigration and Naturalization Service (INS), and disclosed the nature of the investigation and all the information NIS had discovered up to that point.[20]

The initial disclosure was made by the NIS agent because he "was sure that the INS would want to have this information at the earliest possible opportunity."[21] Britt's superior at INS then requested copies of all the reports related to the investigation.[22] The request was approved and reports were sent to INS containing accounts of persons interviewed, results of searches and a record of all physical evidence seized.[23] The record of the trial court revealed no evidence that Britt

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sion of the degree of relationship required by the Third Circuit, see *infra* notes 46-59 and accompanying text.

15. *See Britt*, 886 F.2d at 545.

16. *Id.* The home of Steven Reinert, a gunnery sergeant and subordinate of Britt's, was searched by the Camden County (N.J.) Sheriff's Department and the Federal Bureau of Alcohol, Tobacco and Firearms. *Id.*

17. *Id.*

18. *Id.* at 546, 549. Britt alleged that NIS designated him for investigation because Britt had testified at a bail proceeding on behalf of his subordinate Reinert. *See* Britt v. Naval Investigative Serv., No. 86-0889, 1-2 (E.D. Pa. July 10, 1987) (LEXIS, Genfed library, Dist file).

19. *See Britt*, 886 F.2d at 546. In fact, Britt was subsequently promoted to Lieutenant Colonel in the Reserves. *Id.*

20. *Id.* Britt was a special agent responsible for conducting administrative and criminal investigations for the INS. *Id.* at 545. The disclosure was made to his superior within the INS by the agent in charge of the investigation at NIS. *Id.* at 546.

21. *Id.* at 549. It is crucial to this case that the initial disclosure was made unilaterally by NIS. If INS had initiated the disclosure by formally requesting the information, it is likely that there would have been no violation. *See* 5 U.S.C. § 552a(b)(7) (1988). The Act permits disclosure of information upon written request by the head of another agency if the information requested is for use in civil or criminal law enforcement activity. *Id.*

22. *See Britt*, 886 F.2d at 546.

23. *Id.*

was under investigation by INS for the same or any other criminal activity, thus the only impetus for the request by INS was the initial disclosure by NIS.[24] Shortly after the NIS investigation was concluded, Britt brought suit against NIS for an unauthorized disclosure of personal information in violation of the Privacy Act.[25]

NIS moved for summary judgment against Britt, and the motion was granted by the district court.[26] The district court ruled that the unauthorized disclosure by NIS was covered by the routine use exception, thus NIS was protected from any liability.[27] Britt appealed, contending that NIS had failed to meet both the publication and compatibility requirements of the routine use exception.[28] Britt claimed that the published routine use relied upon by NIS was vague and overbroad and thus provided inadequate notice to individuals regarding what information about them could be released and for what purposes it would be released.[29] Alternatively, Britt contended that the purpose for which NIS collected the information concerning him was not compatible with its purpose for disclosing the information to INS.[30]

The Court of Appeals for the Third Circuit reversed, basing its holding on two findings: (1) the compatibility language used in the statutory definition of "routine use" requires a higher standard than mere relevance;[31] and (2) an agency may not rely on a broad routine use purpose published in the Federal Register in an effort to "evade the statutory requirement that [the purpose for] disclosure must be compatible with the [specific] purpose for which the material was collected."[32] The

24. *Id.* at 549.

25. *Id.* at 544. Britt also sought damages for violation of his due process rights from the individual agents who conducted the investigation for NIS. That claim was dismissed by the district court and Britt did not appeal the dismissal. *Id.* at 546.

26. *Id.* at 546.

27. *Id.* at 547. The district court also ruled that the disclosure fell within the "need to know" exception to the Privacy Act. *Id.* The need to know exception covers disclosures within the same agency that must be made in order that employees and officers within the agency may perform their duties. *See* 5 U.S.C. § 552a(b)(1) (1988). In *Britt*, however, the disclosure was made to the INS, not the Marine Reserves, thus the Third Circuit held that the need to know exception was inapplicable. *Britt*, 886 F.2d at 547. This error of law was acknowledged and conceded by the government in its brief, thus allowing the court to bypass the issue quickly. *Id.*

28. For an explanation of the compatibility and publication requirements, see *supra* notes 5-6 and accompanying text.

29. *See Britt*, 886 F.2d at 547-48. For the text of the routine use relied on by NIS and a discussion of its sufficiency, see *infra* notes 34-39 and accompanying text.

30. *See Britt*, 886 F.2d at 548.

31. *Id.* at 550. For a discussion of the court's rejection of the relevance standard, see *infra* notes 46-59 and accompanying text.

32. *Britt*, 886 F.2d at 550. For a discussion of the court's analysis regarding the appropriate purposes to be compared for compatibility, see *infra* notes 42-45 and accompanying text.

case was remanded for further findings on the issue of damages.[33]

The court initially examined the compliance by NIS with the publication requirement.[34] The government argued that the published routine use allowing disclosure by NIS to "federal regulatory agencies with investigative units" satisfied its publication requirement.[35] The court pointed out that this phrase contained no statement of the purpose for the use as required by section 552a(e)(4)(D) of the Act.[36] Additionally, in the opinion of the court, the phrase relied upon by NIS was too broad to serve the functions of the publication requirement.[37] The court determined that the phrase lacked meaningful notice to individuals as to what information would be released and the purposes for which it would be released.[38] The court also concluded that the breadth of the published use left NIS free to make unauthorized disclosures of virtually any information it possessed.[39]

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33. *See Britt*, 886 F.2d at 551. The Privacy Act authorizes an individual to bring a civil action against an agency for improper disclosures provided there is an adverse effect on the individual. 5 U.S.C. § 552a(g)(1)(D) (1988). Furthermore, damages are only recoverable if the agency acted intentionally or willfully. *Id.* § 552a(g)(4). The court determined that Britt was denied satisfactory discovery on the issue of intentional or willful violation of the Act and remanded to allow for such discovery. *See Britt*, 886 F.2d at 551.

34. For the text of section 552a(e)(4)(D) (the publication requirement), see *supra* note 6.

35. *See Britt*, 886 F.2d at 548. The text of the routine use relied upon by NIS was as follows: "To other investigative units (federal, state or local) for whom the investigation was conducted, or who are engaged in criminal investigative and intelligence activities; federal regulatory agencies with investigative units." *Id.* at 547 (citing 50 Fed. Reg. 22,802-03 (1985)).

36. *See Britt*, 886 F.2d at 548. For the text of section 552a(e)(4)(D) (the publication requirement), see *supra* note 6. The court concluded that the phrase "[t]o other investigative units (federal, state or local) for whom the investigation was conducted, or who are engaged in criminal investigative and intelligence activities" gave adequate notice of the categories of users and the purpose. *Id.* at 547-48. The court, however, contrasted that phrase with the "federal regulatory agencies with investigative units" phrase relied on by the government and found the latter to be an independent phrase (the phrase was set off by a semicolon) that contained no purpose. *Id.* at 548.

37. *Britt*, 886 F.2d at 548. The court did not hold that the phrase relied upon was too broad to satisfy the publication requirement because it chose to rest its holding on the compatibility requirement. *Id.* Nonetheless, the dicta of the court concerning the inadequacy of NIS's publication is strong and well supported by the legislative history. *See id.*

38. *See id.* at 548. The court stated that it "share[d] Britt's concern that the breadth of the clause relied on does not provide adequate notice to individuals as to what information concerning them will be released and the purposes of such release." *Id.* The court looked to the legislative history of the Act to support its finding of congressional intent that the published routine use provide meaningful notice. *Id.* (citing S. REP. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 6916, 6973).

39. *Id.* The court believed that any agency would have some type of investigative unit and thus NIS could disclose the information to just about anyone. *Id.* In the court's opinion, "[s]uch breadth fails to constrain in a meaningful manner the NIS' discretion to disclose information." *Id.* The court noted that the intent

Despite its misgivings concerning the adequacy of the published routine use relied upon by NIS, the court focused exclusively on the compatibility requirement in reaching its holding.[40] The definition of a routine use disclosure states that the disclosure must be "for a purpose which is compatible with the purpose for which it was collected."[41] Within this phrase, the court articulated two definitions which it believed to be essential to proper application of the exception.

First, the court defined exactly which purposes must be compatible for a routine use to exist.[42] According to the Third Circuit, the "purpose for which the information was collected" referred to the purpose for which the NIS collected the information about Britt in this specific instance.[43] It did not, as NIS contended, refer to the general purposes for collection of information by the agency which NIS had published along with its routine uses in the Federal Register.[44] It is this "case-specific purpose" that must be deemed compatible with the purpose for the disclosure in order for the exception to be a valid justification.[45]

Next, the Third Circuit focused on the word "compatible" to determine the degree of relationship required between the two purposes.[46] The court concluded that NIS had made the disclosure because it

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of Congress as shown in the legislative history was that the routine use exception " 'serve as a caution to agencies to think out in advance what uses it [sic] will make of information.' " *Id.* (citing ANALYSIS OF HOUSE AND SENATE COMPROMISE AMENDMENTS TO THE FEDERAL PRIVACY ACT, *reprinted in* 120 CONG. REC. 40,405, 40,406 (1974)).

40. *Id.* at 548. The court explained that "[n]otwithstanding the problems with the publication in the Federal Register, we [the Third Circuit] choose to focus our attention, and rest our holding, on what we deem the more basic issue [of compatibility]." *Id.*

41. 5 U.S.C. § 552a(a)(7) (1988).

42. *See Britt*, 886 F.2d at 548-49. The court referred to the necessity of a dual inquiry whereby each separate purpose is determined before any type of relationship between the two is analyzed. *Id.*

43. *Id.* at 549. Upon review of the evidence (mainly affidavits of NIS officials) the court determined that NIS's investigation was for the specific purpose of determining whether or not disciplinary action against Britt was appropriate. *Id.* For an explanation of the facts surrounding the investigation, see *supra* notes 15-17 and accompanying text.

44. *See Britt*, 886 F.2d at 549. Along with the published list of routine uses, NIS also published a description of the general purposes for which the agency collected information. *See* 50 Fed. Reg. 22,802 (1985). The portion relied upon by NIS included the following: "The records in this system are used to make determinations of: suitability for access or continued access to classified information, suitability for employment or assignment, suitability for access to military installations . . . ." *Id.* NIS reasoned that the published purpose relating to security clearance was consistent with the purpose for which it disclosed the information to INS. *Britt*, 886 F.2d at 549. The published purpose was, however, not the purpose for which it investigated Britt. *Id.* Britt was investigated for a specific instance of possible wrongdoing and not for a general security clearance. *Id.*

45. *Id.* at 548-49.

46. *Id.* at 549-50.

thought the information it had collected about Britt would be found "relevant" by his superior at INS.[47] A standard of mere relevance was flatly rejected by the Third Circuit as not being sufficiently restrictive.[48] Instead, the court required "a more concrete relationship or similarity, some meaningful degree of convergence, between the disclosing agency's purpose in gathering the information and in its disclosure."[49] The lack of case law focusing on the compatibility aspect of the routine use exception forced the Third Circuit to rely on dicta from other circuits[50] and language in the legislative history of the Privacy Act[51] in order to determine the standard of compatibility. The court relied almost exclusively on the legislative history of the Privacy Act to justify its interpretation of the compatibility requirement.[52] The court articulated the general purpose of the Act as the protection of individual privacy from government intrusion.[53] Then, more specifically, the Third Circuit examined the role of the compatibility requirement in furthering this general purpose.[54] The report on the final bill described the requirement as " 'intended to discourage the unnecessary exchange of information . . . to agencies who may not be as sensitive to the collecting agency's

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47. *Id.* at 549. NIS did not contend that it believed INS was conducting any type of investigation of Britt, rather it only felt the information might have affected Britt's ability to perform his job. *Id.* NIS believed that Britt's superior at INS would want to have information suggesting a lack of integrity in one of his subordinates who occupied a sensitive position within the agency. *Id.*

48. *Id.* The court noted that "[r]elevance . . . is not the standard Congress placed in section 552a(a)(7). Congress limited interagency disclosures to more restrictive circumstances." *Id.*

49. *Id.* at 549-50. The court noted that the Privacy Act was drafted to prevent agencies from "merely citing a notice of intended 'use' as [an] . . . easy means of justifying transfer or release of information." *Id.* at 550 (citing S. REP. No. 1183, 93d Cong., 2d Sess. 69, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 6916, 6983).

50. *Id.* at 550. The court cited two cases in which the purposes for collection and the purposes for the disclosures were deemed incompatible, but these findings did not control the outcome of the cases. *See* Covert v. Harrington, 876 F.2d 751, 755 (9th Cir. 1989) (information collected pursuant to security clearance investigation incompatible with disclosure for later criminal investigation of individual); Mazaleski v. Treusdell, 562 F.2d 701, 713 n.31 (D.C. Cir. 1977) (information concerning dismissal of employee incompatible with disclosure to prospective employer).

51. *See Britt*, 886 F.2d at 550.

52. *Id.* at 550.

53. *Id.* The court stated that "[o]ne of the goals of the Act was to prevent the federal government from maintaining in one place so much information about a person that [a] person could no longer maintain a realistic sense of privacy." *Id.* (citing S. REP. No. 1183, 93d Cong., 2d Sess. 15, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 6916, 6930) ("[T]he creation of formal or de facto national data banks, or of centralized Federal information systems without certain statutory guarantees would . . . threaten the observance of the values of privacy and confidentiality in the administrative process.").

54. *See id.*

reasons for using and interpreting the material.' "[55] The court concluded that a standard based on mere relevance would weaken both the general purpose of the Act and the specific purpose of the compatibility requirement.[56]

In applying its "more than relevance" or "meaningful degree of convergence" standard, the Third Circuit held that the purpose of the disclosure to INS[57] was not compatible with the purpose for which NIS collected the information about Britt.[58] In other words, a general disclosure to an employer regarding the integrity of an employee is not sufficiently compatible with an investigation concerning a specific instance of possible wrongdoing by the individual in an entirely different context.[59]

III. ANALYSIS

The *Britt* decision clarifies the application of the compatibility requirement for existing government agencies in the Third Circuit and elsewhere.[60] When contemplating an unauthorized disclosure based on the routine use exception, an agency knows it must consider the specific purpose for which it collected the information about the individual, rather than a general purpose found in the Federal Register.[61] As seen in *Britt*, the specific purpose will often diverge from the published general purposes.[62] Additionally, an agency knows that its purpose for collecting the information must have a particularly close connection to its

55. *Id.* (quoting *Analysis of House and Senate Compromise Amendments to the Federal Privacy Act, reprinted in* 120 CONG. REC. 40,405-06 (1974)).

56. *Id.* The court stated that "if the numerous government agencies which collect information about individuals are free to share their information with others, bound only by the standard of relevance to the recipient agency, the purpose of the limitation in [section] 552a(a)(7) may be nullified." *Id.* The court also noted the statement of Senator Percy (a cosponsor of the Act) that " '[w]hen personal data collected by one organization for a stated purpose is used and traded by another organization for a completely unrelated purpose, individual rights could be seriously threatened.' " *Id.* (citing 120 CONG. REC. 36,894 (1974)).

57. For a discussion of the purpose of the disclosure to INS, see *supra* notes 44 and 47.

58. *Britt*, 886 F.2d at 550. The court "conclude[d] . . . that NIS' use of the information compiled as to Britt, which was merely a preliminary investigation with no inculpatory findings, by disclosing it to Britt's civilian employer (albeit a government agency) was not compatible with the purpose 'for which the information was collected.' " *Id.* For a discussion of the purpose for NIS's collection of information on Britt, see *supra* note 44.

59. *See Britt*, 886 F.2d at 549-50.

60. For a discussion of another circuit court's recent reliance on the Third Circuit's holding in *Britt*, see *infra* notes 66-71 and accompanying text.

61. For a discussion of the proper analysis for comparing the purpose for the collection of the information and the purpose for the disclosure, see *supra* notes 42-45 and accompanying text.

62. *See Britt*, 886 F.2d at 550.

purpose for disclosing it.[63] For instance, the *Britt* court made it a point to dismiss the possibility that INS was investigating Britt for the same activity.[64] If INS had been investigating Britt for the same activity, then the disclosure by NIS would have satisfied the court's standard. A harder case would be presented by a situation where INS was investigating Britt for possible criminal conduct related to a different activity. Although the court's definition of "more than relevance" is not eminently clear,[65] a disclosure of a criminal investigation by one agency to another agency also conducting a criminal investigation of the same person would likely be considered more than relevant. The standard does not present a bright-line rule, but does provide some guidance by raising the acceptable standard for compatibility above mere relevance.

The Third Circuit's holding in *Britt* has recently been cited with approval and followed by the Ninth Circuit.[66] In *Swenson v. United States Postal Service*,[67] the Ninth Circuit was faced with the case of a postal worker who had written to her Congressmen to complain about misconduct on the part of her postmaster.[68] The Congressmen wrote a letter of inquiry to the Postal Service concerning Swenson's allegations about her postmaster's misconduct.[69] The responses received by the Congressmen contained personal information about Swenson's employment status.[70] The court, citing the Third Circuit's "more than relevance" test, found that the purpose for the disclosure by the Postal Service was incompatible with the purpose for which it had collected the information

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63. For a discussion of the degree of relationship required by the compatibility requirement, see *supra* notes 46-59 and accompanying text.

64. *See Britt*, 886 F.2d at 549.

65. For the court's definition of "more than relevance," see *supra* note 49 and accompanying text. On the facts of *Britt*, the court went so far as to hold that the standard was more than relevance, yet it declined to go any further in restricting the exception. *See Britt*, 886 F.2d at 549.

66. *See* Swenson v. United States Postal Serv., 890 F.2d 1075, 1078 (9th Cir. 1989) (relying on *Britt* in holding there must be a "meaningful degree of convergence" between purpose for collecting and purpose for disclosing information).

67. *Id.*

68. *Id.* at 1076. Swenson was a rural route mail carrier in California. *Id.* She observed that her postmaster deliberately undercounted rural route mailboxes, which entitled him to merit bonuses, and forced mail carriers to work off the clock. *Id.* In her letter, Swenson alleged that the undercounting resulted in lost revenue for the government, non-delivery of mail to boxholders at the end of the route and reduction in advertiser access to postal patrons. *Id.* Swenson also contended that when she attempted to correct the problem, she was threatened and harassed. *Id.*

69. *Id.* Both Representative Chappie and Senator Wilson of California wrote to the United States Postal Service in an effort to uncover information concerning Swenson's allegations. *Id.*

70. *Id.* The letters to the Congressmen revealed that Swenson had filed sex discrimination complaints with the Equal Employment Opportunity Commission (EEOC). *Id.* at 1077. One letter also disclosed that Swenson had filed two grievances in response to warnings from her employer. *Id.* at 1076-77.

about Swenson.[71] The Ninth Circuit's adherence to the Third Circuit's holding indicates that the standard set forth by the Third Circuit is practical despite being somewhat vague. A "more than relevance" standard allows for considerable judicial discretion whereby the courts have ample room to effectuate the legislative purpose of the Privacy Act.[72] At the same time, the standard provides a cognizable warning to government agencies that they will be bound by a higher standard than mere relevance.

IV. CONCLUSION

The Third Circuit's interpretation of the routine use exception is consistent with the intent of Congress in enacting the Privacy Act. The acceptance of a relevance standard by the *Britt* court would have eviscerated the usefulness of the Act. An agency would then merely have to demonstrate that it reasonably believed the information would in some way be relevant to the agency to which it was disclosed. Such a subjective standard would not lessen the unnecessary exchange of information between agencies, rather, it would increase it dramatically. Congress sought to preserve individual privacy rights by restricting the unauthorized disclosure power of agencies to the bare minimum required for the smooth operation of modern government.[73] In structuring the Act, Congress was careful to define the acceptable situations where unauthorized disclosures would be permitted.[74] The Third Circuit kept the routine use exception from expanding in scope to the point of minimizing the utility of the other narrowly defined exceptions provided by Congress.

Christopher W. Wasson

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71. *Id.* at 1078. The court determined that the Postal Service collected the information regarding Swenson's EEOC complaints to evaluate the effectiveness of the EEOC program, and the information on the other grievances was collected for routine personnel functions. *Id.* Implicit in the court's analysis was its recognition that the appropriate purpose to be compared with the purpose of the disclosure was the specific purpose for which the information was collected on Swenson. In this respect also, the Ninth Circuit followed the Third Circuit's holding in *Britt*. For a discussion of the case-specific purpose requirement outlined by the Third Circuit in *Britt*, see *supra* notes 42-45 and accompanying text.

72. For a discussion of the legislative purpose of the Privacy Act and the compatibility requirement, see *supra* notes 52-56 and accompanying text.

73. For a statement of Congress's concern for individual privacy, see *supra* note 53 and accompanying text.

74. *See* 5 U.S.C. § 552a(b)(1)-(12) (1988) (exceptions to prohibition on unauthorized disclosures).