

Notary Journals Raise Issues about Public Records versus Privacy

Notaries public have access to many items of personal information in order to do a proper job of notarizing. We have to see the entire document to make sure the signer is able to freely and willingly sign. We have to briefly review the document to gather some specifics to record in our notary journals. We have to examine the satisfactory evidence presented that establishes the identity of the signer and record details of that evidence in our journals. Other specific information about the circumstances of the notarization (as covered in other articles in this series) has to be written into the journal as well.

While the notary may forget the details of the notarization as time passes, whatever the notary has written in their notary journal becomes their official record of her acts as a notary. So much legal weight is given to the information recorded in the notary journal that it is considered prima facie evidence, which means it is presumed to be true unless proven otherwise. A growing number of states have passed statutory laws requiring that their notaries public keep an official record and many more have rules or laws on how the journals will be handled or disposed of, yet very few have addressed the issue of privacy.

Are notary journals a public record subject to state or federal freedom of information act requests? Are they private business records subject to the myriad array of state and federal laws dealing with privacy? Or are they something in between?

Among the more well-known federal laws that contain privacy provisions, the list includes the Graham-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA), the Privacy Act, the Privacy Protection Act, and the Freedom of Information Act. Many others apply in specific instances or regulate specific industries or commercial or government practices.

The Consumer Privacy Guide (<http://www.consumerprivacyguide.org/law/>) lists 27 federal statutes that protect the privacy of consumers in specific instances. Robert Ellis Smith, attorney and publisher of the Privacy Journal (<http://privacyjournal.net>) has written a book that lists more than 800 federal and state privacy laws as of 2013 -- and he has stated that more than 60 laws on the topic were passed within the 12 months after that book was published.

While European law gives consumers broad rights over their personal information and these rights apply across the board, the USA follows a more piecemeal approach. Unless you are a specialist in privacy law, the American approach means that you are very unlikely to know when the privacy rights of your signers or other parties may be a legal issue.

It would be helpful if state governments examined the issue of public access to official records versus the public's right to privacy as set forth in state and federal law as these issues relate to notary journals and notary practices in general, especially if such an examination led to specific rules to guide us notaries in the performance of our duties.

Unfortunately, only a few states have even addressed the issue of who may access the notary journal, let alone other privacy concerns. If you are commissioned in Arizona, California, Hawaii, Maryland, Massachusetts, Mississippi, Nevada, or Texas, contact your Secretary of State's office to see what the rules are for access to notary journals in your state.

Those of us in the other 42 states may need to take this matter up with our respective state legislators. Meanwhile, we should probably treat all the information in our journals as we would want our own information to be treated: consider it private unless ordered by a court to release it.

If you need a notary journal or notary supplies, please visit ASN notary supplies at www.ASNnotary.org

This article is part of the series that began with [What Does a Notary Public Do?](#)

NOTE: This article serves as information purposes to broaden the knowledge of the notary public. The Delaware Notary Association is dedicated in keeping the Delaware Notary with working information in performing their duties to the best they can and to the fullest.