

As of August 19, 2024  
(subject to revision)

Law 243-001 - Privacy and Information Security Law  
Fall 2024 - Monday 6:05–8:05 p.m.

Professors Jessica Martz ([jmartz2@gmu.edu](mailto:jmartz2@gmu.edu)), Mari Dugas ([mdugas2@gmu.edu](mailto:mdugas2@gmu.edu)),  
& JT Terry ([jterry24@gmu.edu](mailto:jterry24@gmu.edu))

**COURSE OVERVIEW/DESCRIPTION:** The course explores the rapid development of the law governing the processing, collection, use, protection and disclosure of personal, sensitive, and other information by governmental entities and private sector parties. The course also examines the legal obligations in regard to the protection of information from misuse or access by unauthorized third parties and potential liability that may arise from such misuse or access. This course is designed to be an introduction and overview to privacy and information security law topics.

**REQUIRED TEXT:** Solove, Schwartz, Information Privacy Law, Wolters Kluwer (Eighth Edition). Additional reading materials will be posted on the class TWEN site. All additional materials will be posted no later than 8pm EST the day prior to class. Privacy and information security is a rapidly developing area of the law, so supplemental materials will be updated throughout the semester in order to capture relevant updates in the law. Students are encouraged to review media and legislative sources for such updates on their own.

**OFFICE HOURS:** Will be by appointment, and can be by phone, in person, or video conference as professor schedules allow. Please email a professor to schedule a time.

**GRADING:** Final exam - 80%; Class participation 20%; Extra Credit worth up to 10% - optional extra credit opportunities will be discussed in class.

**LEARNING OUTCOMES:** By the end of the course students should have an understanding of:

- The history of privacy and information security law and regulation in the U.S.
- The interaction of criminal law, law enforcement, national security, and privacy
- The patchwork approach that the U.S. has taken to privacy and information security law
- An overview of sectoral privacy regulations
- Private versus public sector privacy practices, laws and regulations
- Legal obligations relating to security incidents and data breaches
- Legal landscape of emerging technologies, including artificial intelligence

**COURSE RULES/STRUCTURE:**

- We will use the On Deck approach. We will have four groups of students. One group will be designated to be prepared to present cases and participate actively in discussion of the materials covered during that day of class. Students not “on deck” for a specific class are still encouraged to ask questions and participate in class discussions.
- Discussion between the instructor and students and among students is strongly encouraged.

**EMAIL COMMUNICATION:** Students must use their MasonLive email account to receive important University information, including communications related to this class. We will not respond to messages sent from or send messages to a non-Mason email address. Students must also check TWEN for updates and announcement regarding the class.

**ATTENDANCE:** Regular and punctual attendance are required to earn academic credit.

- Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1.
- Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.
- The instructors will record attendance at each class.
- A student who is not present for at least 75 percent of a session of the course is absent from that session.

**CLASS RECORDINGS PROHIBITED:** Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. We may record classes for possible use in appropriate circumstances.

**CONTINUITY CONTINGENCY PLAN FOR STUDENTS:** To the extent that a student becomes ill and cannot participate in class for a period of time, the student will notify Associate Dean Niels or Assistant Dean Malone of their illness and absence(s). They will work with the student and us to arrange for substituted work in accordance with the School's Academic Regulations.

**INSTRUCTIONAL CONTINUITY CONTINGENCY PLAN:** In the event we are unable to teach any class, we will reschedule the class.

**EXAM CONFLICTS:** In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

**ACADEMIC INTEGRITY:** It is expected that students adhere to the Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

**CLASSROOM ACCOMMODATIONS:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

**SCHOOL POLICIES AND RESOURCES:**

[STUDENT HONOR CODE](#)

[ACADEMIC REGULATIONS](#)

**UNIVERSITY LIFE:** University Life provides student support resources such as Counseling and Psychological Services (<https://caps.gmu.edu/>), Student Health Services (<https://shs.gmu.edu/>), and the Student Support and Advocacy Center (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

## COURSE ASSIGNMENTS (confirm syllabus version for latest assignments):

August 26 –

Class 1 (**Terry**) Introduction; Information Security and Privacy Law:

- Origins and Types pp. 1-37, 54-57, EU 1081-1095
- Skim: 1137-1147

September 4 –

Class 2. (**Dugas**) Consumer Data: U.S. Patchwork System of Consumer Data Privacy; privacy rights; FTC Section 5 enforcement

- Consumer Privacy Introduction: Solove pp. 679-689;
- Contract theories of privacy: Solove pp. 722-730 (*In re Northwest Airlines; In re Marriott*);
- State statutory regulation: Solove pp. 843-850;
- FTC enforcement: Solove pp. 743-746; 749-770 (*In the Matter of Sears Holdings; Easy Health Care; In the Matter of Facebook*) (skim case notes)
- On Deck Group 1

September 9 –

Class 3 (**Terry**) Sensitive Data and Vulnerable populations; FERPA; COPPA; geolocation data

- Pp. 977-985 (FERPA), 799-814 (COPPA), [FTC Announcement on XMode Social and Outlogic](#)
- On Deck Group 2

September 16 –

Class 4. (**Dugas**) Financial Data: Fair Credit Reporting Act; Gramm-Leach Bliley Act; Federal and State Financial Privacy Laws

- FCRA and preemption: Solove pp. 631-638 (*Spokeo*); 641-645; 653-659 (*Sloane*)
- FTC Summary of FCRA Rights: <https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0096-fair-credit-reporting-act.pdf>
- GLBA: Solove pp. 660-664
- Skim Financial Privacy Rule and Safeguards Rule: <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-314>
- Right to Financial Privacy Act: Solove pp. 666-671 (*Gratkowski*) <https://epic.org/the-right-to-financial-privacy-act/>
- On Deck Group 3

September 23 –

Class 5 (**Martz**) Health Privacy: Confidentiality of Medical Information; HIPAA; Genetic Information; Biometric data

- Solove pp. 499-507; 603-618
- HIPAA summary: <https://www.hhs.gov/sites/default/files/privacysummary.pdf>

- Biometric data: <https://www.reuters.com/legal/legalindustry/beware-bipa-other-biometric-laws-an-overview-2023-06-22/>
- On Deck Group 4

September 30 -

Class 6. (**Dugas**) Intro to information security law and regulation; data breach statutes and federal reporting obligations

- Intro to data breach regulation: Solove pp. 899-918 (*Clemens*)
- FTC regulation: Solove pp. 933-956 (*Drizzly; LabMD*)
- Read and review one of the following articles on federal breach reporting schemes:
  - HHS breach reporting: <https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>
  - SEC Form 8-K, Item 1.05: <https://www.sec.gov/newsroom/speeches-statements/gerding-cybersecurity-incidents-05212024>
  - CIRCIA: <https://therecord.media/cisa-publishes-circia-rule-cyber-incident-reporting>
- On Deck Group 1

October 7 –

Class 7. (**Dugas**) Tabletop Exercise: Putting together privacy and security regulations; continuation of data breach reporting obligations and incident response

- Read FT's Negotiating with a Threat Actor: <https://www.ft.com/content/03806a9d-acbf-4f07-8c50-c78304368f46>
- Complete FT's ransomware negotiation module: <https://ig.ft.com/ransomware-game>
- Brian Mund & Leonard Bailey, Privilege in Data Breach Investigations, 69 DEPT OF JUST. J. FED. L. & PRAC. 39 (2021) (posted to Twen)
- **All groups on deck**

October 21 –

Class 9. (**Terry**) Privacy and Law Enforcement: How the Fourth Amendment Works; Wiretapping, Bugging and Beyond; Reasonable Expectation of Privacy Test; Fourth Amendment and Emerging Technology; Information Gathering About First Amendment Activities; Federal Electronic Surveillance Law

- Skim Solove pp. 233-240 (or read if new material for you)
- Solove pp. 240-263, 268-290, 296-312, 318-321
- On Deck Group 2

October 28 –

Class 8. (**Terry**) Computer Fraud and Abuse Act

- Solove pp. 821- 832
- Congressional Research Service, Cybercrime and the Law: Primer on the Computer Fraud and Abuse Act and Related Statutes, <https://crsreports.congress.gov/product/pdf/R/R47557>

- Executive Order on Spyware: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/27/executive-order-on-prohibition-on-use-by-the-united-states-government-of-commercial-spyware-that-poses-risks-to-national-security/>
- On Deck Group 3

November 4 –

Class 10. (**Martz**) Government Records: Privacy Act; Public Access to Government Records (FOIA); Use of Personal Data; Identification Records and Requirements; Guest Speaker

- pp. 630-659; 685-693; 740-751
- Additional readings will be posted on TWEN
- On Deck Group 4

November 11 –

Class 11. (**Dugas**) Novel issues in privacy and information security law: Artificial intelligence, consumer rights, and information security

- Solove pp. 862-876; 1052-1055
- Reread CCPA
- Read: <https://www.wired.com/story/how-to-delete-your-data-from-chatgpt/>
- Additional readings to be posted on TWEN
- On Deck Group 1

November 18 –

Class 12 (**Martz**) National Security and Foreign Intelligence; National Security Law Practitioners' Panel

- FISA Overview: <https://crsreports.congress.gov/product/pdf/IF/IF11451>
- FISA 702 (read each 1-page summary on 702): <https://www.odni.gov/index.php/newsroom/reports-publications/reports-publications-2023/3672-fisa-section-702-resources>
- Solove pp. 455-473
- Assignment for on deck groups: research legal careers in national security law and prepare 3-5 questions to ask panel members
- On Deck Groups 2, 3 and 4

November 21 –

Class 13. (Martz, Terry, Dugas): Review and Discussion Review of course, questions, and discussion around extra credit activities and outcomes.