

From Identity Architecture to Data Trusteeship

The legal layer SEDI needs: fiduciary duties, constitutional structure, and enforceable citizen rights

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Format: 60 minutes | ~35 min presentation / ~20 min discussion / 5 min close

Format: 60 minutes | ~30 min presentation / ~25 min discussion / 5 min close

Session Purpose | Introduce the constitutional argument that the Fourth Amendment establishes a fiduciary relationship between government and citizens regarding information, and present PDTA as the legislative instrument that gives that relationship legal content and enforcement teeth. Participants leave understanding why the fiduciary framework is constitutionally grounded rather than merely a policy proposal, and why it generates different and stronger obligations than existing privacy law.

A. Opening and Continuity [5 min]

- Brief re-orientation for participants who did not attend Session 1 — one paragraph summary of SEDI and the three gaps
- Room identification round — same question as Session 1, since the room composition may differ
- Frame the session's central claim: the legal relationship between government and citizens regarding data is not a policy design choice — it is a constitutional structure that already exists and that current law fails to recognize

***Facilitator note:** Expect some participants from Session 1 and some who are new. The one-paragraph re-orientation serves both without boring the returning attendees.*

B. Why the Current Legal Framework Fails [10 min]

- The consent model's structural impossibility in government contexts
 - *Citizens cannot meaningfully decline to provide data to the agencies that administer their benefits, license their vehicles, or adjudicate their taxes*
 - *Notice-and-consent as legal cover for relationships that are not consensual in any normatively meaningful sense*
 - *Fair Information Practice Principles have been policy since 1973 — fifty-three years of voluntary framework failure*
 - The ownership model's legal incoherence
 - *Personal data constitutes a commons of unownable facts — copyright protects database compilations, not underlying facts*
 - *Neither government nor any private actor can own information about a citizen in any legally cognizable sense*
 - *Ownership frameworks encourage commodification and monopolistic aggregation, which is precisely what they purport to prevent*
 - ? What legal framework does your organization currently rely on when asserting data rights against a government actor — and does it actually work?
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C. The Constitutional Argument: Government as Information Trustee [15 min]

- The Fourth Amendment as structural, not merely procedural
 - *The standard reading: Fourth Amendment prohibits specific search practices — requires warrants, probable cause, particularity*
 - *The structural reading: Fourth Amendment establishes a constitutional relationship between government and citizens regarding information — that relationship is fiduciary in structure*
- Why the relationship is fiduciary: the structural conditions that trigger fiduciary obligations in equity
 - *One party exercises discretionary power over the fundamental interests of another*
 - *The more vulnerable party cannot protect those interests through ordinary bargaining, consent, or exit*
 - *Law responds by imposing duties that exist by virtue of the relationship's structure, not by virtue of any bargain*
 - *Government information relationships possess this structure completely and unavoidably*
- The Digital General Warrants argument: modern integrated databases reconstitute the general warrant
 - *Perpetual duration: records maintained indefinitely across every domain of a citizen's life*
 - *Universal scope: aggregation across agencies, functions, and contexts without individualized authorization*
 - *Discretionary access: governed by administrative policy rather than judicial particularity*
 - *Delegable authority: accessible to broad classes of officials and contractors*
 - *The constitutional violation is structural — it lies in the power relationship the architecture creates, not in any specific misuse*

***Facilitator note:** This section is the conceptual core of the entire four-session arc. Take the time it needs. If discussion starts breaking out naturally, let it run briefly and then park it for Section E — it means the argument is landing.*

D. PDTA: Giving the Constitutional Relationship Legal Content [10 min]

- Individuals as primary trustees of their own personal data — the trust law framework and why it is chosen
 - *Trusteeship does not require ownership — designed precisely for relationships where one party holds power over another's interests*
 - *Duties of loyalty and care exist by virtue of the relationship's structure, not any bargain*
- Government actors as secondary fiduciaries — holding data in trust, authority limited to purposes consistent with fiduciary obligations
- Specific duties: data minimization, purpose limitation, transparency, accuracy, and the prohibition on uses inconsistent with the citizen's fundamental interests
- The private right of action — why it is structural, not optional
 - *A framework relying on agencies to enforce fiduciary obligations against other agencies replicates in the enforcement mechanism the power asymmetry the law is designed to correct*

- *Citizens must be able to enforce their rights without dependence on government enforcement discretion*
 - How PDTA completes SEDI: VIDA's technical architecture is the physical expression of the fiduciary relationship PDTA defines
 - *Data minimization, purpose limitation, and citizen control are not merely design principles — they are enforceable legal obligations whose breach is actionable*
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E. Discussion [15 min]

- ? The fiduciary framework generates duties that exist by virtue of the relationship's structure. In your experience building or advising on identity systems, have you encountered situations where the absence of such duties created specific harms that voluntary frameworks could not address?
- ? The private right of action is the enforcement mechanism that distinguishes this framework from prior privacy law. What are the practical obstacles to citizens exercising that right against government actors, and does the framework need to address them directly?
- ? Trust law was developed for human fiduciaries managing discrete assets. Does it translate coherently to the government-citizen data relationship at scale, or does it require modification to work in this context?
- ? If your state or country adopted PDTA's framework, what would change in practice about how you build identity and data systems for government clients?

***Facilitator note:** The last question is the most important one for building post-IIW dialogue. Note who answers it and how — those are your natural follow-up contacts.*

F. Close and Call to Action [5 min]

Bridge to Session 3: PDTA imposes fiduciary obligations on human actors within government. But government is increasingly not making these decisions through human actors. When an AI system makes the operative decision, the fiduciary relationship does not disappear — but its enforcement becomes radically more complex. Session 3 addresses the accountability gap that SEDI and PDTA together cannot close.

Call to Action:

- If you advise governments on data systems, identify one specific system in your portfolio where PDTA's private right of action would change the design calculus and bring that example to Session 3
- The constitutional argument in this session is developed fully in a law review article submitted for publication — contact me after the session if you would like to review it before publication and provide comment
- Connect with others in this room who work at the intersection of trust law and data governance — the cross-disciplinary conversation this framework needs does not currently exist at scale