

# Louis D. Brandeis Privacy Award 受賞者のアピール

主催：日本データ通信協会情報法制研究会  
第2回 シンポジウム

一橋大学一橋講堂 2015年6月28日(日)

一橋大学名誉教授(特定個人情報保護委員会委員長)

堀部 政男



Louis D. Brandeis  
Privacy Award

Presented to

*Professor Masao Horibe*

2015

Awarded by

patientprivacyrights

bsci6u6b1iasc1i8u2

# ルイス・D・ブランダイス・ プライバシー賞の主催団体

## ■Patient Privacy Rights(PPR)

PPRは、2004年、開業医・フロイト精神分析医で、ヘルス・プライバシーの指導的権威者であるデボラ・C・ピール博士(Dr. Deborah C. Peel)によって設立された。2007年、公益事業団体の認定を受けた。2012年、ルイス・D・ブランダイス・プライバシー賞の授与を開始した。

# ルイス・D・ブランダイス・プライバシー賞

## ■ルイス・D・ブランダイスについて

この賞は、1890年の「ハーバード・ロー・レビュー」(Harvard Law Review)という法律雑誌にサミエル・D・ウォーレン(Samuel D. Warren)とともに「プライバシーの権利」(The Right to Privacy)と題する論文を執筆したルイス・D・ブランダイス(1856-1941)の名を冠したものである。

1878年ハーバード・ロー・スクール卒業、翌1879年、上記のウォーレンと法律事務所をボストンで開いた。

# ルイス・D・ブランドイス・プライバシー賞

弁護士として社会的問題にも取り組み、社会学的データを基に弁論を展開するようになった。その弁論趣意書は、ブランドイス式上告趣意書 (Brandeis brief) と呼ばれている。

1916年に合衆国最高裁判所の裁判官に任命され、1939年までその職にあった。この間に、ボストン時代からの知合いであったオリバー・ウェンデル・ホームズ (Oliver Wendell Holmes, Jr. (1841-1935)、最高裁裁判官 (1902-1932)) とともに、自由、人権などを擁護する意見を述べた。

# Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890)

## HARVARD LAW REVIEW.

VOL. IV.

DECEMBER 15, 1890.

NO. 5.

### THE RIGHT TO PRIVACY.

"It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage."

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2303, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in



# Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, at 220 (1890)

220

HARVARD LAW REVIEW.

the rights of the individual. Each man is responsible for his own acts and omissions only. If he condones what he reprobates, with a weapon at hand equal to his defence, he is responsible for the results. If he resists, public opinion will rally to his support. Has he then such a weapon? It is believed that the common law provides him with one, forged in the slow fire of the centuries, and to-day fitly tempered to his hand. The common law has always recognized a man's house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?

*Samuel D. Warren,  
Louis D. Brandeis.*

Boston, December, 1890.

# Louis D. Brandeis(1856-1941)

from Brandeis NOW Saturday, February 28, 2015



Louis Brandeis at his desk



Louis Brandeis looks out his office window, circa 1890  
By Leah Burrows July 24, 2013



The first paragraph of Warren and Brandeis,  
*The Right to Privacy*, 4 HARV. L. REV. 193 (1890)

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# Perpetual Fame of *The Right to Privacy*

For example, “It has come to be regarded as the outstanding example of the influence of legal periodicals upon the American law.”

(William L. Prosser, *Privacy*, 48 CALIF. L. REV. 383, 383 1960))

I would like to rewrite this sentence as follows :“not only the American law, but also the Japanese law and other laws in the world.”

# ルイス・D・ブランダイス・プライバシー賞

## Olmstead v. United States, 277 U.S. 438 (1928)— 電話傍受に関する判決における少数意見

国家禁酒法(National Prohibition Act)違反の共謀罪で有罪認定を受けたオルムステッド(Olmstead)は、この犯罪グループの主犯格であった。この事件は、電話傍受で発覚した。合衆国最高裁は、5対4の多数で、合衆国憲法(United States Constitution)の修正第4条(Amendment 4)【「不合理な搜索及び差押え」の禁止】の意味する「搜索・差押え」の対象は有体物に限られ、物理的な侵入を伴わない電話傍受は「搜索・差押え」に該当しないと判断した。

# ルイス・D・ブランドイス・プライバシー賞

これに対し、ホームズ裁判官、ブランドイス裁判官、バトラー裁判官(Butler, J.)、ストーン裁判官(Stone, J.)が反対した。このブランドイス裁判官の反対意見は、有名である。

ブランドイスは、合衆国憲法修正第4条及び第5条【大陪審訴訟手続、被告人の権利、「法の適正な手続」(due process of law) 及び「正当な補償」】が採択された当時【1791年】は、人類に知られていたのは物理的な手段のみが政府が直接的に自己負罪に影響し得る手段であったことなどと指摘し、また、先例を挙げながら、官憲が物理的な侵入なしに書類を読むことは修正第5条違反であることなどを説いて、次のような意見を述べた。



# ルイス・D・ブランダイス・プライバシー賞

「修正条項によって保障される保護の範囲は、極めて広い。われわれの憲法の起草者は、幸福追求に有利な状況を確保することを約束した。彼らは、人間の精神的本質、感情及び知性の重要性を認識していた。彼らは、人生の苦痛、快楽及び満足のごく一部だけが物質的なものの中に見出されることを知っていた。彼らは、米国人の信仰、その思想、その感情、及びその感覚を保護することを追求した。彼らは、政府に対する関係で、ひとりにしておかれる権利—諸権利の中で最も包括的で、また、文明人によって最も尊重される権利—を付与した。その権利を保障するために、政府による個人のプライバシーへのあらゆる不当な侵入は、用いられた手段がどのようなものであろうとも、修正第4条に違反すると考えられなければならない。そして、

# ルイス・D・ブランダイス・プライバシー賞

刑事手続における証拠として、そのような侵入によって確認された事実を用いることは、修正第5条に違反すると考えられなければならない。」(下線は追加)

# ルイス・D・ブランダイス・ プライバシー賞の受賞者①

○2012年

**The Honorable Joe Barton**, *U.S. Representative for Texas's 6th Congressional District*

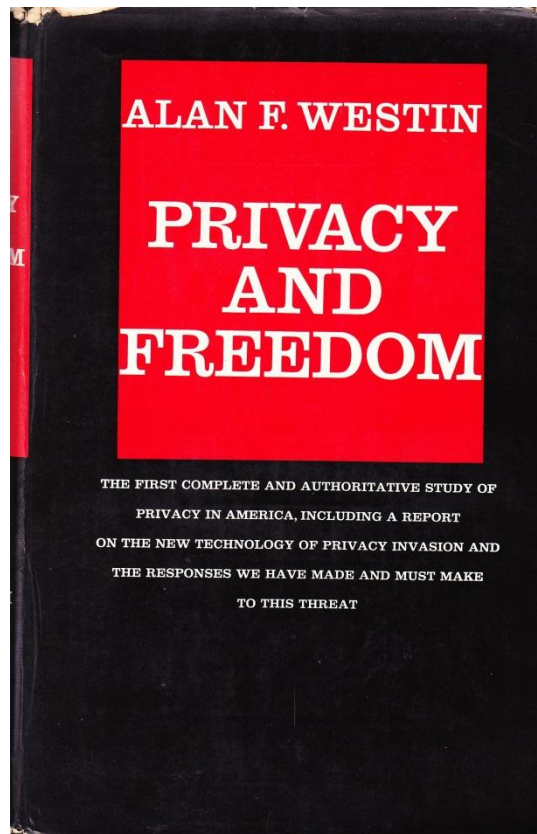
**The Honorable Ed Markey**, *U.S. Senator for Massachusetts*

**Ross Anderson, PhD**, *University of Cambridge Computer Laboratory*

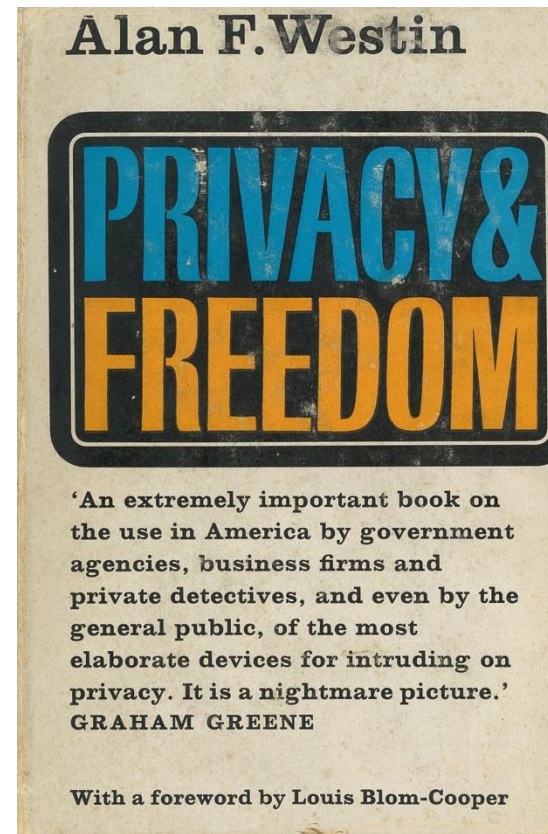
**Alan F. Westin, PhD**, *Advisor, Arnall Golden Gregory, Atlanta and Washington DC; Professor of Public Law and Government Emeritus at Columbia University*

# ALAN F. WESTIN, PRIVACY AND FREEDOM (1967)

## Published in the USA



## Published in the UK



Dr. Alan F. Westin (1929 –2013)  
(From Japan Privacy Center)



## ALAN F. WESTIN, *PRIVACY AND FREEDOM* 7 (1967)

**“Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”**

- I remember being very impressed by Dr. Westin’s idea of privacy when I first read his book in 1967.
- Needless to say, [he is one of the awardees of the Louis D. Brandeis Privacy Award in 2012.](#)
- Personally, I enjoyed a long-term friendship with him. I will touch upon his discussion on the protection of privacy and personal information in Japan later.



半世紀以上、腐医関係などとも見交  
にわたり、世に「換の樹」を持った。

者としてアラ 日本での個人生活保護

イバミの思は、自ら縮こまっていた。

たなかで、初笑の非難と ニースレターで日本警察  
多くの出会いがあった。空堀み 私をその棚架に

なかにモリス・ヒア大蔵省の故アラン・F・米国と欧州連合（EU）

達

先政

の

究 掘 した。

研

私が彼と出会ったのは、面を人々の御覧を憚り、

で、国際会議でパネリス 社会に与えた影響の大き

時だ。当時日本では電手に、先立からの争ひを終

する議論が活発化し始め、感した。(ほりへ・まき)

在而變が日本に招き、政 府会審(是)

## 研究の先達

男 政 部 堀  
を溶接を習った日本人が歩くというもので、独自の道を辿った日本を前にきに際出してゐた。

「思ひに帰らぬ人」

と云ふ。たゞ、又各報に於て

社会に与えた影響の大き

先哲の「道徳的」行為は、

『新編 日本書紀』(新編・国史)。

《中国森林地理》

# 日本経済新聞2015年2月10日朝刊交遊抄

## 堀部政男「研究の先達」

半世紀以上にわたり研究者としてプライバシーの思想を究めてきたなかで、研究の先達と多くの出会いがあった。なかでもコロンビア大名誉教授の故アラン・F・ウェスティン博士との交流は30年以上にわたった。アランは1967年、プライバシー研究の金字塔である「プライバシーと自由」を著し、注目され、各国のプライバシー思想に大きな影響を与えた。

私が彼と出会ったのは80年。京王プラザホテルでの国際会議でパネリストとしてともに出席した時だ。当時日本では電子化された個人データに関する議論が活発化し始めていた。以来私はアランを何度か日本に招き、政府関係者などとも意見交換の場を持った。

日本での個人情報保護法制定を喜んだアランは、自ら編集していたニューズレターで日本特集を組み、私もその編集に協力した。特集の扉絵は、米国と欧州連合(EU)のプラカードを持った2人の間の道を浴衣を着た日本人が歩くというもので、独自の道を選んだ日本を前向きに評価してくれた。

2013年2月に83歳で帰らぬ人となった際、米各紙は紙面を大きく割り評伝を掲載した。彼の研究が現代社会に与えた影響の大きさを再認識すると同時に、先達からの学びを後輩に引き継ぐ大切さも痛感した。(ほりべ・まさお・特定個人情報保護委員会委員長)



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# ルイス・D・ブランダイス・ プライバシー賞の受賞者②

2013年

[Peter J. Hustinx](#), *European Data Protection Supervisor*

[Mark A. Rothstein](#), JD, *Herbert F. Boehl Chair of Law and  
Medicine, University of Louisville Brandeis School of Law*





# Peter J. Hustinx, *European Data Protection Supervisor (photo from EDPS)*

Peter Hustinx has served as the European Data Protection Supervisor (EDPS) since January 2004, contributing to the building of the new supervisory authority and developing its role at Community level. He was reappointed for a second five-year term of office in January 2009. Prior to his appointment as EDPS, Mr. Hustinx worked as the President of the Dutch Data Protection Authority as from 1991. Between 1996 and 2000, he was Chairman of the Article 29 Data Protection Working Party. His long standing experience in the field also extends to the broader European level; covering work as an expert in the Committee which prepared the Council of Europe Convention on data protection (No. 108). He also has data protection experience from the law enforcement field, having been Chairman of the Appeals Committee of the Joint Supervisory Body of Europol, and Chairman of the Commission for the Control of Interpol's Files.

# ルイス・D・ブランダイス・ プライバシー賞の受賞者③

○2014年

**Latanya Sweeney**, *Chief Technologist; Federal Trade Commission*

**Peter Schaar**, *Chairman; European Academy for Freedom of Information and Data Protection (EAID), Germany*



# *Peter Schaar, Chairman; European Academy for Freedom of Information and Data Protection (EAID), Germany(photo from PPR HP)*

Chairman of the European Academy for Freedom of Information and Data Protection (EAID); former German Federal Commissioner for Data Protection and Freedom of Information

Mr. Schaar was born in Berlin in 1954 and has a degree in Economics. From 1980 to 1986 he worked in various functions in the city administration of Hamburg. From 1986 to 2002 he was employed in the office of Hamburg's Data Protection Commissioner, initially as the head of the technology unit and later as deputy commissioner. From 2002 to 2003 he was the founder and managing director of a consulting company for data protection. From 2003 to 2013 he was the Federal Commissioner for Data Protection and Freedom of Information. He also currently works as lecturer at the University of Hamburg. 2013 he has been elected as chairman of the European Academy for Freedom of Information and Data Protection.

Awards: Prize of the Friedrich-Ebert-Foundation "Das politische Buch 2008" ("The Political Book 2008") for the book Das Ende der Privatsphäre (The End of Privacy); "eco Internet AWARD 2008", the special award of the Association of the German Internet Industry; Data Protection Award of the German Association for Data Protection and Data Security (GDD) 2013

## ルイス・D・ブランダイス・ プライバシー賞の受賞者③

○2015年

**Professor Masao Horibe**, *Professor Emeritus,  
Hitotsubashi University, and Chairman, Specific Personal  
Information Protection Commission, Government of  
Japan*

**Professor Alex Pentland**, *MIT, Advisor UN Secretary  
General's Office, World Economic Forum*

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# *The Celebration of Privacy*

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June 3, 2015  
Hyatt Regency Washington on Capitol Hill  
Washington, D.C.

Patient Privacy Rights Presents the 2015

**LOUIS D. BRANDEIS**  
**Privacy Awards**



*The right to be let alone is the most comprehensive of rights and the right most valued by civilized people.*

—Justice Brandeis, 1928, *Olmstead v. United States*, dissenting



# Program

Patient Privacy Rights welcomes you to the fourth annual *Celebration of Privacy*. We are deeply honored that the family of Louis D. Brandeis placed their trust in us to chose those deserving of an award that exemplifies great achievement in the protection of the most sensitive personal information of all — health information.

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## WELCOME & INTRODUCTION

Deborah C. Peel, M.D.

## PRESENTATION OF AWARDS

**Professor Alex Pentland**

*Presented by Adrian Gropper, M.D.*

**Professor Masao Horibe**

*Presented by Deborah Hurley*

## CONCLUDING REMARKS

Deborah C. Peel, M.D.

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The Louis D. Brandeis Privacy Awardees are recognized for their significant intellectual, legal, and technical contributions to the field of health information privacy. Standing on the shoulders of Supreme Court Justice Louis D. Brandeis, these heroes work to ensure that the “*highest right of civilized man*” remains the foundation for all electronic systems, and for law and policy governing the use and control of sensitive health information.

# 2015 Recipients

## Professor Masao Horibe

Professor Emeritus, Hitotsubashi University, and Chairman, Specific Personal Information Protection Commission, Government of Japan.

On January 1, 2014, Dr. Masao Horibe was appointed as the first Chairman of the Specific Personal Information Protection Commission, a new independent data protection authority, by the Prime Minister, with the consent of both Houses of the Diet.

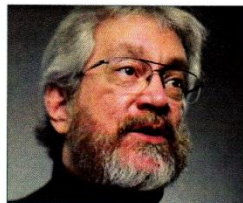
He has been researching both privacy and data protection and freedom of information for more than half a century and has written extensively in the areas of privacy, data protection, freedom of information, media law, etc. He served as Vice-Chair of WPISP (the Working Party on Information Security and Privacy) of the OECD (1996-2008). He is "*Privacy by Design Ambassador*" of the Information and Privacy Commissioner of Ontario, Canada, and one of the five honorary members of the Digital Enlightenment Forum, established as a not-for-profit organization in Luxembourg in 2011.



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## Professor Alex Pentland

MIT, Advisor UN Secretary General's Office, World Economic Forum



Alex 'Sandy' Pentland has helped create and direct MIT's Media Lab, the Media Lab Asia, and the Center for Future Health. He chairs the World Economic Forum's Data Driven Development council, is Academic Director of the Harvard-MIT Data-Pop Alliance, and is a member of Advisory Boards for the United Nations Secretary General. In 2012, Forbes named Sandy one of the '*seven most powerful data scientists in the world*', along with Google founders and the CTO of the United States.

# 2015 Recipients

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# 2015healthprivacysummit



## ABOUT

### LOUIS D. BRANDEIS

In 1890, Louis D. Brandeis co-authored what has historically been called *the most influential law review article of all*, *The Right to Privacy*. As a Supreme Court Justice from 1916 – 1939, he changed the nation's and the world's understanding and appreciation for privacy as the foundation of the individual, civil, and human rights that underlie all democracies. Brandeis often joined his colleague, Oliver Wendell Holmes, Jr., in dissenting against the Court's willingness to impose its judgments about economic and social policy against those of individual states. Also with Holmes, Brandeis bravely defended civil liberties throughout his era. If he did uphold wide use of state powers, it was only in the service of furthering individual self-fulfillment; he also rejected incursions of a state upon a citizen's liberty. Two examples are the *Olmstead* case involving wire-tapping, and *Whitney v. California*, in which Brandeis opposed a California law suppressing free speech.

patientprivacyrights











# 2015 Health Privacy Summit Agenda (excerpt)

## **5<sup>th</sup> International Summit on the Future of Health Privacy**

### **Health information in the Age of Surveillance**

June 3 – 4, 2015

## **Agenda**

### **DAY 1 – WEDNESDAY, JUNE 3, 2015**

Location: Georgetown Law Center

8:00-8:30 am

Registration | Light Breakfast & Coffee –



10:50 am – 11:10 am

## **Break**

11:10 am – 11:55 am

***Keynote: The Evolution of Privacy in Japan Over the Past Half-Century: Lessons from American Privacy Law***

**Professor Masao Horibe** | Professor Emeritus  
Hitotsubashi University and Chairman, Specific  
Personal Information Protection Commission  
Government of Japan

# The Evolution of Privacy in Japan Over the Past Half-Century: Lessons from American Privacy Law


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**Dr. Masao Horibe**

Chairman of the Specific Personal Information  
Protection Commission, Japan

Professor Emeritus at Hitotsubashi University

特定個人情報保護委員会



# O'Neill Institute

for National and Global Health Law

5<sup>th</sup> International Summit on the Future of Health Privacy





THE EMBASSY OF JAPAN IN THE UNITED STATES OF AMERICA  
JAPAN SOCIETY FOR THE PROMOTION OF SCIENCE  
& PATIENT PRIVACY RIGHTS

INVITE YOU TO JOIN THEM AT A

Welcome Reception and Mini-symposium

FOR SPEAKERS AND DISTINGUISHED GUESTS  
OF THE 5TH INTERNATIONAL SUMMIT ON THE  
FUTURE OF HEALTH PRIVACY

TUESDAY, THE 2ND OF JUNE 2015  
4:30 P.M. TO 8:00 P.M.

AMBASSADOR'S OLD RESIDENCE, EMBASSY OF JAPAN,  
2520 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON DC

PLEASE RSVP BY FRIDAY, THE 22ND OF MAY  
TO [PRIVACY@PATIENTPRIVACYRIGHTS.ORG](mailto:PRIVACY@PATIENTPRIVACYRIGHTS.ORG)

BUSINESS ATTIRE





## MINI-SYMPOSIUM PROGRAM

### Opportunities and Challenges in Medical Information

#### --- Patient Privacy, Bioethics, and Big Data ---

- 4:30 "Patient Privacy" by Professor Masao Horibe, Chairman Specific Personal Information Protection Commission, and Professor Emeritus Hitotsubashi University
- 4:45 "International Perspectives on Protection of Health Information" by Deborah Hurley, Fellow, Institute for Quantitative Social Science, Harvard University, and Principal, Hurley
- 5:00 "Bioethics" by Professor Mark Rothstein, Director of the Institute for Bioethics, Health Policy and Law, University of Louisville School of Medicine
- 5:15 "Medical Care Using Big Data" by Deborah C. Peel, MD, Founder and Chair, Patient Privacy Rights

**Opportunities and Challenges in Medical Information  
--- Patient Privacy, Bioethics, and Big Data ---**

**June 2, 2015**

**Japan Society for the Promotion of Science / Embassy of Japan**

**Program**

**4:30 “Patient Privacy” (Professor Masao Horibe)**

**4:45 “Data Science and Privacy” (DJ Patil, US Chief Data Scientist)**

**5:00 “International Research Collaboration” (Mark A. Rothstein JD)**

**5:15 “Health Information and Big Data” (Deborah C. Peel MD)**

**5:30 Q & A**

**6:05 Welcome remarks by Minister Yamanouchi**

**6:10 - 8:00 Reception**

特定個人情報保護委員会

# PATIENT PRIVACY

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**Dr. Masao Horibe**

Chairman of the Specific Personal Information  
Protection Commission, Japan

Professor Emeritus at Hitotsubashi University



人情報保護委員会





Thank you for your kind attention.  
ご清聴ありがとうございました。