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## COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: April 24, 2020  
To: Harvey Perlman, Chair  
William McGeeveran, Reporter  
Uniform Law Commission, Collection and Use of Personally Identifiable Data  
Committee  
Re: **Seeking to Ensure Balanced Public Records Access and Use**

Dear Chairman Perlman and Mr. McGeeveran:

### **Who We Are**

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public record access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your state. Collectively, CSPRA members alone employ over 40,000 persons across the U.S. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars. Our economy and society depend on value-added information and services that includes public record data for many important aspects of our daily lives and work and we work to protect those sensible uses of public records.

We are writing to express concerns about the current draft version and its effect on access and use of public records. We have provided specific comments and suggestions on the sections of concern in the act at the end of this letter.

### **A Simple and Unqualified Exemption for Public Records Is Needed**

We support clear language that simply says information available in public records from local, state, and federal government sources is not personal information. This will not harm privacy since the records are public already and will not include selected personally identifiable information already withheld by law. If there are unregulated behaviors in the use of public and private data that should be banned or criminalized, they should be identified and addressed directly. Clouding and degrading the value and use of public records harms beneficial uses, undermines trust, is unlikely to stop the bad behavior, and will lead to a lot of pointless and wasteful litigation without any corresponding benefit to states adopting the model act.

## **Public Records Help Provide Essential and Valuable Services to State Residents and Government**

Many persons and entities access and add value to the records they receive from public sources that contain some of the what the bill calls personal information. They use these public records for a variety of personal, socially desirable, and essential civic and governmental purposes. We have attached an infographic that summarizes the benefits and uses of public information in the everyday lives of state residents and businesses. You will see that the information in the public record is foundational to many important life events and transactions of your state's residents. Value-added services such as risk management, property title protection, news, protection of vulnerable populations, the administration of justice, law enforcement, monitoring government spending and corruption, enforcement of court orders and child support collection, and economic forecasting are just a few of the uses of public data. Consumers depend on the services that access, combine, and add value to public and private data almost every day and in ways that benefit all residents in every state whether they are aware of it or not.

Many institutions like the free press as well as businesses and services rely on combinations of public and private records to function and we all benefit. For example:

- Public and private data is used to monitor government for waste, fraud, and corruption
- Data is used to find parents delinquent on child support.
- Combined public and private mapping data are used for locations, safety, consumer protection, and ratings of restaurants and retail stores
- Real estate facts like square footage derived from public databases are key to buying and selling houses and provide consumers with accurate information
- Vehicle registration data is used for safety recalls and helping forecast car sales data on which stock markets and manufacturing suppliers rely
- Public information originally collected for a variety of purposes is used to find missing persons, witnesses, and suspects

## **All State Public Records Law Already Strikes a Balance**

There is a clear need to adequately protect public records and strike a proper balance between privacy and trust. The many state public acts have been reviewed and amended numerous times to keep this balance. They protect selected records from disclosure. They limit access to certain parties in other cases. They ensure that disclosable public records are available to all and often prevent the government or anyone from requesting the reasons a person wants to access records. This protection ensures that people can see public records without interference from government or anyone who fears public scrutiny.

## **Broad Restrictions on the Use of Public Records Raises Constitutional Issues and Will Lead to Litigation**

Our analysis of legislation similar to the model act (the CCPA in California, for example) is that it runs afoul of the First Amendment. The law imposes a burden on speech without advancing a

compelling or substantial government interest for doing so, having vague standards, and discriminating against types of speakers by limiting the use of public records by information and service providers but not others. Litigation over these issues can be avoided by a clean public records exception in the bill and some other changes suggested below.

## **Protect Legal and Beneficial Uses of Public Records**

Information is so intricately embedded in so many aspects of life and commerce that it is difficult to predict all the ways a change in information policy will affect various people, products, services, uses, and government functions. CSPRA has tracked such policies over the last three decades and we often see many unintended consequences of limits on access and use of public records. This often results in a long list of frequently revised exceptions. The root cause of such unintended consequences is the attempt to limit access to public information rather than focusing on bad actors and acts that the society wants to regulate. We suggest the following changes to the draft model act to protect needed access and use of public records and still maintain a proper balance between privacy and access.

Page 2-3: *“(12) ‘Public available data’ means information that has been made available from federal, state, or local government records in accordance with law, provided the information is being used in a manner consistent with any conditions on its use imposed by law.”*

The addition of “in a manner consistent with any conditions on its use imposed by law” is confusing and unnecessary. The other laws are many and already impose their own protections. Repeating that here is not needed. Finally, “other laws” would include this one and given some of the rights added, it would create confusing logic loops for no reason. California had similar language to this in the CCPA and passed separate corrective legislation to remove it (AB 874 passed in 2019).

Page 3-4: Section 3. Scope

The federal Drivers Privacy Protection Act is missing from the list of exceptions and should be added. It is comparable to the other federal laws that are listed as exceptions and was created to bring uniformity to the administration of and access to state Department of Motor Vehicles records. There are numerous societally beneficial and critical uses of this information such as auto safety recalls and public safety in managing commercial fleets and their operators.

Page 5: *“(c) Nothing in this act shall prevent the collection, authentication, maintenance, retention, disclosure, sale, processing, communication, or use of personal information necessary to:*

- (1) Complete a transaction in goods or services that the data subject requested.*
- (2) Protect against, prevent, detect, investigate, report on, prosecute, or remediate actual or potential:*
  - (i) Fraud;*
  - (ii) Unauthorized transactions or claims;*
  - (iii) Security incidents;*

- (iv) *Malicious, deceptive, or illegal activity; or*
- (v) *Other legal liability;*
- (3) *Assist another person, entity, or government agency in conducting any of the activities specified in subsection (1); or*
- (4) *Comply with or defend claims under federal, state, or local laws, regulations, rules, guidance, or recommendations:*
  - (i) *Setting requirements, standards, or expectations to limit or prevent corruption, money laundering, export controls; or*
  - (ii) *Related to any of the activities specified in subsection (1) of this subsection.*

Is subsection (1) the right reference? It seems like it should be subsection (2) dealing with prevention, detection, investigation, and so on for crimes and security issues.

Sections 5 and 4 need to be better reconciled with the investigative exceptions in Section 3. A person who is under lawful investigation or whose data is being used as part of a lawful investigation needs different disclosure, deletion, and correction rules. This needs to be carefully crafted along the lines of what is used in law enforcement for active investigations where information is not available to the public at all and especially NOT to the subjects of the investigation.

Finally, there should be no right to opt out, delete, or correct the records used as part of safety recalls and warranties. Such language was amended into the CCPA to address this issue. Here is that language:

“(d) A business or a service provider shall not be required to comply with a consumer’s request to delete the consumer’s personal information if it is necessary for the business or service provider to maintain the consumer’s personal information in order to:

(1) Complete the transaction for which the personal information was collected, fulfill the terms of a written warranty or product recall conducted in accordance with federal law, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business’ ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.”

Page 5: (5) *This [act] does not apply to state or local government entities.*

There are a number of ways that private entities use public and private data to support government administration, investigation, and enforcement of a number of laws—not all of which are listed in the exception section under Subsection (c) (2). For example, child support collection, tax lien collection, and finding potential claimants or injured parties as part of a civil enforcement action by government. We suggest an addition to the exception in the definition section for state and local government that adds their vendors, parties, and subcontractors who carry out activities for and at the behest of those governments.

Page 6-7: “(a) *A data subject has the right to restrict a data controller from processing or transferring personal data pertaining to the data subject (an “opt out”) for purposes of*  
*(1) targeted advertising;*

*(2) profiling in furtherance of decisions that result in a provision or denial of financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities, such as food and water.”*

*(b) If a controller processes or transfers sensitive data for the purposes listed in 6 subsection (a), the controller must receive affirmative consent (an “opt in”) from the data subject 7 before undertaking such processing or transfer.*

Requiring opt in for sensitive data and opt out for all other is a recipe for a difficult to administer and hard to understand law. Every data type in the sensitive data definition is already covered by numerous federal and state laws on privacy, data use, and data protection. There is no reason to add an opt in here given those existing limits and the greater likelihood of success of the model act if it sticks with one form of education and choice for the subject of the data.

Thank you for your consideration of our input.

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