



COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: March 29, 2024
To: Chair Sen. Kesha Ram Hinsdale
kramhinsdale@leg.state.vt.us
Members of the Vermont Legislature
CC: Magali Stowell Alemán, Committee Assistant
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Re: **Comments on H. 121 (the Bill)**

Who We Are

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public records 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 75,000 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 and employs millions of people. 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. This letter is supplemental to that which we submitted last year, and which is attached for reference. Please keep us informed on any opportunity to testify about the bill via video conference.

A More Complete Publicly Available Information (PAI) Exemption Is Needed in the Proposed General Privacy Law

The current Bill has a limited Publicly Available Information (PAI) exemption in the privacy section that omits some publicly available and constitutionally protected information. The Bill states:

- (34) “Publicly available information” means information that:
 - (A) is lawfully made available through federal, state, or local government records; or
 - (B) a controller has a reasonable basis to believe that the consumer has lawfully made available to the general public through widely distributed media.

We support and applaud section (A) of this definition. Section (B) is fine as far as it goes, but not all lawful and widely distributed, widely available, and publicly observable information is made available by the consumer themselves. California, Utah, Virginia (and other states), and the model Uniform Personal Data Protection Act (UPDPA) proposed by the Uniform Law Commission (ULC) all have clean, clear, and more complete PAI exemptions. We support changing the Bill to incorporate such an exemption. Below are four examples.

UPDPA:

This language mimics the state statutory exemptions for public records by exempting the following from the act:

“(15) “Publicly available information” means information:

- (A) lawfully made available from a federal, state, or local government record;
- (B) available to the general public in widely distributed media, including:
 - (i) a publicly accessible website;
 - (ii) a website or other forum with restricted access if the information is available to a broad audience;
 - (iii) a telephone book or online directory;
 - (iv) a television, Internet, or radio program; and
 - (v) news media;

(C) observable from a publicly accessible location; or

(D) that a person reasonably believes is made available lawfully to the general public if:

- (i) the information is of a type generally available to the public; and
- (ii) the person has no reason to believe that a data subject with authority to remove the information from public availability has directed the information to be removed.”

Iowa:

Publicly available information - means information that is lawfully made available through federal, state, or local government records, or information that a business has reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.

Virginia:

“Publicly available information’ means information that is lawfully made available through federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.”

Utah:

(29) "Publicly available information" means information that a person:

- (a) lawfully obtains from a record of a governmental entity;
- (b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or
- (c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.

The Data Broker Section Lacks Clear Exemptions for PAI Where Needed

Here is the language in the Bill related to PAI from several provisions in the data broker section:

1. Brokered Personal Information Exemption:

(B) “Brokered personal information” does not include publicly available information to the extent that it is related to a consumer’s business or profession.

2. Business Activity Exemptions:

(C) The following activities conducted by a business, and the collection and sale or licensing of brokered personal information incidental to conducting these activities, do not qualify the business as a data broker:

(iii) providing publicly available information related to a consumer’s business or profession; or

(iv) providing publicly available information via real-time or near-real-time alert services for health or safety purposes.

3. Information Exempt from Breach Notice Requirements

(B) “Personally identifiable information” does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records.

4. Opt-Out Language without Exemption

(a) Individual opt-out.

(1) A consumer may request that a data broker do any of the following:

(A) stop collecting the consumer’s data;

(B) delete all data in its possession about the consumer; or

(C) stop selling the consumer’s data.

As one can see, there are overlapping and interacting definitions affecting PAI across the various provisions relating to who must register (1 and 2), what constitutes a breach (3), and opting out (4).

We support the following changes:

- Broadening the registration exemption to include all PAI activities using a definition identical to what we recommended above for the privacy section;
- Keeping the exemption as is for breach notice since that data is not private and is otherwise available to the general public; and
- Clarifying that PAI/Public Records are not subject to opt-out rights.

There Will Be Substantial Unintended Consequences and Constitutional Issues from Including Opt-out Without an Exemption for Public Records

The interaction of the opt-out and the lack of an adequate and clear public records exemption that applies to this section of the Bill would be fatal to many essential uses of public records for law enforcement, fraud detection and prevention, personal safety, child support recovery, lien enforcement, debt collection, underwriting, tax enforcement, witness location, judicial and legal processes, loans, auto safety recalls, and numerous other uses. Private services and private companies which government lawfully uses to administer and enforce the law would be

compromised. For example, a bad actor could ask to have public records deleted from a data set and opt-out of uses that are essential to public health, safety, and lawful commerce. Public records are not the property of the subject of the record. They are the property of the people of Vermont and cannot be deleted, opted out, or destroyed by the subject of the record for their own personal advantages. Public records in general are the lifeblood of a democracy and are rightfully protected by the First Amendment, common law, and privacy case law and warrants protection here as well.

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 and PAI. Our suggestions in this letter are aimed at preventing those kinds of consequences while still protecting privacy and consumers.

Thank you for your consideration of our input.

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