



COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: September 01, 2023
To: Indira Ridgeway
Research Analyst
House Commerce Committee
Rep. John Galloway, Chairman (D)
301 K. Leroy Irvis Office Building
Telephone: 717-787-1292

Re: **Comments on HB 1201 (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.

We Support a Clean, Clear and Uniform Publicly Available Information Exemption.

We support a public records exemption being in the Bill, but as drafted, the Bill is inadequate, and it lacks a specific exemption for publicly available information from other sources. The issue with public records is the addition of this clause in the definition in the Bill:

(3) For the purpose of this definition, information shall not be considered publicly available if the data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in Federal, State, or local government records or for which the data is publicly maintained.

The Uniform Law Commission model privacy act and other state privacy laws have clean exemptions for lawfully acquired public records and publicly available information.

Here are four “publicly available information” definition examples.

ULC Uniform Data Protection 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.

One state, California, briefly adopted language like the Bill's public records definition clause (3), but it was then repealed by both the legislature and then by the people of California by referendum. We do not know of any state that limits the use of its public records in this manner and for good reasons.

It is unclear what this limitation of "compatible with purpose for which the data is maintained" means in the Bill or how compatible with original purpose will be determined and applied. This would cause substantial uncertainty regarding the lawful uses of public records and would lead to

a costly, time consuming, and bureaucratic processes to manage its application. It would also likely be the subject of a lot of litigation to determine the meaning of this vague language and its unintended effects on public records users. Furthermore, our analysis of the clause is that it runs afoul of the First Amendment in general. 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 and publicly available information exception in the bill.

It is important to understand that there are many legal and societally beneficial uses by government (with the help of their data service vendors) and private parties that are not the original purpose for which data was collected and maintained. For example, property records are collected and maintained for proving who owns property. It is also used by government and their private contractors to locate people who are delinquent on their child support or some other obligation to government. Is this 'compatible'? Private watchdogs and the press use public property records for corruption investigations. Is this 'compatible'? Current Pennsylvania law states that a records requestor cannot be compelled to disclose nor be denied access to public records because of their intended use except in narrowly prescribed specific circumstances. This leads to this Catch 22 question: will public records users who are controllers under the Bill now be required to disclose all possible intended uses for all public records they request so that someone can judge if they are 'compatible' even though the law says they cannot be compelled to disclose that nor denied access because of their intended use? Here are the relevant code sections of the Right to Know Chapter (emphasis added):

Section 301. Commonwealth agencies.

(a) Requirement.--A Commonwealth agency shall provide public records in accordance with this act.

(b) Prohibition.--A Commonwealth agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

Section 703. Written requests.

A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, by any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

The rights of a person regarding personal information further complicate the vague language added to the public records exemption. The Bill states a consumer may have records deleted that the business has collected about them. Are records that are collected from third parties such as the government included in this? Are they included only if they are used in some way not part of

the original purpose for which data was collected and maintained? This would be an egregious effect of the law if it does apply because this essentially lets a person censor and edit the public truth about themselves and prohibit others from speaking that truth. With this, we all get to write our own fake history and hide any unpleasant facts about our bad behavior as well as cut off socially beneficial and necessary uses of public data.

Subsection (3) is also problematical in that a person who was the subject of a public interest inquiry conducted by the press or concerned citizens (on their own or using a covered vendor to aid them) into possible wrongdoing would have the right to find out if they were in the private party's data. Such disclosure could compromise the inquiry and the free speech and privacy rights of those doing the inquiry. It would be even worse if the subject of the inquiry can go further and request the information be deleted even if it is from public sources because the use is not 'compatible'. If this interpretation is accurate, it would undermine anti-corruption efforts as well as free press work protected under the First Amendment that helps hold government accountable and inform the voters of what their government and its officials are doing.

Finally, the definition of personal information includes a broad statement regarding inferences. To wit:

- (x) An inference drawn from any of the information identified under this definition to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behaviors, attitudes, intelligence, abilities, or aptitudes.

It should be made clear that one may draw inferences from publicly available information. Placing limits on lawful inferential uses of publicly available information effectively nullifies the Right to Know statute. The purpose of getting public records is not simply to disseminate them—it is to use them for purposes that benefit society. One cannot use information without making inferences about what the information says. For example, if an elected official owns property and the roads in front of the property receive improvements and maintenance that are outside normal procedures, a citizen or any other party, including news organizations, should be free to make an inference that the elected official was receiving special treatment, or such property otherwise benefited in a manner that others have not. That inference should still be considered publicly available information, not covered personal data. Another example is if a person running for office where there is a residency requirement is found to have connections to addresses and taxation outside of the jurisdiction, it could be inferred that the candidate may not qualify for the office sought or that their residency is a legitimate issue for voters to consider when voting. There are thousands of beneficial inferences made from public records and publicly available information every day that are lawful and part of our right to free speech. The right to make such inferences should be protected and clarified by the statute.

Information in public records from local, state, and federal government sources are **owned by the People of Pennsylvania**, not the person who is the subject of the record. We support clear language added to the Bill like that used in other state privacy acts that simply states that legally available public records from local, state, and federal government sources are 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 Pennsylvanians.

Public Records Help Provide Essential and Valuable Services to State Residents, Businesses, and Government

We want to take this opportunity to point out that many persons and entities access and add value to the records they receive from public sources. 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 service providers greatly rely on combinations of public and private records to function, and we all benefit in ways including, but not limited to, the following.

- Public and private data is used to monitor government for waste, fraud, and corruption.
- Informing consumer choice on what services and businesses provide the best value and optimal safety.
- 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 is used to find missing persons, witnesses, and suspects.

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 records and public information rather than focusing on bad actors and acts that the society wants to regulate.

Thank you for your consideration of our input.

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