



COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: February 9, 2024
To: Members of the Maryland Legislature
Re: **Comments on HB 567 and SB 541 (the Bills)**

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.

Ask: Replace Current Language with a Clean, Clear, Complete, and More Uniform Exemption for Publicly Available Information/Public Records

The current Bills have non-standard and limited Publicly Available Information (PAI) exemption. 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 complete publicly available information/public records exemptions. We support changing the bills to incorporate such an exemption that applies to all aspects of the bills.

The current Bills state:

PUBLICLY AVAILABLE INFORMATION MEANS INFORMATION THAT:

- (I) **IS LAWFULLY MADE READILY AVAILABLE TO THE GENERAL PUBLIC THROUGH FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; OR**
- (II) **A CONTROLLER HAS A REASONABLE BASIS TO BELIEVE THAT A CONSUMER HAS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC THROUGH WIDELY DISTRIBUTED MEDIA.**

We Recommend the UPDPA Language or Language Similar to other States as a Clean Public Records Exemption.

The UPDPA language mimics the state statutory exemptions for ALL public records and other PAI 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.”

Notice it covers more information that is clearly within 1st Amendment Rights by including widely distributed media and publicly observable facts and addresses all public records. Here are three other state definitions:

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 Public Records Exemption Must Be Consistent with Maryland Public Records Law

Not all public records are made widely available “to the general public.” We recommend that this added “to the general public” language be removed from the exemption and that it read instead as noted above in the ULC UPDBA model act in section A. It states: “Publicly available information means information: (A) lawfully made available from a federal, state, or local government record.” Therefore, public records as a class and other publicly available information would not be personal information under any section of the act if it is properly placed in a definition section that covers the entire act.

Maryland’s existing public records law regulates access to certain public records to certain persons and for certain purposes. Adding the unnecessary and problematic qualifier “to the general public” would weaken existing privacy protections under the Maryland public records law which restricts access to certain public records to certain persons and for certain purposes (also note our discussion below on vendors to government and their use of public records on government’s behalf).

There Will Be Unintended Consequences from Including Opt-out and Secondary Use Restrictions Without Exemptions for all Public Records

The interaction of the opt-out and secondary use clauses with the lack of an adequate and clear public records exemption that applies to all sections of the Bill would be fatal to many essential uses of public records for law enforcement, child support recovery, lien enforcement, debt collection, underwriting, tax enforcement, witness location, judicial and legal processes, loans, auto safety recalls, and numerous other uses. We know that it is not author’s intent to let bad actors remove their public records from databases to commit more bad acts or escape responsibility for those they have already committed. A clean public records exception and authorized government vendor exemption (see below) solves these problems.

There Is a Need for A Clear Government and Government Vendor Exemption

Generally, government itself should not be governed by new public access to public records laws, and rules as the specific role of government, the enabling statutes, the rights involved, and privacy rules vary widely from government program to government program. Therefore, any proposed general privacy laws or rules should not apply to and hence shackle the government itself. It is therefore important to make it clear that vendors, parties, and subcontractors who carry out activities for and at the behest of government are also exempt from any general statute such as the ones proposed.

There are several ways that private entities use public and private data to support government administration, investigation, and enforcement of several laws. For example, vendors help with

finding missing and exploited children and trafficked persons, child support collection, tax lien collection, witness location, criminal investigations, and finding potential claimants or injured parties as part of a civil enforcement action by government. The Bills need to clearly exempt government **and** its selected vendors from the law for the lawful purposes for which the government uses those vendors.

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

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.
- 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 in public records from local, state, and federal government sources are **owned by the People of Maryland**, not the person who is the subject of the record. Public records already **do not** include selected personally identifiable information and **do** include limits on its availability to selected parties for selected purposes in law, in rules, and by contract.

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. We strongly request that proposed privacy legislation include a clean PAI/public records exemption.

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