

## **MEMORANDUM**

TO: Commissioners and Observers, ULC Study Committee on Redaction of Personal Information from Public Records (RPIPR)

FROM: Barbara Bintliff, Study Committee Reporter  
Vince DeLiberato, Study Committee Chair  
Keith Pickard, Study Committee Vice Chair

DATE: March 23, 2023

SUBJECT: For March 27, 2023, Meeting: Final Memo to Scope and Program Committee with Study Committee Recommendation

The attached memorandum, accompanied by several attachments, is presented to the Study Committee for comments and corrections. Based on remarks made at the meeting, the memo will be finalized and transmitted to the ULC's Scope and Program Committee and the Study Committee will conclude its work.

Tremendous thanks are due to all who participated in the Study Committee's deliberations. The robust discussions and clear explanations of positions allowed for informed decision-making throughout the process. The final recommendation is clearer and better focused than it would have been without everyone's contributions.

## **MEMORANDUM**

TO: Uniform Law Commission Scope and Program Committee

FROM: ULC Study Committee on the Redaction of Personal Information from Public Records  
Vincent C. DeLiberato, Chair  
Keith Pickard, Vice Chair  
Barbara Bintliff, Reporter

DATE: March 23, 2023

SUBJECT: Study Committee Recommendation to Proceed to Drafting Committee

The ULC Study Committee on the Redaction of Personal Information from Public Records was formed in the fall of 2021 and held its first meeting in January, 2022. In addition to the chair, vice chair, division chair, 11 Commissioners, 3 ABA advisors/section advisors, and reporter, there were as many as 56 observers contributing to the discussions. Active study committee participants included major stakeholders with a commercial interest in access to public records (“the associations”), various administrative and elected state officials, open government organizations, and law professors, among others. The full membership list is included as an attachment to this memo.

Discussion was robust, with stakeholders actively presenting arguments both for and against the project. Many provided supporting documents and suggested relevant legislation from individual states as examples.

The committee held eight 90-minute meetings during 2022 and early 2023, with a ninth meeting held to present this memorandum to the entire committee. The following is a very brief summary of its recommendations and the main reasons for those recommendations. The Study Committee is prepared to provide a drafting committee with specific recommendations and detailed areas of general agreement that are included in the series of memos that guided the committee’s deliberations.

### **Study Committee Recommendation**

1. Committee Vote. The Study Committee voted 6-3, with one abstention, to recommend the project proceed to a drafting committee. The majority of Commissioners ultimately came down on the side of personal safety. They agreed that any uniform act must maintain a balance between public access to information and personal safety. The project must focus on safety issues in identifying those for whom redaction may be available, while simultaneously assuring that the underlying information is preserved in an official record that is not necessarily accessible by the general public. The discussions dealt with access to civil records in public databases and did not cover the use of the information; the project did not look to criminalize use of information or penalize those using the information. Further, the Study Committee generally agreed that the First Amendment should not be implicated; any proposal should fit within existing FOIA/Open Records/public access structures.

This recommendation is for a system of redaction with two parts. *Per se* redaction (automatic redaction) is proposed for public employees classified as judicial officers (elected or appointed) or law enforcement personnel (for example, prosecutors or certain police officers) for the period during which they are in office. Redaction for others should be available by application with evidence of credible risk of harm, as determined by a judicial authority. *Per se* redaction eligibility should not be determined by a ministerial employee and should not be discretionary; there must be a statutory determination, court order, or other approved document. States must have discretion to define categories of those for whom redaction is available and specific criteria for approving redaction.

The group was clear in its understanding that a full and complete set of unredacted records must be available for legitimate use, with guidelines from a drafting committee and conditions set by an enacting state. There was no suggestion that legitimate, socially beneficial uses of complete public records be denied. The committee agreed that unredacted records must have integrity and reliability to provide constructive and public notice and must be securely stored to ensure their preservation and availability.

The abstaining Commissioner, Division Chair Barbara Atwood, “agrees with the project in spirit” but is concerned about the amount of “pushback” from observers. Commissioner Atwood was also concerned with enactability in the face of opposition among the observers and because of already existing redaction of records provisions which may need amending or repealing, making legislative action more challenging. She questioned if states would even be willing to look at a uniform law on redaction of personal information if they had an existing process.

Key points of discussion included:

1. Need for uniformity. Almost every state has legislative provisions for redacting information from public records. The laws specify varying eligibility, procedures, duration, records, and information covered. In some states, redaction (or even greater confidentiality measures) is available only to victims of domestic violence or abuse, sexual offenses, or stalking. (Note that the Study Committee decided not to include victims of domestic violence in its deliberations because of the larger issues involved.) In some states, redaction is available to a range of public employees (from judges to law enforcement to county assessors and treasurers to as many as 20 identified categories of employees in one state), certain witnesses of crime, and certain family members of specified public employees. This is an area that is receiving continuing attention in the states.

One observer noted that at least eight states were considering bills this legislative session on redacting information from public records. A uniform act could reduce (or eliminate) the many varying approaches. States could benefit greatly from guidance from the ULC and a standardized process, definitions, and expected outcomes. A uniform law could offer reciprocity among enacting jurisdictions, streamlining court or administrative proceedings and improving communications.

There was recognition among both Commissioners and many observers that the ULC was the right group to bring some order to this rapidly evolving area that has been addressed in a variety of ways by the states. Some opposed to all redaction—notably representatives of open government organizations and representatives of associations with commercial interests in access

to public records—feared that the imprimatur of the ULC on a redaction process would lead to undue restrictions on governmental transparency and potentially limit the legitimate and socially beneficial use of public records.

2. Stakeholder responses. Opinion on the project was split among the observers and reflected in the Commissioners' votes. The strongest and most significant opposition came from the open government organizations and the associations. The open government organizations were concerned with unfettered access to public records. These organizations first point to unintended impediments to access of public records already seen in states that have passed laws restricting access to certain public records. Second, they state that, the more barriers there are to public information, the greater the strain on accountability and oversight of officials. Third, they proposed that the ULC should consider alternative approaches because redaction, as discussed by the Study Committee, would provide a false sense of security.

In response to a request for written comments, three statements were received. The written comments provide an overview of the major issues that influenced the Study Committee's decision-making. Three of the most vocal participants from those with a commercial interest in public records, **the Consumer Data Industry Association, the Software and Information Industry Association, and the Coalition for Sensible Public Records Access** ("the associations") prepared a joint statement outlining their opposition to a drafting committee. The Study Committee summarizes the statement here and provides the full report of the associations as an attachment.

The stated reasons of the opposition are, first, violation of the Uniform Law Commission policy and second, inability to provide for protection of public employee safety. As to violation of the *Uniform Law Commission Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Acts (2022-2023)*, the associations raise three problems. First, because there is no empirical evidence establishing a causal link between availability of public records on personal information about public employees and misbehavior toward or criminal activity against public employees and because there is no review of proven measures to reduce such misbehavior and criminal activity, there is no obvious reason for an act that will be a practical step toward uniformity. Second, because there is currently no uniform approach to, but widely varying systems for, public records management and because adoption of a uniform approach would be costly, there is no reasonable probability that a substantial number of states and political subdivisions would adopt a uniform act with resulting public benefit. Third, because there is significant opposition to the project, enactment would be controversial and unlikely based on policies or philosophies among the states.

As to inability to provide for protection of public employee safety, the associations recommend a new study committee and ensuing drafting committee with the charge of creating a model act to guide states and political subdivisions in the assessment of and protection against threats and risks to public employees. Such an approach will avoid negative unintended consequences and the creation of a false sense of security for public employees.

Two other participants provided written comments in support of the project. A summary of the comments of a representative of **The American Land Title Association**, representing the real estate settlement services, abstract, and title insurance industry, is that the organization is in

support of recommending a drafting committee. The stated reason is the establishment of a model legislative approach to address recognized safety concerns while avoiding unintended consequences, such as impacting the integrity of land records or the ability of protected individuals to engage in commercial transactions affecting property. The full statement is attached as an attachment to this memorandum.

**Commissioner Amy Elliott (Pennsylvania)** provided the following comments, via email, reproduced in full: “I recognize that several industry groups appeared adamantly opposed to this concept – but what I found most compelling was the industry representative (I believe he dealt with land titling issues), who spoke in favor of the concept. That individual expressed that states are already beginning to enact laws on this subject, and it would be to everyone’s benefit if the state laws provided for protection of the same type of information, for the same categories of public officials (and possibly others), and has the same processes in place to both redact the necessary information, and provide access to that information to those entities that have a legitimate need for it – such as land title/real estate companies, process servers etc.

“I tend to agree – this need for consistency across state lines is the very reason uniform laws exist. This issue is not going away, and the ULC is the organization best positioned to solicit information from a variety of viewpoints in order to craft a clear, concise and legally sufficient law on the subject.”

3. Enactability. Opinions varied as to the enactability of a uniform act. The most often stated concerns were, first, of potential financial impacts, whether coming via a fiscal note or in the ultimate implementation and, second, that the lobbying of the associations and others might be robust. These are speculative in nature as there was no supporting evidence provided. Opponents also suggested states might need new technologies or personnel and one state government employee complained of the heavy impact of an extensive redaction program in their state.

Ultimately, nearly two-thirds of the commissioners supported the recommendation to move to a drafting committee. The Study Committee recommends an outcomes-based process, suggesting that a drafting committee provide guidance on definitions and procedures but leave it to each state to determine which state employees, or others, are eligible to have information redacted and how the redaction program will be implemented. It is reasonable to assume that states will not need an entirely new bureaucracy and newly created procedures because existing state practice can be built upon in an outcomes-based uniform act. Incorporating this proposal into existing state frameworks should result in lessened or minimal fiscal impact in most jurisdictions.

Further, the Study Committee has a list of specific recommendations for a drafting committee, should one be formed. These recommendations cover specific issues and problems and may alert a drafting committee of otherwise unexpected results.

TO: Uniform Law Commission Scope and Program Committee

FROM: ULC Study Committee on the Redaction of Personal Information from Public Records  
Vincent DeLiberato, Study Committee Chair  
Keith Pickard, Study Committee Vice Chair  
Barbara Bintliff, Study Committee Reporter

DATE: March 23, 2023

SUBJECT: Attachments to Study Committee Recommendation to Proceed to Drafting Committee

Three attachments, included here, are provided to supplement the information in the Study Committee Recommendation to Proceed to Drafting Committee. The attachments are:

1. Final membership roster of the Study Committee
2. Joint statement of the Consumer Data Industry Association, the Software and Information Industry Association, and the Coalition for Sensible Public Records Access
3. Statement of the American Land Title Association



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## Attachment 2

**To:** Vince DeLiberato, Esq., Committee Chair  
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*Delivered via email: [vdeliberato@palrb.us](mailto:vdeliberato@palrb.us), [bbintliff@law.utexas.edu](mailto:bbintliff@law.utexas.edu)*

**RE:** Recommendations from Uniform Law Commission study committee on Redaction of Personal Information from Public Records

The undersigned organizations provide information services based on public records to consumers, businesses, and government entities. Among many other valuable services, our services prevent identity theft; locate missing children; inform consumers about safety recalls; assist in counter-terrorism investigations; enable tax compliance; gather news; power credit, tenant, and employment screening; and enable corporate due diligence. Individuals, government agencies, commercial enterprises, and a myriad of nonprofits depend on timely access to this information, and its predictable transmission forms the backbone of billions of dollars in commerce, millions of jobs, and multiple important decisions in people's everyday lives. We collectively represent thousands of businesses that are members, millions of businesses that are customers, and hundreds of millions of people who benefit from the availability and utility of public information.

We have participated in the Committee as observers from its inception, and although grateful to the Chair for his transparency, we continue to believe that that the Uniform Law Commission should *not* appoint a drafting committee as a follow on from the Study Committee on the Redaction of Public Records.

We take this position for two important reasons:

- (1) The Study Committee has not demonstrated that its proposal is appropriate under the ULC's Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Uniform and Model Acts; and
- (2) Public employees who are at risk from threats, harassment, aggression, theft, and violence need real protection that redaction of selected data cannot and will not provide. Further, selective redaction will be costly, difficult, and time consuming, and will likely lead to loss of access to public records for essential societal functions.

### **1. Creating a Drafting Committee Is Inconsistent with ULC Policy**

#### *A. There is no "obvious reason" that a model or uniform act will further uniformity*

The ULC's Statement of Policy Establishing Criteria and Procedures for Uniform Acts requires an "obvious reason" for an act that will be a practical step toward uniformity. That "obviousness" is nowhere to be found. While the goals of the project are laudable, the Committee could not produce any empirical evidence about the degree to which availability of public records of employee home address, birth date, and public phone numbers are causally related to misbehavior

and crimes. The Study Committee sets forth *opinions* and anecdotes about whether public contact information is a source for data misuse, while refusing to review proven measures to reduce threats, harassment, and crime against public employees and officials. Opinions, anecdotes, and a lack of the actual causes and likely effective solutions to the problem do not add up to an “obvious reason” for a model or uniform act.

The sole argument in favor of the project centered on repeated statements that while redaction would not prevent the redacted information from being widely available and within the reach of bad actors, the cost, time, and loss of functionality of the public records system would nevertheless be justified if doing so “would save just one life.” This is a false dilemma and logical inconsistency—a ban on interstate travel would accomplish the same end as would any number of other policy choices. Redaction of this information could just as easily lead to injury or death through a missed notice of product recall, or through a failure to expose corruption that leads to a horrific outcome like the poisoning of a water supply or structural failure in buildings caused by shoddy safety inspections. No weight was given to uses of complete public records for saving lives, enabling essential transactions, performing watchdog functions over government, and maintaining trust in government. There is more evidence that keeping an eye on government to make sure there are no conflicts of interest or inappropriate reasons for what public employees do saves lives, saves taxpayer money, and keeps a peaceable and functioning society together.<sup>1</sup>

*B. There is no reasonable probability that a uniform or model act will standardize public records or provide any benefit that might come with uniformity*

There is no reasonable probability that a uniform act will either standardize the handling of public employee information in public records acts across the United States or produce public benefits by virtue of that standardization. We collect public record data from all over the United States, and no uniform approach to public records management exists. States, municipalities, counties, and agencies vary dramatically in size, scope, policies, budgets, priorities, management, and willingness and ability to adapt systems of data collection, retention, and transmission that would enable a uniform approach. Implementing a uniform act will be costly as even within the same state, different agency computer systems often do not talk to each other. There is therefore no reasonable probability that a substantial number of states and their various units of government would adopt a uniform act with fidelity to the ideas of keeping the adoption uniform across states.

*C. Any model or uniform act is highly unlikely to be adopted by states*

The measure is unlikely to be enacted. Section 1(e)(2) of the Statement of Policy rejects creation of drafting committees if the measure is “controversial because of disparities in social, economic, or political policies or philosophies among the states.” In addition to the opposition from

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<sup>1</sup> We note that the ULC has already created a uniform privacy law to address the balance between public and private information. If saving lives is the offered reason for a uniform law protecting public employee safety, please consider our discussion under number 2 below for a proposal that would conduct regular all-threats appraisals with selected countermeasure deployed to protect public employees. A separate paper outlining this approach was submitted to the committee by observer Richard Varn.

groups like ours as well as the press, opposition will come from different regions within the same state. For example, as the NFOIC and CSPRA position papers pointed out (and those of us from small towns know), everyone knows where people live and work in smaller towns and less populated states. Why would such states and their jurisdictions adopt expensive and controversial laws and systems that try to hide what everyone knows or can be found out very easily without using public records? We wholeheartedly endorse and adopt by reference the letter from the National Freedom of Information Council (NFOIC) and 25 of its affiliates opposing this effort.

## **2. Creating a Drafting Committee with a Narrow Redaction Focus Will Not Address the Problem**

Again, we share the desire to protect public employee safety. Drawing on processes and programs already used by public and private entities, a new study committee and ensuing drafting committee, if approved, could productively create a model act to guide states and local jurisdictions to assess all threats and risks to their employees, rank them, choose which ones are actionable, select known countermeasures or effective protections regimes, implement them, and keep their protection plan evergreen.

In contrast, redaction of selected identifiers and contact information in the public records of public employees and officials will have negative unintended consequences and provide no real protection for these employees, instead, redaction will risk creating a false sense of security in the face of real threats to their safety. While we share a common interest in preserving public safety, the uniform statute proposed by this Study Committee will not achieve that end, and may well harm it. It is our informed view that the creation of a redaction drafting committee will result in a product that is unwise, unwieldy, and unenacted.

Thank you for the opportunity to express our views.

Respectfully submitted on behalf of their respective associations,

*Eric J. Ellman*

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Consumer Data Industry Association (CDIA)

*Chris Mohr*

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Executive Director  
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AMERICAN  
LAND TITLE  
ASSOCIATION



Date: March 1, 2023

To: Uniform Law Commission (ULC)

Redaction of Personal Information from Public Records Committee

Re: Support for ULC Drafting Committee

The American Land Title Association (ALTA), representing the real estate settlement services, abstract and title insurance industry, strongly supports the creation of a Uniform Law Commission (ULC) drafting committee focused on public record privacy measures for at-risk groups and individuals.

Many lawmakers are proactively working to address safety concerns related to public records access. While there are a variety of public record privacy programs in practice across the country, a national model has not emerged. This lack of uniform approach has resulted in passage of well-intentioned laws that have been unworkable in practice and required legislative updates.

ALTA supports the ULC's work on this important topic and looks forward to the creation of a model legislative approach that addresses recognized safety concerns while avoiding unintended consequences, such as permanently impacting the integrity of land records or impacting the ability of protected individuals to buy, sell or refinance property.

Finally, ALTA's FAQs on record shielding are attached for your review and consideration in the drafting process.

Should you have any questions, please contact Elizabeth Blosser at [eblosser@alta.org](mailto:eblosser@alta.org).