

D R A F T
FOR DISCUSSION ONLY

Redaction of Personal Information from Public Records Act

Uniform Law Commission

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Redaction of Personal Information from Public Records Act

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Redaction of Personal Information from Public Records Act

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1 **{Working Title: Redaction of Personal Information from Public Records Act}**

2 {Prefatory Note}

3 Almost every state has legislative provisions for redacting information from public records. The
4 laws specify varying eligibility, procedures, duration, records, and information covered. In some
5 states, redaction (or even greater confidentiality measures) is available only to victims of
6 domestic violence or abuse, sexual offenses, or stalking. In some states redaction is available to a
7 range of public employees (from judges to law enforcement to county assessors and treasurers to
8 as many as 20 identified categories of employees in one state), certain witnesses of crime, and
9 certain family members of specified public employees. This is an area that is receiving
10 continuing attention in the states. A uniform act can reduce or eliminate the many, varying
11 approaches. States could benefit from guidance from the ULC and a standardized process,
12 definitions, and expected outcomes. A uniform law could offer reciprocity among enacting
13 jurisdictions, streamlining court or administrative proceedings and improving communications.

- 14 • Fundamental to the philosophy of American democracy and government is that all are
15 entitled to accurate and complete information regarding the actions and affairs of
16 government and the official actions and policies of public officials and employees. This
17 information is necessary for an informed electorate and to ensure accountability and
18 transparency in government affairs. It is for the public benefit.
- 19 • Must maintain a balance between public access to information and personal
20 safety/security needs. Openness and transparency cannot be an excuse for an invasion of
21 personal privacy or diminution of security. This is also for the public benefit.
- 22 • This recommendation is for a system of redaction with two parts. Per se redaction
23 (automatic redaction) is proposed for public employees classified as judicial officers
24 (elected or appointed) or law enforcement personnel (for example, prosecutors or certain
25 police officers) for the period during which they are in office. Redaction for others should
26 be available by application, with evidence of credible risk of harm as determined by a
27 judicial authority.
- 28 • Much in this [act] is left to state discretion (who is eligible for redaction, processes, etc.)
- 29 • Dealing with access to information only.
- 30 • First Amendment implications?
- 31 • Intent is to situate [act] within the state’s FOIA/Open Government/Sunshine Laws.
- 32 • Intent is for Redaction Officer to be someone already within that state’s administrative
33 structure—no need for new offices or bureaucracies.
- 34 • Only applies to information in databases or records collected by or for government (at
35 government expense?). Does not apply to information found elsewhere.
- 36 • Only applies to civil records.
- 37 • Need to be mindful of separation of powers re: redaction of court/judicial branch records
38 if court/judicial branch records are included in coverage.
- 39 • Does not include victims of domestic violence or those against whom domestic violence
40 may be threatened under the assumption that the state has a fuller program of protection
41 for those individuals.

- 1 • State-wide uniform standards and processes must be followed to ensure all records
- 2 pertaining to an individual are properly shielded.
- 3 • Focusing on a sensible, uniform approach among the states, not creating something new.

4

1 **{Working Title: Redaction of Personal Information from Public Records Act}**

2 **Section 1. Title**

3 This [act] may be cited as the {title of act}.

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Electronic” means relating to technology having electrical, digital, magnetic,
7 wireless, optical, electromagnetic, or similar capabilities. {ULC}

8 (2) “Judge” means {defined by state?}.

9 (3) “Law enforcement official” means {defined by state?}.

10 (4) “Person” means an individual, estate, business or nonprofit entity, or other
11 legal entity. The term does not include a government or governmental subdivision, agency, or
12 instrumentality. {See Rule 304 of ULC Drafting/Style Manual.}

13 (5) “Personally identifying information” means {text of NY bill sec 859(c)}:

14 (A) home address, including primary residence and secondary residences;

15 (B) unlisted telephone number;

16 (C) personal cell phone number;

17 (D) personal email address;

18 (E) social security number;

19 (F) driver license number;

20 (G) license plate number;

21 (H) marital status and identity of any present and former spouse;

22 (I) identity of children under 26 years of age;

23 (J) name and address of a school or day care facility attended by an

1 immediate family member;

2 (K) bank account number;

3 (L) credit or debit card number;

4 (M) personal identification number (PIN);

5 (N) automated or electronic signature;

6 (O) unique biometric data; and

7 (P) account passwords.}

8 (6) “Public official” means {as defined by state?}.

9 (7) “Public Record” means {as defined by state?}.

10 (8) “Record” means information:

11 (A) inscribed on a tangible medium; or

12 (B) stored in an electronic or other medium and retrievable in perceivable

13 form. (ULC)

14 (9) “Redaction” means {prospective and retrospective removal of designated

15 personally identifying information from publicly accessible records}.

16 (10) “Redaction official” means the state government official charged with

17 oversight of redaction as described in this [act].

18 (11) “Sign” means, with present intent to authenticate or adopt a record:

19 (A) execute or adopt a tangible symbol; or

20 (B) attach to or logically associate with the record an electronic symbol,

21 sound, or process. {ULC}

22 (12) “State” means a state of the United States, the District of Columbia, Puerto

23 Rico, the United States Virgin Islands, or any other territory or possession subject to the

1 jurisdiction of the United States. The term includes an agency or instrumentality of the state.
2 {See ULC Style/Drafting Manual Rule 305 and comments below for additional considerations
3 concerning the definition of “State”.}

4 **Comment**

5 The reference to “instrumentality” in the phrase “governmental subdivision, agency, or
6 instrumentality” includes a corporation or other entity created by a government. (Language
7 required per Rule 304 of Style/Drafting Manual)

8
9 “Political subdivision of this state” includes a city, [county,] district, and any other local or
10 regional governmental authority. (ULC)

11
12 RE: “Judge” definition: alternative: “a public official appointed or elected to hear and decide
13 legal matters in court.” (Black’s Law Dictionary, 9th ed)

14
15 RE: “Law enforcement official” definition; the study committee recommended prosecutors and
16 certain police officers (for example, undercover police officers). Alternatives: an individual
17 “whose duty is to enforce the laws and preserve the peace.” (Black’s Law Dictionary, 9th ed.)

18
19 RE: “Personally identifying information”: Illinois FOIA, Sec. 7:
Subject to this requirement, the following shall be exempt from inspection and copying:

...

(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. “Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

20
21 RE: “Public record” definition: Alternatives: “a record created or received by a government
22 official or agency as part of their official duty or function.”
23 <https://dictionary.archivists.org/entry/public-record.html> OR
24 “a record that a governmental unit is required by law to keep[.]” (Black’s Law Dictionary, 9th
25 ed.) OR

26 Illinois definition: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2>)
27 “Public records” means all records, reports, forms, writings, letters, memoranda, books, papers,
28 maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records,
29 electronic communications, recorded information and all other documentary materials pertaining
30 to the transaction of public business, regardless of physical form or characteristics, having been
31 prepared by or for, or having been or being used by, received by, in the possession of, or under
32 the control of any public body.” OR

1 Colorado definition: The definition of public records includes all “writings” made, maintained,
2 or kept by the state or any agency, institution, or political subdivision “for use in the exercise of
3 functions required or authorized by law or administrative rule *or* involving the receipt or
4 expenditure of public funds.” [C.R.S. § 24-72-202\(6\)\(a\)\(I\)](#). This means the content of the record
5 must discuss some public business, as opposed to purely private matters. The definition of public
6 records also includes the “correspondence” of elected officials, with some exceptions. [C.R.S. §](#)
7 [24-72-202\(6\)\(a\)\(II\)](#). “Writings” includes books, papers, maps, photographs, cards, tapes,
8 recordings or other documentary materials, regardless of physical form or characteristics, as well
9 as digitally stored data, including electronic mail and text messages. The definition excludes
10 computer software. [C.R.S. § 24-72-202\(7\)](#). [https://coloradofaic.org/open-government-](https://coloradofaic.org/open-government-guide/#What_is_a_public_record)
11 [guide/#What_is_a_public_record](https://coloradofaic.org/open-government-guide/#What_is_a_public_record)
12

13 **Legislative Note:** *A state that uses a different term for “county” should insert that term in the*
14 *brackets. If a state does not have a governmental unit corresponding to a county, it should*
15 *delete the bracketed term. (ULC standard definition).*
16

17 **Section 3. Scope**

18 This [act] provides a level of personal security for specified public officials and certain
19 others by allowing, on application, for the redaction of personally identifying information from
20 public records. The [act] balances personal security with provisions allowing for the inspection,
21 on application, of unredacted public records for socially beneficial, legitimate reasons.

22 **Comment**

23 [Insert comment]

24 **Section 4. Redaction Official**

25 The Redaction Official coordinates all aspects of the redaction process, including:

26 (1) developing procedures to review and process redaction requests and requests
27 for access to unredacted records;

28 (2) receiving all redaction requests and approving requests or forwarding requests
29 to the decision-making authority;

30 (3) receiving all requests for access to unredacted records and approving requests
31 or forwarding requests to the decision-making authority;

1 (4) coordinating redaction of records across state government entities and
2 agencies;

3 (5) developing procedures for restoring previously redacted information to
4 records; and

5 (6) serving as custodian either personally or via delegation of all unredacted
6 records, ensuring that an unredacted version of all public records is properly maintained.

7 **Comment**

8 The study committee suggested that this uniform act could fit within a state’s FOIA/Sunshine
9 Act/Open Government Act structure. This is a fairly typical arrangement for existing redaction
10 laws (sometimes included as exemptions to FOIA disclosure) and, if followed by enacting
11 jurisdictions, the “Redaction Official” could be an existing state employee. This could reduce the
12 fiscal impact of adopting the act.

13 Should there be one “redaction official” for the entire state government or should each
14 agency/public body have a redaction official, particularly in light of the reality that many public
15 records are kept locally (for example. at the county level) and not centrally (at the state level)? If
16 there are multiple redaction officials, how should procedures be coordinated? By whom?

17 Is there a reason to create a private right of action for improper redaction or penalties for not
18 redacting in timeframes specified? By whom and against whom would right be exercised?

19

20 **Section 5. Individuals Eligible for Redaction of Public Records**

21 (a) Judges and law enforcement personnel {and others, as defined by the state?} are
22 eligible for per se redaction of personally identifying information as described in Section 6(a).

23 (b) Those with a valid court order or other appropriate adjudication approving redaction
24 of personally identifying information shall use the procedure described in Section 6(a).

25 (c) Other individuals may request redaction of personally identifying information using
26 the procedures for requesting redaction in Section 6(b).

27 **Comment**

28 Subsection (b) likely includes victims of domestic violence who have a court order approving
29 redaction; those who may potentially become victims of domestic violence are eligible for (c).

1 Also see Section 6(b) below.

2

3 Do names stay in the database but information is redacted? Or are names redacted, too? Is this a
4 state decision? Should the Drafting Committee make a recommendation?

5

6 Should a database be maintained (by names) of those who have been allowed redaction? Would
7 this encourage accountability of officials and discourage misbehavior of individuals whose
8 records are redacted? Should such a database be accessible and, if so, by whom?

9

10 **Legislative Note:** *Enacting states may include additional categories of individuals eligible for*
11 *per se redaction. This may require adjustment to definitions, to this Section 5, and possibly to*
12 *other sections.*

13

14 **Section 6. Procedures for Requesting Redaction**

15 (a) An individual described in Section 5(a) or (b) as eligible for redaction shall apply by
16 presenting a written request to the Redaction Officer which includes a certificate of election,
17 commission, appointment letter, statutory determination, court order, or other recognized official
18 document that establishes the individual's status and eligibility.

19 (b) Any individual may request redaction of personally identifying information from
20 public records using the procedures developed by the Redaction Officer.

21 (c) The decision-making authority (judge? Redaction Official?) must render a decision
22 within (X days?). Failure to act shall be deemed approval.

23

Comment

24 Specific procedures will need to be developed at the state level. Ideally, the procedures and
25 accompanying forms would be readily locatable on a website or directly from the office of the
26 redaction officer. Procedures should include the office or website with which the request is filed,
27 including physical location of office, email address, and phone number.

28

29 Recommended application procedures for individuals requesting redaction of personally
30 identifying information (Section 6(b)) might include providing the following information:

- 31 • Full legal name, residential address, and other unique identifying information (e.g. social
32 security number, driver's license number, or state-issued ID number);
- 33 • A sworn statement or affidavit showing evidence of credible risk of harm, defined, for
34 example, as a risk or threat that is rational or reasonable for the applicant to believe will be
35 carried out;
- 36 • Noting whether the requesting party has personally identifying information redacted in

1 another state (see Section 13).

2
3 Must application specify exact records to be redacted, or is “all records” or “all real property
4 records” or some general statement sufficient? How will the bureaucratic burden of redaction be
5 accounted for?

6
7 Application for redaction should include general information about procedures, timelines, etc.

8
9 Per se redaction should not be determined by a ministerial employee and it should not be a
10 discretionary process; this is a Study Committee recommendation.

11
12 How are the costs to the government of redaction determined? Should taxpayers pay for the
13 redaction processes or should the individual requesting redaction bear the cost similar to how a
14 requestor pays for records requests? Does it matter if redaction is per se or by application?

15
16 **Section 7. Duration of Redaction; Extension or Waiver of Redaction**

17 (a) For those described in Section 5(a) as eligible for per se redaction, the redaction of
18 public records continues throughout the individual’s term of office regardless of whether such
19 terms ends by election, resignation, reassignment, expiration of term, death, or otherwise.

20 (b) For those described in Section 5(b) for whom redaction is approved by court order or
21 other appropriate adjudication, the duration of redaction shall be (X years) unless otherwise
22 determined by the decision-making authority.

23 (c) For those described in Section 5(c) for whom redaction is approved, the duration of
24 redaction shall be determined by the decision-making authority.

25 (d) An individual whose personally identifying information has been redacted but for
26 whom the term of redaction has expired may apply for an extension of redaction using
27 procedures described in Section 6(b).

28 (e) Any individual for whom redaction has been approved may waive such redaction by
29 notifying the Redaction Officer in writing of the waiver. If redaction is waived, all redacted
30 records related to that individual will be available for public inspection. The individual must
31 reapply for redaction, using the procedures in Section 6, if redaction is subsequently desired.

1 **Comment**

2 [Insert comment]

3 **Section 8. Appeal of Denial of Redaction**

4 Appeals go to intermediate appellate court? Trial court? Judicial or quasi-judicial
5 authority that regularly hears appeals from entity making initial determination?

6 **Comment**

7 Should appeals provisions be part of application procedures (Section 6)? Or should both
8 “appeals” sections be combined?

9

10 **Section 9. Maintenance of Unredacted Public Records**

11 All governmental agencies that create or maintain public records shall maintain an
12 unredacted version of such public records. The Redaction Official shall be the custodian for all
13 unredacted public records.

14 **Comment**

15 [Insert comment]

16 **Section 10. Access to Unredacted Public Records**

17 (a) A governmental employee engaged in legitimate government business for the purpose
18 of updating, maintaining, preserving, or other legitimate day-to-day operations may access
19 unredacted records without application.

20 (b) Access to unredacted public records is available using application procedures
21 described in Section 11 to a commercial entity engaged in one of the following activities {from
22 NY bill page 10}:

23 (1) reporting, news-gathering, speaking, or other activity intended to inform the
24 public on matters of public interest or public concern;

25 (2) using personal information internally, providing access to businesses under

1 common ownership or affiliated by corporate control, or selling or providing data for a
2 transaction or service requested by or concerning the individual whose personal information is
3 being transferred;

4 (3) providing publicly available information via real-time or near real-time alert
5 services for health or safety purposes;

6 (4) any activity where the commercial entity is a consumer reporting agency
7 subject to the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.);

8 (5) any activity where the commercial entity is a financial institution subject to
9 the Gramm-Leach-Bliley Act (Public Law 106-102) and regulations implementing that Act; and

10 (6) the collection and sale or licensing of personal information incidental to
11 conducting the activities described in paragraph (2).

12 (c) Access to unredacted public records is available, upon application, to others showing a
13 legitimate purpose, using procedures described in Section 11.

14 **Comment**

15 Note: The [Gramm-Leach-Bliley Act](#) requires financial institutions – companies that offer
16 consumers financial products or services like loans, financial or investment advice, or insurance
17 – to explain their information-sharing practices to their customers and to safeguard sensitive
18 data.

19
20 Add definition of commercial entity or is that overkill (e.g. Individuals “or entities engaged in
21 the buying, selling, or production of goods and/or services for profit.” From LawInsider)?

22
23 Would it be useful to define news-gathering? Illinois offers the following definition that can be
24 adjusted: (f) “News media” means a newspaper or other periodical issued at regular intervals
25 whether in print or electronic format, a news service whether in print or electronic format, a radio
26 station, a television station, a television network, a community antenna television service, or an
27 individual or corporation engaged in making news reels or other motion picture news for public
28 showing.”

29
30 Would a separate subsection giving access on application to “an established open government
31 organization or political party” be useful or is it included in (c)?

32
33 An alternative approach: The Illinois FOIA allows certain entities to access unredacted records,

1 as follows:

2 (c-10) . . . news media (as defined in the statute) and non-profit, scientific, or academic
3 organizations . . . when the principal purpose of the request is (i) to access and
4 disseminate information concerning news and current or passing events, (ii) for articles of
5 opinion or features of interest to the public, or (iii) for the purpose of academic, scientific,
6 or public research or education.

7 <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2>

8

9 Possible subsection “(d) information from unredacted records may only be used for the purpose
10 specified in the application for access. It may not be made publicly available or otherwise
11 released without permission from any individual whose personally identifying information is
12 redacted from the records.” (Is this opening a can of worms? Is it deciding how information
13 legally obtained through the application process can be used? Is this *Sorrell*?)

14

15 **Section 11. Procedures for Requesting Access to Unredacted Records**

16 (a) A commercial entity described in Section 10(b) may apply to the Redaction Officer
17 for access to unredacted records by written request which includes identification of the category
18 in Section 10(b) it meets.

19 (b) Any person may request access to unredacted records using the procedures developed
20 by the Redaction Officer.

21 (c) The decision-making authority (judge? Redaction Official? deeming) must render a
22 decision within (X days?). Failure to act shall be deemed approval.

23

24 **Comment**

25

26 Specific procedures will need to be developed at the state level. Ideally, the procedures and
27 accompanying forms would be readily locatable on a website or directly from the office of the
28 redaction officer. Procedures should include the office or website with which the request is filed,
29 including physical location of office, email address, and phone number.

30

31 Recommended procedures for requesting access to unredacted records (Section 10(c)) might
32 include providing:

- 33 • Full legal name, residential address (for individuals) or business address (for entities), and
34 other unique identifying information (e.g. social security number, driver’s license number,
35 tax ID number, or state-issued ID number); and
- 36 • A description of the legitimate purpose for which access to unredacted records is needed.

37

38 Must the application specify exact records to be accessed or is “all records” or “all real property
records” or some general statement sufficient?

1 (Generally from NY bill sec. 7 (bill page 13)), it shall constitute presumptive evidence of
2 “having no legitimate purpose” when (i) the individual for whom personally identifying
3 information is sought is described under this [act] as a judicial or governmental employee who
4 may request per se redaction, or who otherwise has been approved for redaction of PII and (ii)
5 the person seeking the information was or is a party to a judicial proceeding before or involving
6 the judge or governmental employee or the individual whose information is redacted. }

7
8 **Section 12. Appeals of Denial of Request to Access Unredacted Records**

9 Appeals go to intermediate appellate court? Trial court? Judicial or quasi-judicial
10 authority that regularly hears appeals from entity making initial determination?

11 **Comment**

12 Should appeals provisions be part of application procedures (Section 11)? Or should both
13 “appeals” sections be combined?

14
15 **Section 13. Effect of Redaction**

16 (a) Information redacted from public records under the provisions of this [act] is
17 presumed to be properly redacted.

18 (b) A party contesting the redaction of information under the provisions of this [act] has
19 the burden of proving by a preponderance of the evidence that the record is not properly
20 redacted.

21 (c) Only redacted records can be accessed by the general public. Unredacted records may
22 only be accessed as described in Section 11.

23 (d) If another state has adopted a law substantially similar to this [act], a presumption in
24 favor of redaction of personal information in a public record in the other state shall be created
25 when, upon following the procedures specified by the other state, the individual whose
26 information is properly redacted under this [act] applies for redaction in the other state. {Note
27 that this Subsection (d) may need to be removed if the act becomes a model act instead of a
28 uniform act. }

1 **Comment**

2 Subsection (d) is aimed at creating reciprocity among enacting states as an incentive or benefit of
3 enactment.

4
5 **Section 14. Uniformity of Application and Construction**

6 (a) This [act] shall be broadly construed to favor protection of the private information of
7 those individuals for whom redaction is approved.

8 (b) In applying and construing this uniform act, a court shall consider the promotion of
9 uniformity of the law among jurisdictions that enact it.

10 **Comment**

11 [Insert comment]

12 **Section 15. Relation to Electronic Signatures in Global and National Commerce Act**

13 {Insert if necessary.}

14 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
15 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or
16 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
17 described in 15 U.S.C. Section 7003(b).

18 ***Legislative Note:** It is the intent of this act to incorporate future amendments to the cited federal*
19 *law. A state in which the constitution or other law does not permit incorporation of future*
20 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*
21 *amended”. A state in which, in the absence of a legislative declaration, future amendments are*
22 *incorporated into state law also should omit the phrase.*

23
24 **Section 16. {Saving Provisions}**

25 (a) If a saving provision is necessary, include appropriate language. {See Rule 403.}

26 (b) Nothing in this act excludes a court of competent jurisdiction from ordering redaction
27 or expungement of certain information in a public record.

28 (c) Nothing in this act affects the operation of [the state’s] regularly adopted records

1 retention practices.

2 **Comment**

3 [Insert comment]

4 Subsection (c) for example, victims of domestic violence may have a court order to redact or
5 expunge certain information.

6

7 **Section 17. {Transitional Provision**

8 If a transitional provision is necessary, include appropriate language. {See Rule 403.}

9 **Comment**

10 [Insert comment]

11 **[Section 18. Severability**

12 If a provision of this [act] or its application to a person or circumstance is held invalid,
13 the invalidity does not affect another provision or application that can be given effect without the
14 invalid provision.]

15 **Comment**

16 [Insert comment]

17 **Legislative Note:** *Include this section only if the state lacks a general severability statute or a*
18 *decision by the highest court of the state stating a general rule of severability.*

19

20 **[Section 19. Repeals; Conforming Amendments**

21 (a) . . .

22 (b) . . .]

23 **Legislative Note:** *A state should examine its statutes to determine whether conforming revisions*
24 *are required by provisions of this act relating to { }. See Section { }.*

25

26 **Section 20. Effective Date**

27 This [act] takes effect . . .