

To: Vince DeLiberato, Esq., Committee Chair
Barbara Ann Bintliff, Esq., Committee Reporter Uniform Law Commission
Uniform Law Commission (ULC)
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602
Delivered via email: vdeliberato@palrb.us, 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.¹

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.

¹ 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.

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 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

Senior Vice President, Public and Legal Affairs
Consumer Data Industry Association (CDIA)

Chris Mohr

President
Software and Information Industry Association (SIIA)

Richard Varn

Executive Director
Coalition for Sensible Public Records Access (CSPRA)