



Consumer Data Industry Association
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October 12, 2021

Brandon Gosnell, First Sergeant
Maryland State Police
1201 Reisterstown Road
Pikesville, MD 21208

Re: Comments on Proposal to Amend Regulation .02 Under COMAR 29.01.02 (Public Information Requests)

Dear Sergeant Gosnell:

I write on behalf of the Consumer Data Industry Association (“CDIA”) to comment upon the proposal by the Secretary of State Police to amend Regulation .02 under COMAR 29.01.02 Public Information Requests to add “date of birth” to the list of sociological information that would not be disclosed in response to a request to inspect or copy public records of the Department of the State Police (the “DOB Proposal”).¹ CDIA requests that the Secretary reconsider the proposal to remove dates of birth from the information that is part of the public record given the important role that dates of birth play in the accuracy of consumer reports.

CDIA is a century-old international trade association for consumer reporting agencies, and it is the largest trade association of its kind in the world. Among other activities, CDIA provides business and professional education for its members, and produces educational materials for consumers on their rights and the role of consumer reporting agencies in the marketplace. CDIA’s members play a vital role in the American economy by creating, maintaining, and communicating consumer reports—including, where applicable, criminal background information—on millions of American consumers to employers, principal and general contractors, landlords, property management companies, nonprofits, government agencies, and law enforcement agencies.

When conducting a search for criminal records, a consumer reporting agency (also known as a background screening company) uses identifiers like date of birth provided by the consumer and obtained in public records as an indispensable tool to identify records that pertain to the consumer applicant and eliminate records of other persons with the same name, especially where other identifiers like Social Security number are not available to the public. Public record data, including Maryland State Police records, is crucial to the smooth functioning of the U.S. and

¹ Maryland Register, Vol. 48, Issue 19, pp. 789-838 (Sept. 10, 2021).

Maryland economies.² Consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, and background check and residential screening companies, use public record data every day to help consumers achieve their financial and personal goals, and to help businesses, governments, property managers, and volunteer organizations avoid fraud and manage risk. Additionally, other states use public record data to comply with their own internal statutory requirements for a “multi-state,” “multi-jurisdictional,” or “national” criminal state background check using date of birth and driver’s license number.³

Thousands of employers in Maryland and across the country, both private and public, use some form of a background check (which is a type of consumer report) to evaluate job applicants or to monitor existing employees for ongoing compliance with job requirements. The results of criminal record searches (often conducted nationwide) are a key component of these reports. Employers of all sizes, across a myriad of industries, are often *required* to conduct these background checks of potential and existing employees. *See, e.g., NASA v. Nelson* (2011) 562 U.S. 134, 150 (acknowledging the legitimate needs of the government, as an employer, to screen employees for drug use and other elements of their background).

The DOB Proposal does not identify the reason for the proposed amendment. If, however, the Maryland State Police is concerned with protecting consumers from identity fraud, CDIA respectfully requests that the Secretary consider the fact that identifying information contained in public records plays an important role in data matching, and helps improve authentication and reduce the risk of identity fraud.⁴ Further, courts and regulators, including the Maryland Commissioner of Financial Regulation, expect consumer reporting agencies to use multiple identifiers to ensure that records are accurately matched to consumers as part of a consumer

² As of 2020, 94% of American employers state that their organization conducts one or more types of employment background screening, and 73% of employers have a documented screening policy. HR.com and Professional Background Screening Association, *Background Screening: Trends and Uses in Today’s Global Economy* (2020), available at <https://pubs.thepbsa.org/pub.cfm?id=459B8AB7-oCEA-625E-0911-A4Ao89DE5118> (accessed Oct. 12, 2021).

³ *See, e.g.,* Conn. Gen. Stat. Ann. § P.A. 21-23, § 10 (providing that, instead of a criminal history records check, a potential employee may submit to a “national criminal background check that includes a multistate and multijurisdictional criminal record locator”); 40.1 R.I. Gen. Laws Ann. § 40.1-25.1-1 (requiring all persons over the age of 18 who are seeking employment at facilities operated by the department of behavioral healthcare, developmental disabilities, and hospitals, to undergo a national criminal background check); Wyo. Stat. Ann. § 31-20-106 (providing that in order to hire a driver for a transportation network company, the company shall conduct “[a] local and national criminal background check on the individual that shall include review of multistate and multijurisdictional criminal records locators.”).

⁴ *See* “Understanding the Public Access Debate,” Coalition for Sensible Public Records Access, available at <https://cspira.org/public-records/> (accessed Oct. 12, 2021).

reporting agency's responsibility to use reasonable procedures to assure maximum possible accuracy of the information that they provide on consumers.⁵ For these reasons, CDIA respectfully requests that the Maryland State Police consider the negative impact of the removal of dates of birth from public records and continue to make that information available to the public.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Ellman', with a long horizontal flourish extending to the right.

Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs

⁵ See, e.g., *TransUnion LLC v. Ramirez* (June 25, 2021, No. 20-297) 594 U.S. ___, 2021 WL 2599472 (implying that TransUnion, one of America's major consumer credit reporting agencies, risked exposure to liability under the Fair Credit Reporting Act ("FCRA") for failing to use reasonable procedures to assure maximum possible accuracy in maintaining credit files (another type of consumer report), because TransUnion cross-checked against terrorist watchlists by first and last name only); COMAR 09.03.07.05 B.(3) (requiring consumer reporting agencies to "use personal information and public available information to match tax liens and judgments to the appropriate consumer report . . .").