

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: January 27, 2022

SUBJECT: Items for discussion at next meeting

The first meeting of the Study Committee on Redaction of Personal Information from Public Records was remarkably productive due to the thoughtful, informed, inquisitive, and keen contributions of commissioners and observers. Thanks to all for your participation; it bodes well for our deliberations! We will be scheduling a second meeting soon.

This memo offers several types of information, all drawn from the discussion held during our first meeting. First is a short list of points that were largely agreed to during the meeting. If you think there are other points of common agreement or if something on this list needs amendment, please let me know.

Next, a series of proposed definitions is offered to guide the conversation in our next meeting. Definitions are foundational to much of the legislation drafted by ULC committees. They help clarify the purpose of the act and provide structure, context, and consistency. If we can agree on a general way to define key concepts, we can begin to address a significant part of our charge—determining feasibility of drafting an act and identifying issues a drafting committee might encounter. Additional, needed definitions will likely be identified during our next and subsequent meetings.

Third, for discussion purposes, issues we identified in our first meeting surrounding redaction itself are posed.

Finally, a series of questions is added for future consideration. This will be a dynamic list, with additions, modifications, and deletions as our deliberations proceed. Please send your suggestions to add to the list.

I. Generally accepted points from first meeting:

- The project is dealing with redacting information from civil records only.
- Redacting information from court/judicial branch records might implicate separation of powers; a drafting committee (or we) could offer bracketed options for dealing with court/judicial branch records for those states in which legislative instructions to the judicial branch would not be a problem.

- The First Amendment is probably not implicated; our project outcomes should fit within the existing structure of exceptions to state open records/public access/FOIA laws.
- Clarity will be needed regarding where unredacted records are stored and how and by whom they will be accessible (the “double books” issue). The original, unredacted content of records is needed for many purposes. Complete, unredacted government records must be available and must have integrity and reliability to provide constructive/public notice.
- Any proposal must maintain a balance between public access to information and personal safety/security needs.
- The project is dealing with access to information, not its use. We are not looking to criminalize use of or penalize those using information from public records, including information lawfully obtained before redaction.

II. Proposed definitions

To begin with, we can start with a three-part concept: an office as a baseline, an officer who holds the baseline office with capacity for discretion, and other public employees.

- “public office” is a position in government which, by law, has specified sovereign governmental functions during a specified period. (*See 63c Am. Jur 2d Public Officers and Employees §§ 1 and 5 (2018)*).
- “public officer” is an individual elected or appointed to exercise discretion in discharging the functions specified for a public office. (*See 63c Am. Jur 2d Public Officers and Employees §§ 1 and 9 (2018)*).
- “public employee” is an individual employed by a government to discharge the functions specified by the employment. (*See 63c Am. Jur 2d Public Officers and Employees §§ 2 and 10 (2018)*).

Addition “first draft” definitions for discussion:

- “public records” includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency, regardless of physical or electronic form or characteristics. “Public records” in the custody of, or maintained by, the Governor’s office means any writing prepared on or after January 6, 1975. CAL. GOV’T CODE § 6252(e) (2021).
https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=7.&chapter=3.5.&lawCode=GOV&title=1.&article=1.

OR

A “public record” is any record, instrument, or document required, authorized, or permitted by statute or agency rule to be recorded. (adapted from TX County Court Manual)

OR

“Public record.” A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.

“Record.” Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. (65 PA.STAT. § 67.102 (2021)). <https://casetext.com/statute/pennsylvania-statutes/statutes-unconsolidated/title-65-ps-public-officers/chapter-3a-right-to-know-law/chapter-1-preliminary-provisions/section-67102-definitions>

- “redact” is to select or adapt (as by obscuring or removing sensitive information) for publication or release; or to obscure or remove (text) from a document prior to publication or release (“Redact.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/redact>. Accessed 24 Jan. 2022.)
- “personal information” is information that might be of several types: “personally identifiable” information allows for identification of a specific individual and includes name, home address (and second home/vacation home address?), personal phone numbers (landline and mobile), birthdate, driver’s license number, SSN or tax ID, passport or governmental ID number; or “personally sensitive” information including bank account numbers, credit card numbers, or other financial information, emergency contact information (e.g. next of kin) or immediate family member’s personally identifiable or sensitive information.

III. The redaction process: eligibility and timing

A. Who is eligible to have personal information redacted from public records?

- All public officers as defined in the act?
- Specified public officers? Do we enumerate which public officers (elected only, for example) or do we recommend that this be left to each enacting state’s discretion? Or should we consider a combination of both approaches?
- Public employees? Would all public employees qualify or only certain ones? If only certain ones, who (law enforcement officers, for example)? Do we attempt to articulate criteria or do we recommend that this be left to each enacting state’s discretion?
- Any member of the public? This group could include immediate family of public officers, victims of domestic violence, employees of domestic violence shelters, individuals (who also may be public employees) who meet specified criteria such as an imminent and credible threat of violence, whistleblowers, etc. Do we attempt to articulate criteria or do we recommend that this be left to each enacting state’s discretion?

B. Timing

- Should there be immediate and automatic redaction of personal information for all public officers (or specified public officers) upon appointment or election? Or is redaction automatic for public officers (or specified public officers) if they request it? Do we attempt to articulate criteria and/or an application process or do we recommend that this be left to each enacting state’s discretion?

- Should there be automatic redaction for some but others may apply? Do we attempt to articulate criteria and/or an application process or do we recommend that this be left to each enacting state's discretion?
- Should all redaction of personal information be by application?
- Is redaction of personal information temporary or permanent? If temporary, is there a recommended time period after which the information is returned to the public record or would this vary by each individual? Or, if temporary, is information already redacted not returned to the public record but, going forward, the individual's personal information is no longer redacted? Do we attempt to articulate criteria or do we recommend that this be left to each enacting state's discretion?

IV. Questions for future consideration

- Do we address where unredacted information is stored?
- Do we specify a custodian of the unredacted information?
- Do we address accessibility of unredacted information (by whom, under what circumstances, procedures, etc.)?
- Do we need to better explain the "why" of the project? That is, why are we looking at redaction of public records? What would be the purpose of the proposed act?