



Consumer Data Industry Association
1090 Vermont Ave., NW, Suite 200
Washington, D.C. 20005-4905

P 202 371 0910

Writers email: ellman@cdiaonline.org

Writer's direct dial: +1 (202) 408-7407

CDIAONLINE.ORG

April 14, 2020

Mr. William McGeveran
Reporter, ULC Collection and Use of Personally Identifiable Data Committee
Mondale Hall
229 19th Ave., South
Minneapolis, MN 55455

Via Email: mcgeveran@umn.edu

Dear Mr. McGeveran:

Thank you very much for sharing with the Collection and Use of Personally Identifiable Data Committee ("Committee") and the observers to that Committee, the Collection and Use of Personally Identifiable Data Act ("Draft Act"). You have put a lot of work into the document, and I have some comments on behalf of the Consumer Data Industry Association ("CDIA").

The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

CDIA's comments will help the Committee create a privacy model bill that is workable for all stakeholders: consumers, businesses, governments, and nonprofits.

1. Application of the Draft Act (Exemptions)

A. *The FCRA exemption in the Draft Act helps all stakeholders and should remain intact*

CDIA supports the FCRA exemption in Draft Act § 3(b)(2). This exemption is for activities involving personal information governed by the [Fair Credit Reporting Act](#) ("FCRA"), or otherwise used to generate a consumer report, by a consumer reporting agency, by a furnisher of information, or by a person procuring or using a consumer report. The FCRA exemption in the Draft Act is legally, substantively and operationally identical to the FCRA exemption in the California Consumer Privacy Act ("CCPA"), [Cal. Civ. Code](#)

[Sec. 1798.145\(d\)](#), yet the Draft Act language is cleaner, simpler, and far easier to understand than the exemption in the CCPA. The Draft Act’s FCRA exemption goes no further nor encompasses any less than its counterpart in the CCPA. CDIA supports the Draft Act’s approach.

B. The GLBA exemption needs to fully recognize GLBA-protected data flows

Draft Act § 3(b)(4) offers an unnecessarily limited exemption for personal information under the Gramm-Leach-Bliley Act (“GLBA”). CDIA encourages the Committee to consider a change to support consumers and businesses by fully recognizing the GLBA-regulated data flows in commerce that serves consumers and businesses. We suggest that § 3(b)(4) apply to “personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act...”, rather than just to financial institutions that meet the GLBA definition of a financial institution.

The GLBA exemption is too narrow with its focus on “personal information collected, processed, sold, or disclosed *by a financial institution* as defined by 15 U.S.C. § 6809(3) pursuant to the federal Gramm-Leach-Bliley Act (Public Law 106-102).” (emphasis added). There are many businesses that offer support to financial institutions (“FIs”) under GLBA that are not themselves defined as “financial institutions.” Yet, these non-FI businesses are still required by law or contract to process data in accordance with GLBA. Service providers to FIs perform critical functions to meet consumer needs and expectations. These needs and expectations would be frustrated, and consumers would suffer if long-standing, legally protected GLBA data flows were closed off by the Draft Act.

Full recognition of GLBA-protected data flows is found in the CCPA where there is an exemption for “personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act (Public Law 106-102)...” [Cal. Civ. Code Sec. 1798.145\(e\)](#). CDIA encourages the Committee to follow this GLBA approach in its Draft Act.

C. The fraud prevention exemption in the Draft Act helps all stakeholders and should remain intact

CDIA supports the fraud prevention exemptions in Draft Act § 3(c)(2). Regrettably, fraud is part of commerce, and reducing fraud is a significant part of the work of businesses, nonprofits, and governments, who often rely on CDIA members to keep their losses as low as possible. The exemption in the Draft Act will serve stakeholders will to keep losses as low as possible.

D. The employment exemption should be expanded to better serve workers

The Draft Act exempts “[p]ersonal data collected or retained by an employer with regard to its employees that is directly related to the employment relationship”, § 3(b)(6). The modern American economy is more than just employer-employee relationships. Even before the “gig economy” was born, a substantial part of American commerce was built with the work of non-employee agents or other workers. The rise of the “gig economy”, which is a critical, flexible workforce, highlights the need for the exemption to cover agents, contractors, owners, directors, managers, and other non-employee workers. The expanded exemption will allow data flows that benefit these workers and their principals during and after their work.

E. Stakeholders would benefit from an exemption for the DPPA

The federal Drivers Privacy Protection Act (“DPPA”) is a national privacy statute protecting consumers and their motor vehicle data. [15 U.S.C. Sec. 2721](#). The DPPA provides a narrow band of thoughtful exemptions that allow the release of certain information from motor vehicle departments, like automobile recalls, legal and criminal proceedings, and insurance transactions. To meet consumer needs and to protect consumer expectations, we encourage the Committee to include a DDPA exemption in its Draft Act. An exemption for DPPA regulated data is provided in the CCPA and has likewise been included in other privacy bills introduced in various states.

F. Stakeholders would benefit from a clarification of the application of “publicly available information” and “publicly available data”

The Draft Act does not apply to “publicly available information”. Draft Act § 3(b)(3). Under the Draft Act, “publicly available information means information that is lawfully made available from federal, State, or local government records, or generally accessible or widely-distributed media.” There is also a definition in the Draft Act for “publicly available data” which “means information that has been made available from federal, state, or local government records in accordance with law, provided the information is being used in a manner consistent with any conditions on its use imposed by law.” Draft Act § 2(12).

It is not clear if the Committee intends to define and apply two different terms, “publicly available information” and “publicly available data.” The publically available data exemption only applies so long as the information is used “in a manner consistent with any conditions on its use imposed by law.” This modifying language is unnecessary in the Draft Act necessary here. This confusing language could pose compliance and enforcement confusion, especially since public records are generally not going to have conditions on their use.

2. Application of the Draft Act (Scope)

The Draft Act appears to apply to not just consumer transactions, but also to business to business transactions. The unnecessarily broad scope of the bill is found in § 3(a) where the “Act applies to the commercial activities of a person who conducts business [in 20 the State of X] or produces products or provides services targeted to [the State of X...” CDIA believes the Committee should narrow the proper focus of the Draft Act to apply to consumers and not to business-to-business transactions.

3. Conclusion

Thank you for the opportunity to serve as an observer to the Committee’s work and to comment on the Draft Act. We appreciate the time and effort that has gone into an attempt at a model privacy bill to serve all stakeholders. Our comments improve a promising project in ways that recognize legal and commercial realities to serve consumers, businesses, nonprofits, and government agencies. Please let me know if you have any questions or need additional information.

Sincerely,



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