LOCAL 503
SEIU
Stronger Together

Service Employees International Union, Local 503, OPEU

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October 28, 2019

Members of the Sunshine Committee,

Thank you for your work to address concerns and make recommendations regarding bulk data and its relationship to personally identifiable information and public records.

SEIU Local 503 is a union that represents more than 20,000 state workers whose personally identifiable information (PII) is routinely subject to public records requests by outside organizations and individuals, including members of the news media. In some cases, this information is incidental to the request, in others, obtaining personal information (such as home address and birth date) is the specific subject of the request.

This is an issue that is very important to our members for a variety of reasons. Some of our members are survivors of domestic violence and do not want their information released to anyone out of concern for their own safety (there was a case last year where the state mistakenly released someone's personal information that was not intended to be disclosed, and that person was forced to relocate as a matter of safety). Others, such as legal staff or caseworkers at DHS, interact with people who may wish to do them or others harm, and are concerned that releasing their personal information could subject them to unwanted harassment or violence. These are just a handful of the reasons we want to ensure PII isn't released without serious consideration of privacy and safety.

Our members also value transparency and believe that government should be held accountable. This includes when institutions or agencies misspend public funds, attempt to shield abusers from being held accountable, or when someone has clearly broken the law. It is important to our union that government be efficient, transparent, and accountable, while also protecting the privacy of the individuals who serve our state.

We understand that as a result of House Bill 2016, a bill that SEIU supported and contributed to, you have been directed by the Governor to propose possible changes and make recommendations that balance personal privacy and transparency. We are making the following suggestions that we believe strike that balance. Following these suggestions, we provide direct feedback on the specific proposal considered in the October 10, 2019 meeting.

First, we agree with the suggestion to standardize the way state and local governments and other public entities store data/information to make it easier to redact or remove PII (in cases where it is incidental to the request) or otherwise organize it and redact when necessary (when it is the subject of the request). We support this suggestion only with the assumption that direct requests for personal information are subject to the public interest test, which should be consistently applied in all cases.

Second, and related to that condition, we believe the notice requirements embedded in the public interest test (ORS 192.363) should be strengthened. The statute currently states:

> "(3) Upon receiving a request described in subsection (1) of this section, a public body shall forward a copy of the request and any materials submitted with the request to the individuals whose personal information is being sought or to any representatives of each class of persons whose personal information is the subject of the request.
>
> (4) For purposes of subsection (3) of this section, the public body has sole discretion to determine the classes of persons whose personal information is the subject of the request and to identify the representatives for each class.
>
> (5) The public body may not disclose information pursuant to the request for at least seven days after forwarding copies of the request under subsection (3) of this section."

It is our experience that public bodies *are not complying* with ORS 192.363(3) in many cases. Thus, violating the spirit if not the letter of the law and not giving those whose information is subject to disclosure the opportunity to otherwise object or follow the procedures in ORS 192.368 to prevent their PII from being disclosed. Using the example above, if the notice requirements had been followed, the individual whose information was subject to disclosure could have intervened to clarify that she was a participant in the Address Confidentiality Program (ACP), and thus make the case that her information should not be disclosed.

We ask the committee to consider the following amendments to ORS 192.363:

1. Require the public body to notify anyone whose information is subject to disclosure *and* ensure that individuals have a process by which to respond and dispute the request or otherwise decline to have their information released as provided under ORS 192.368;
2. Add language clarifying that "any representatives of each class of persons" includes their exclusive representative, and that they *shall* (emphasis added) also be notified (clarifying any ambiguity of ORS 192.363(4)). Further clarify that a public body only has discretion to determine the representative for a class of persons if that class of persons is not covered by an existing Collective Bargaining Agreement with the State of Oregon. Otherwise, the Exclusive Representative(s) of record *must* be notified; and
3. Add a requirement that the individuals whose information is subject to request and their exclusive representative must be notified within 48 hours of the receipt of the request.

Third, we appreciate the suggestion of Committee member Charlie Fisher to look to ORS 409.225 (recently under consideration by the Committee) for possible language regarding the use of information obtained under a request for PII. Specifically, the statute says, "Any record disclosed under subsection (1), (2) or (3) of this section shall be kept confidential by the person or entity to whom the record is disclosed and shall be used only for the purpose for which disclosure was made." It would be prudent of the committee to consider including similar language in either ORS 192.363 or another statute regarding PII to clarify that the information may only be used for the purpose requested - not for another purpose. This would help to deter the sale, trade, or other non-permissible uses of requested data by third parties (including commercial entities). It is our understanding that a similar suggestion has been made in the

recent "Legislative Recommendations: Bulk Data Requests" authored by Committee member Eileen Eakins.

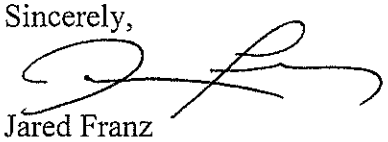
Finally, as part of any language regarding bulk data, it would be important to consider including language similar to that found in ORS 40.264, "This section does not prohibit the disclosure of aggregate, non-personally identifying data."

Now, with regard to the aforementioned Legislative Recommendations, we would like to provide the following feedback:

1. We understand the interest in promoting efficiency in processing requests for information by incorporating elements of "transparency by design." Our concern is that there could be too heavy of reliance on technological means of protecting individuals' exempt information from disclosure, without any human intervention or review. Because individual users of systems sometimes change the way they enter data and user practices can get in the way of technological solutions, failure to review information before it is disclosed puts individuals at risk of having their PII improperly disclosed.
2. If there is interest in expanding the criteria to be considered when the public interest test is applied, we ask that the committee considers including individual privacy and safety, not just transparency.
3. We generally support the idea of including a private right of action, with some concerns. We believe that the proposal needs to more clearly outline or address what constitutes a misuse or use of data for an unauthorized purpose, and what level of specificity regarding use will be required in a request for PII. Otherwise, including a private right of action could be little more than symbolic gesture, if an individual has to prove specific damages as a result of an overly broad request.
4. Finally, the notion of pre-certifying entities with a demonstrated legitimate business need for bulk data is of serious concern. The process by which this is done, and the criteria for receiving such a certification, would need to be sufficiently clear, rigid, and consistently reevaluated to truly protect personal privacy over time. Even if the state attempts to define news media or journalist as part of this criteria, a number of other problems arise - that the state should not be allowed to define what is considered journalism and also that then virtually any entity that distributes any information could claim to be a reporter in order to obtain information.

Thank you for your consideration of our feedback and suggestions. We look forward to the opportunity to further engage and are happy to answer any questions or provide examples where helpful.

Sincerely,



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