

June 17, 2022

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Uniform Law Commission
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RE: Preliminary recommendations from Uniform Law Commission study committee on Redaction of Personal Information from Public Records

Dear Mr. Schnabel, Mr. DeLiberato and Ms. Bintliff:

This letter is on behalf of 26 government transparency organizations concerning the work of the Uniform Law Commission's study committee on Redaction of Personal Information from Public Records. We understand the committee to be considering recommending that model legislation be drafted to provide for per se redaction from public records of information related to public employees, including judicial or law enforcement personnel, and a right for domestic violence victims and certain other groups to request redaction of personal information from public records. Our organizations have reviewed the study committee's latest memorandum and have attended one of the committee's recent meetings.

We write to make the Uniform Law Commission and the study committee aware of a number of concerns that our organizations have with the committee's proposal.

First, the type of legislation being considered by the Uniform Law Commission is highly likely to result in serious unintended reductions in access to public records. Such negative consequences have already occurred following the implementation of similar laws passed across the country as part of the growing trend to limit access to information that could identify public officials and government employees. While that trend may have initially been motivated by a desire to fight back against doxing and increase safety of government employees and their family members, the resulting laws have already created a host of problems and have led to a decrease in government transparency.

For example, the West Virginia legislature passed a Daniel's Law in 2021 intended to shield private information of public employees, including judges and law enforcement. A number of court systems in the state have concluded that they cannot comply with the law through narrow redactions, and instead have opted to entirely eliminate public access to any

address information in the court records system, including the addresses of criminal defendants and the office addresses of public employees.¹

Florida courts have taken a similar approach to complying with rules designed to protect personal information in public records. In 2010, the Florida Supreme Court adopted amendments to the state rules governing the court system. The amendments required clerks' offices to review court records and redact any personal information therein prior to disclosing the records publicly. The rule was disastrous for public access, creating such delays and administrative headaches that many circuits began treating court records as presumptively closed to the public. Years of complaints from the public, government employees, and the media led the Florida Supreme Court to retract the rule, effective July 2021.²

The type of overreactions seen in West Virginia and Florida are not outliers. Indeed, according to a 2021 report from the National Freedom of Information Coalition, "the greatest threats to government transparency today are legal exemptions primarily focused on protecting individual privacy."³ In our experience, many (if not most) government agencies are either unable or unwilling to carry out a tailored implementation of laws like the legislation that the Uniform Law Commission is considering. Redacting government employees' private information, such as cell phone numbers or home addresses, comes with high administrative burdens that most government agencies, particularly local agencies like police departments or city governments, do not have the resources to absorb. Furthermore, it may not even be possible to achieve such targeted redactions in many government databases.

Our expectation, as reinforced by real-world examples including those in West Virginia and Florida, is that agencies faced with high administrative burdens or with less nimble computer systems will take one of two approaches to sweeping redaction requirements: (1) like the courts in West Virginia or Florida, they will be overinclusive and opt to shield large amounts of data from the public; or (2) they will offload compliance costs to members of the public by charging anyone who requests records for the time it takes a government employee to go through all requested records and personally input appropriate redactions.⁴

¹ *Court Overreacting to Daniel's Law*, THE DOMINION POST (May 14, 2022), available at <https://www.yahoo.com/news/editorial-court-overreacting-daniels-law-111800848.html>.

² Max Marbut, *Filers will be responsible for redacting confidential information in certain cases*, JAX DAILY RECORD (June 22, 2021), <https://www.jaxdailyrecord.com/article/court-document-rules-changing-july-1>.

³ *States of Denial*, NATIONAL FREEDOM OF INFORMATION COALITION (March 15, 2021), available at <https://drive.google.com/file/d/1L8yJY1Lrufg-rfqxFBqQfsi54BUhsBRK/view>

⁴ Redaction of public records already results in significant delays and high costs for the production of public records. Often, these delays and costs are prohibitive, leading the requester to abandon their efforts and never obtain the records they need. We expect that laws requiring redaction of private information of government employees, even in records that do not identify those employees by job title, will greatly increase the delays and costs associated with redactions, given the many contexts in which such laws would apply.

Neither outcome will make government employees any safer but will only serve to meaningfully decrease access to information that should be public.

Second, even where government agencies narrowly and appropriately implement legislation requiring redaction of private information of public employees, there is still a real cost to such redactions. Such laws make it difficult to confirm identities of public employees, for example, where a state official has the same name as someone arrested for drunken driving.⁵ In other words, the more barriers there are to journalists or members of the public linking a public official's name to personally identifying information, the greater the strain on accountability and oversight of those officials.

We encourage the Uniform Law Commission to consider the legitimate—and valuable—uses of the type of information that would be shielded from public view as a result of the model legislation being studied by the committee. In addition to the high value of such information in fostering oversight and accountability, such information assists the real estate industry and the public in powering title searches and in making insurance and financing determinations, and it enables consumer-focused resources like Zillow, Trulia and Rocket Mortgage, among other beneficial resources.

Third, as an alternative to the type of legislation being studied, the Uniform Law Commission should consider other measures that would not undermine government transparency. Redaction of personal information from public records would provide government officials a false sense of security and prove ineffective as a security measure, because bad actors are more likely to discover an official's whereabouts through already available sources, nefarious or legitimate. In many small communities, redacting personal identifiers would have no practical effect, because people tend to know who works for the local government and where they live.

Laws that directly target imminent and actual threats to government officials are more effective at protecting those officials without imposing the costs that come with shielding information from public access and giving government agencies a tool to seriously curtail existing transparency laws.

In our view, the existing proposal under consideration in the study committee would result in harmful and unnecessary damage to the public's right to conduct oversight of the government. As the study committee continues its work, we encourage both the Uniform Law Commission and the committee to consider the issues raised in this letter and to engage with government transparency advocates, including the signatories to this letter, to provide input on the committee's work.

⁵ *States of Denial*, *supra* n.2, at 2.

Sincerely,

Todd Fettig

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Sarah Brewerton-Palmer

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Iowa Freedom of Information Council
It's The People's Data
Kentucky Open Government Coalition
Louisiana Press Association
Maine Freedom of Information Coalition
Missouri Sunshine Coalition
Nevada Open Government Coalition
New England First Amendment Coalition
New Mexico Foundation for Open Government
Open Oregon
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