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March 21, 2016

The Honorable Daryl D. Metcalfe  
Chair, House State Government Committee  
Pennsylvania House of Representatives  
144 Main Capitol Building  
PO Box 202012  
Harrisburg, PA 17120-2012

The Honorable Mark B. Cohen  
Democratic Chair, House State Gov't. Committee  
Pennsylvania House of Representatives  
127 Irvis Office Building  
PO Box 202202  
Harrisburg, PA 17120-2202

Re: S.B. 411, amending the Right to Know Act

Dear Chairman Metcalfe and Democratic Chairman Cohen:

The Consumer Data Industry Association ("CDIA") opposes a small portion of S.B. 411, those related to cost recovery on commercial vendors and home address exemptions. We respectfully request that you oppose those provisions as well. The changes in the bill would increase costs to and burdens on law enforcement and local government, could increase identity theft and fraud, and make it harder for consumers and businesses to close transactions quickly and accurately. Are concerns are with the two provisions that relate to the:

- Unpredictable process and fee structure for commercial public record requests;
- Provision allowing state and local government employees to exclude their home addresses from public records upon request;

CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help

ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

1. **The calculation of fees is unnecessary, unfair, and imposes too many costs for socially beneficial uses, and will add costs to law enforcement and government agencies.**

*A. Public records and "Commercial Purposes."*

Section 102 establishes a new category of public record requests made for "commercial purposes" and Section 707(d) provides:

(d) Commercial requests.--An agency may require a requester to certify in writing whether the request is for a commercial purpose. Certification shall be submitted on a form developed by the Office of Open Records that shall provide a checkoff for the requester to use to indicate whether the request is for a commercial purpose. A requester that submits a false written statement shall be subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Public records are often used by law enforcement and state and local government agencies. The cost increases for public records imposed on our members would increase for all those using public records databases, like law enforcement, state agencies fighting fraud, and even lawyers and courts doing research and investigations.

The value of commercial access to public records has been proven many times over. Then-FBI Director Louis Freeh testified before Congress in 1999 and noted that in 1998, his agency made more than 53,000 inquiries to commercial on-line databases "to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations." This information, according to Director Freeh, "assisted in the arrests of 393 fugitives, the identification of more than \$37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."<sup>1</sup>

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<sup>1</sup> *Hearing before the Senate Comm. on Appropriations Subcomm. for the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies, March 24, 1999 (Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation).*

Access to public records helps in other ways, too. The Association for Children for Enforcement of Support reports that public record information provided through commercial vendors helped locate over 75 percent of the “deadbeat parents” they sought.<sup>2</sup>

The services CDIA members provide to the Commonwealth is substantial and can be life-saving. Increasing the costs to procure public records on our members only serves to raise costs to law enforcement and government agencies within the Commonwealth. Law enforcement and government agencies may be faced with a hard choice of using information less to do their work or paying more for what they get.

The bill requires that commercial record requestors be identified as such and establishes a new fee structure for such vendors. This new category of treatment unnecessarily distinguishes commercial entities in a manner that could create disparate treatment on the local level. For example, Section 4, subsection 506(a) of the Right to Know Law already grants local authorities the discretion to deny a record request if it is a “nuisance.” Presumably, commercial requestors (once identified) are more vulnerable to being deemed a nuisance, especially when making frequent, large volume commercial requests that a local custodian deems inconvenient or bothersome. This provision is both unfair and unnecessary.

*B. The new fees imposed on commercial entities are unfair and unpredictable.*

Section 1307(g.1) imposes additional fees on public record requests made for commercial purposes “for document search, review and redaction for documents for commercial use.” The bill further provides that fees “must be calculated at no more than the hourly wage of the lowest-paid public employee of the agency who is capable of searching, retrieving, reviewing and providing for redaction of the information necessary to comply with the request.”

While the “reasonable fee” may not be charged for the first hour of search and retrieval time from a single requester in a 90-day period, calculating the rate based on the “lowest-paid public employee of the agency,” will inevitably be inconsistent, resource and time-consuming for the state agencies, since the salaries of state agency personnel vary widely.

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<sup>2</sup> *Information Privacy Act, Hearings before the Comm. on Banking and Financial Services, House of Representatives, 105th Cong., 2nd Sess. (July, 28, 1998)* (statement of Robert Glass).

For businesses that rely on intermediaries like CDIA members to make their record requests frequently or in a high volume, this new charge will ultimately be levied on all Pennsylvania taxpayers in that consumers may incur higher fees for those services.

**2. Excluding the home addresses of state employees could allow for more identity theft and fraud.**

Section 504 could allow for more identity fraud and misidentification. This provision provides:

Section 504. Regulations and policies.

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(c) Home address of agency employees.—

(1) Each Commonwealth agency and local agency shall develop a policy allowing an employee to notify the agency that the employee believes the exception under section 708(b)(1)(ii) or any other exception applies to the employee's home address.

Section 708(b) of the Right-to-Know Act already exempts a broad category of personal identification information from public records. Current exemptions include SSNs, personal financial information, driver's license numbers, and personal e-mail addresses. Exempting the home addresses of more than 600,000 state government employees to this already broad list of exemptions further compromises the integrity of public records by removing vital information needed to verify and protect the identities of those individuals.

For many of our members and their law enforcement, government, and business customers, home addresses are key identifiers in public records which allow for appropriate matching of individuals, especially for those with common names, or generational suffixes, like junior or senior. Our members need the address information to help properly identify one person from another. This reduces the instances of identity theft and fraud.

Home address information is also vital to real estate and property transfers. The records are used by insurance carriers, title companies, financial lending institutions and consumers themselves when buying, selling and refinancing property. Removing the home addresses of state government employees from public records in such a wide-sweeping manner will create large information gaps that impede fraud prevention,

encourage identity theft and lead to identity confusion in consumer transactions. Consumers and businesses expect and demand accurate, fast transactions. Section 504 will make it harder for consumer and business expectations to be met.

### 3. Conclusion

Our concerns in the bill with cost recovery for public record access and home addresses exemptions would increase costs to and burdens on law enforcement and local government, could increase identity theft and fraud, and make it harder for consumers and businesses to close transactions quickly and accurately.

We hope you will consider our comments and oppose the provisions as well.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Ellman", written over a horizontal line.

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