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Director, State Government Affairs



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March 18, 2016

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

Hon. Mark B. Cohen  
Pennsylvania House of Representatives  
127 Irvis Office Building  
PO Box 202202  
Harrisburg, PA 17120-2202

Dear Representatives Metcalfe and Cohen:

On behalf of the RELX Group and its division LexisNexis, I am writing to express our opposition to Senate Bill 411. This legislation makes numerous, important changes to the state Right to Know Act. However many of these changes will impede public access to and compromise the integrity of government records in the Commonwealth. Specifically, the legislation:

- Establishes an unpredictable process and fee structure for commercial public record requests;
- Allows state and local government employees to exclude their home addresses from public records upon request; creating a tremendous burden on state agencies and diminishing the value of public record information; and
- Exempts public utility payment records from Right to Know Act, thereby eliminating an important data source for numerous consumer and credit transactions.

While we applaud efforts to enhance individual privacy protections, we believe that the above changes undermine the spirit of the Right-to-Know law and unduly restrict access to public records at a time when businesses need it most to verify identities, prevent fraud and accomplish a variety of other public policy services benefitting Commonwealth residents. Accordingly, we oppose these provisions of Senate Bill 411.

#### **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).

LexisNexis is a recognized leader in providing information technology solutions. As such, both public and private sector industries use our data analytics to perform business transactions and consumer protection functions. For some industries, public records are a key source of the information that we provide customers to assess risk and verify identities in consumer transactions. Law enforcement customers use our data analytics as investigative tools aid in crime prevention. Financial institution customers rely upon our data to determine consumer financial fitness, evaluate credit worthiness and facilitate debt collection. The real estate industry relies upon our data to determine property ownership, land value and to verify loan application information. All of these functions depend on the availability, integrity and accuracy of public record data.

With this in mind, it is important to note that the services we provide greatly reduce the burden on state government by alleviating the need for our customers to make public record requests. Additionally, we flag and correct inaccuracies in government records to maintain the integrity and value of public records. Ultimately, our services save the Commonwealth millions of dollars and public resources. Insofar as SB 411 requires commercial record requestors to be identified as such and it establishes a new fee structure for them, it creates a new category of treatment for us, unnecessarily distinguishing commercial entities in a manner that could create disparate treatment on the local level. To underscore this point, 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 as such) are more vulnerable to being deemed a nuisance, especially when making frequent, large volume commercial requests that a local custodian deems inconvenient or bothersome. We find this provision to be unfair and unnecessary.

**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."

This provision on "reasonable fees" has been proposed in past legislation (ie, SB 444 of 2014) and in each instance we have opposed it as unfair, ambiguous and potentially discriminatory. While the 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. For businesses that rely on intermediaries like LexisNexis 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. With that in mind, the additional costs will have both financial and societal impact on citizens throughout the Commonwealth. Public records are already stored and maintained at taxpayers’ expense and should not be subject to multiple fees. Additionally, imposing fees for public record searches regardless of search outcome means that every public record search, even ones which produce no result, will become more expensive. As an employer with thousands of employees in Pennsylvania, we are opposed to this.

**Excluding the home addresses of state employees compromises the value and integrity of public records.**

Another area of concern is sub-section 504 which 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 range from Social Security numbers to personal financial information to driver’s license numbers and personal e-mail addresses. Possibly adding 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.

At LexisNexis we rely on home addresses as a key identifier in public records to allow for appropriate matching of individuals, especially for those with common names. For example, it is possible to have individuals with a similar name (John Smith, Sr., John Smith, Jr. and John Smith, III) all living at the same address. The information about these individuals—mortgages, car loans, student loans—must be correctly identified in records that are used to assist in consumer transactions.

Beyond consumer protections, home address information is 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

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will create large information gaps that impede fraud prevention, encourage identity theft and lead to identity confusion in consumer transactions. In today's tough economic climate, anything that delay or hinders consumer transactions is imprudent and contrary to the public interest.

**Exempting public utility payment records will disrupt commerce in Pennsylvania.**

Another problematic provision of SB 411 would exclude public utility payment information from public records. Section 708(b) subsection 5.1 and Section 102 provide new exemptions under the Right to Know Act for utility payment records.

(5.1) The payment records of a person receiving services from a municipal water or sewer authority or other municipal authority, municipality or cooperative that provides electricity, water, sewer, storm water, natural gas or similar service . This paragraph shall not apply to reports of aggregate payments made by a municipality, authority or cooperative to assist low-income consumers or other consumers in obtaining services.

Presumably, this section seeks to protect utility payment information from public purview in response to some particular problem or circumstance. However, excluding this type of information from public records actually prevents business, legal and financial institutions from gaining access to information needed to conduct a myriad of transactions that benefit consumers.

In closing, we find that the aforementioned changes to the state Right to Know Act will unduly restrict access to vital public record information , and doing so will have unintended consequences for legitimate business, consumer and public protection functions. We believe that these impacts must be fully understood and avoided before the bill moves forward, so we stand ready to work with you to achieve your legislative goals without hindering the valuable services we provide to customers.

Sincerely,

A handwritten signature in black ink that reads 'Kia D. Floyd'.

Kia D. Floyd