

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Chapter)
4901-2 of the Ohio Administrative Code,)
Confidential Personal Information, in) Case No. 10-820-AU-ORD
Accordance with Section 1347.15, Revised)
Code.)

ENTRY

The Commission finds:

- (1) Substitute House Bill 648, passed by the 127th Ohio General Assembly, effective April 7, 2009, places limits on access to confidential personal information (CPI) in personal information systems maintained by State of Ohio agencies. As a result of the bill's passage, Governor Ted Strickland issued a revised Management Directive on April 6, 2009, regarding access to CPI maintained by the state of Ohio. The revised directive sets forth the process that all state executive agencies, boards, and commissions are to follow to implement Section 1347.15, Revised Code.
- (2) Section 1347.15(A)(1), Revised Code, defines "confidential personal information" to mean personal information that is not a public record for purposes of Section 149.43, Revised Code.
- (3) Section 1347.15(B), Revised Code, requires that each state agency adopt rules under Chapter 119 of the Revised Code to regulate access to CPI that the agency keeps. The division lists several requirements for the content of the rules.
- (4) Section 1347.15(C)(2), Revised Code, requires each state agency to establish a training program for all employees who may access CPI so that such employees are made aware of all applicable statutes, rules, and policies governing their access to CPI.
- (5) Section 1347.15(D), Revised Code, requires the Commission to distribute the policies included in its CPI rules to all employees who may access CPI and to require such employees to acknowledge receipt of such policies. The Commission is also required to post notice of these policies in a conspicuous place, on the Commission's internet web site, and in its employee handbook.

- (6) Section 1347.15(G), Revised Code, provides that a person who is harmed by a violation of a rule of a state agency described in Section 1347.15(B), Revised Code, may bring an action in the court of claims under Section 2743.02(F), Revised Code, against any person who directly and proximately caused the harm. Section 1347.15(H), Revised Code, provides that no person shall knowingly access CPI in violation of an agency rule or knowingly use or disclose CPI in a manner prohibited by law. This section also prohibits any state agency from employing a person who has been convicted of, or pleaded guilty to, a violation of this section.
- (7) As noted above, Section 1347.15(B), Revised Code, requires the Commission to adopt CPI rules pursuant to Chapter 119 of the Revised Code rather than the usual Commission comment procedure in reviewing proposed rules under Section 111.15, Revised Code. The Chapter 119 rule-making process, as set forth in Section 119.03, Revised Code, requires a state agency to give public notice of its intention to adopt a rule in the Register of Ohio at least 30 days before a scheduled hearing on the proposed rule. The notice should include a synopsis of the proposed rule, a statement of the agency's reason for proposing the rule, and the time and place of the hearing. At least 65 days before adopting the rule, the agency shall file the notice, the proposed rule, and a rule summary and fiscal analysis (RSFA) of the proposed rule with the Secretary of State, the Legislative Service Commission, and the Joint Committee on Agency Rule Review, pursuant to Sections 119.03(H) and 127.18, Revised Code. Proposed Chapter 119 rules, together with their notices of intended adoption and RSFAs, are published in the Register of Ohio. The agency must then hold a public hearing on the proposed rule not earlier than 31, or later than 40, days after its rules are filed with the Secretary of State, Legislative Service Commission, and the Joint Committee on Agency Rule Review.

At the hearing, a person affected by the proposed rule may present positions, arguments, or contentions orally or in writing; offer and examine witnesses; and present evidence showing that the proposed rule, if adopted, will be unreasonable or unlawful. An agency also may permit a person to present positions, arguments, or contentions in writing for a reasonable period before, after, or both before and after the hearing. Assuming no objections or legislative invalidation, the agency may adopt the proposed rule 66 days after the initial filing and file it in final form, pursuant to

Section 119.04, Revised Code. Pursuant to Section 119.03(E), Revised Code, the agency must make a reasonable effort to inform those affected by the rule of its adoption and to have copies of the rule available for distribution to those requesting it. A rule adopted pursuant to Chapter 119 of the Revised Code takes effect as specified by the adopting agency, but not earlier than the 10 days after being filed in final form, under Sections 119.03(D) and 119.04(A)(1), Revised Code.

- (8) In accordance with Section 1347.15(B), Revised Code, the Commission intends to adopt the attached CPI rules pursuant to Chapter 119, Revised Code. Accordingly, the attached rules should be initially filed with the Secretary of State, Legislative Service Commission, and the Joint Committee on Agency Rule Review; and the hearing on this matter will be scheduled for Monday, August 2, 2010, at 10:00 a.m., in Hearing Room C, at the offices of the Commission. Interested persons may also file comments in this case by August 2, 2010.

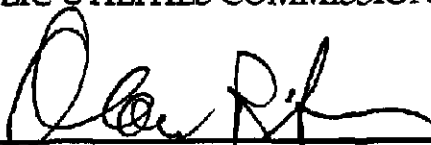
It is, therefore,

ORDERED, That the attached proposed rules be initially filed with the Secretary of State, Legislative Service Commission, and the Joint Committee on Agency Rule Review. It is, further,

ORDERED, That a hearing of this matter be conducted in accordance with Section 119.03, Revised Code, on August 2, 2010, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room C, Columbus, Ohio. It is, further,

ORDERED, That notice of this entry be served upon all regulated entities via the Commission's agendas and industry electronic mail lists.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

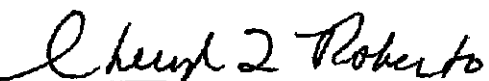
Paul A. Centolella



Valerie A. Lemmie



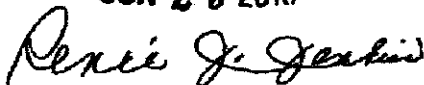
Steven D. Lesser



Cheryl L. Roberto

RMB/dah

Entered in the Journal

~~JUN 29 2010~~


Renee J. Jenkins

Renee J. Jenkins
Secretary

***** DRAFT - NOT YET FILED *****

4901-2-01

Definitions.

For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

- (A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.
- (B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the agency rule addressing requirements in section 1347.15 of the Revised Code.
- (C) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.
- (D) "Confidential personal information" (CPI) has the meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by rules promulgated by the agency in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the agency confidential.
- (E) "Employee of the state agency" means each employee of a state agency regardless of whether he/she holds an elected or appointed office or position within the state agency. "Employee of the state agency" is limited to the specific employing state agency.
- (F) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (G) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (H) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (I) "Person" means a natural person.
- (J) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.
- (K) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.

(L) "Research" means a methodical investigation into a subject.

(M) "Routine" means commonplace, regular, habitual, or ordinary.

(N) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the agency for internal administrative and human resource purposes.

(O) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.

(P) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

*** DRAFT - NOT YET FILED ***

4901-2-02

Procedures for accessing confidential personal information.

For personal information systems, whether manual or computer systems, that contain confidential personal information, the agency shall do the following:

(A) Criteria for accessing confidential personal information. Personal information systems of the agency are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the agency to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The agency shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.

(B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the agency, the agency shall do all of the following:

- (1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
- (2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347, of the Revised Code; and
- (3) If all information relates to an investigation about that individual, inform the individual that the agency has no confidential personal information about the individual that is responsive to the individual's request.

(C) Notice of invalid access.

- (1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the agency shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the agency shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the agency may delay the notification

consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

"Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the agency determines that notification would not delay or impede an investigation, the agency shall disclose the access to confidential personal information made for an invalid reason to the person.

(2) Notification provided by the agency shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.

(3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(D) Appointment of a data privacy point of contact. The agency director shall designate an employee of the agency to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the agency with both the implementation of privacy protections for the confidential personal information that the agency maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.

(E) Completion of a privacy impact assessment. The agency director shall designate an employee of the agency to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

*** DRAFT - NOT YET FILED ***

4901-2-03

Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the public utilities commission's exercise of its powers or duties, for which only employees of the agency may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system:

Performing the following functions constitute valid reasons for authorized employees of the agency to access confidential personal information:

- (A) Responding to a public records request;
- (B) Responding to a request from an individual for the list of CPI the agency maintains on that individual;
- (C) Administering a constitutional provision or duty;
- (D) Administering a statutory provision or duty;
- (E) Administering an administrative rule provision or duty;
- (F) Complying with any state or federal program requirements;
- (G) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (H) Auditing purposes;
- (I) Certification processes;
- (J) Investigation or law enforcement purposes;
- (K) Administrative hearings;
- (L) Litigation, complying with an order of the court, or subpoena;
- (M) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
- (N) Complying with an executive order or policy;
- (O) Complying with an agency policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or

4901-2-03

2

(P) Complying with a collective bargaining agreement provision.

***** DRAFT – NOT FOR FILING *****

4901-2-04

Confidentiality status.

The public utilities commission does not request social security numbers from persons doing business with the agency. If the commission becomes aware that someone has submitted a social security number with a filing, the commission will, pursuant to 5 U.S.C. 552a, redact from the filing and keep confidential the social security number.

***** DRAFT – NOT FOR FILING *****

4901-2-05

Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the agency shall do the following:

- (A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (B) Acquisition of a new computer system. When the agency acquires a new computer system that stores, manages or contains confidential personal information, the agency shall include a mechanism for recording specific access by employees of the agency to confidential personal information in the system.
- (C) Upgrading existing computer systems. When the agency modifies an existing computer system that stores, manages or contains confidential personal information, the agency shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the agency to confidential personal information in the system.
- (D) Logging requirements regarding confidential personal information in existing computer systems.
 - (1) The agency shall require employees of the agency who access confidential personal information within computer systems to maintain a log that records that access.
 - (2) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (a) The employee of the agency is accessing confidential personal information for official agency purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (b) The employee of the agency is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (c) The employee of the agency comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.