

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Ohio Adm.Code Chapter 4901-2,) Case No. 15-495-AU-ORD
Confidential Personal Information.)

ENTRY

The Commission finds:

- (1) R.C. 106.03 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Ohio Adm.Code Chapter 4901-2 set forth standards regarding confidential personal information held by the Commission.
- (2) R.C. 106.03(A) requires the Commission to determine:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rules need amendment or rescission to eliminate unnecessary paperwork,
 - (d) Whether the rules incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
 - (e) Whether the rules duplicate, overlap, or conflict with other rules;
 - (f) Whether the rules have an adverse impact on businesses as determined under R.C. 107.52; and,

- (g) Whether the rules contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive.
- (3) In addition, on January 10, 2011, the governor of the State of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
 - (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) and submit it to the Common Sense Initiative office. R.C. 121.82(A) further provides that if a draft rule does not have an adverse impact on business an agency may proceed with the rule-filing process.

The Commission has determined that these rules do not have an adverse impact on business as defined by R.C. 107.52. Rather, the rules at issue in this proceeding govern the protection of personal confidential information held by the Commission and so do not affect the outside business community. Because there is no adverse impact on business, the Commission will proceed with the rule-filing process without the submission of the rules or a BIA to the Common Sense Initiative office.

- (5) By Entry issued March 17, 2015, the Commission scheduled a workshop on April 16, 2015, to elicit feedback on any proposed revisions to the rules that stakeholders may have. The workshop provided stakeholders an opportunity to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled, but no stakeholders provided comments.


- (6) Staff has evaluated Ohio Adm.Code 4901-2 and has determined that no changes are necessary.
- (7) The Commission is seeking comments to determine if any changes are necessary.
- (8) In order to avoid needless production of paper copies, the rules for Ohio Adm.Code 4901-2 (Attachment A) are posted on the Commission's Docketing Information System (DIS) website at <http://dis.puc.state.oh.us/>. Interested persons are directed to input the case number 15-495-AU-ORD into the "Case Lookup" box to view this Entry, as well as the rules. In addition, a paper copy may be obtained by contacting the Commission's Docketing Division.
- (9) The Commission requests comments from interested persons to assist in the review required by R.C. 106.03, R.C. 111.15, and Executive Order 2011-01K. Comments should be filed, via electronic filing or in hard copy by June 12, 2015.

It is, therefore,


ORDERED, That all interested persons or entities wishing to file comments with the Commission regarding Ohio Adm.Code 4901-2 do so no later than June 12, 2015. It is, further,

ORDERED, That notice of this Entry be served upon all Commission industry list-serves.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman




Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

LDJ/vrm

Entered in the Journal

MAY 28 2015



Barcy F. McNeal
Secretary

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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.

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- (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.

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

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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

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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.

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;

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- (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
- (P) Complying with a collective bargaining agreement provision.

4901-2-04 Confidentiality statutes.

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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.

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:

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- (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.
- (d) The employee of the agency accesses confidential personal information about an individual based upon a request made under either of the following circumstances:
 - (i) The individual requests confidential personal information about himself/herself.
 - (ii) The individual makes a request that the agency takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.
- (3) For purposes of this paragraph, the agency may choose the form or forms of logging, whether in electronic or paper formats.
- (E) Log management. The agency shall issue a policy that specifies the following:
 - (1) Who shall maintain the log;
 - (2) What information shall be captured in the log;
 - (3) How the log is to be stored; and
 - (4) How long information kept in the log is to be retained.

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Nothing in this rule limits the agency from requiring logging in any circumstance that it deems necessary.