

Confidentiality of State Held Information

This Act:

- requires certain state agencies adopt rules regulating access to the confidential personal information the agencies keep, whether paper or electronic;
- provides that a person harmed by a violation of a rule of a state agency adopted under the Act may bring an action in a court of claims against any person who directly and proximately caused the harm, and
- requires the state tax commissioner adopt rules to generally require the tracking of searches of any of the department of taxation's databases.

The Act generally defines “state agency” as the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state. “Local Agency” means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.

Submitted as:

Ohio

Substitute House Bill Number 648

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address The
2 Confidentiality of State Held Information.”

3
4 Section 2. [*State Agencies to Adopt Rules Regulating Access to Confidential Personal
5 Information Kept by the Agencies.*]

6 (A) As used in this Section:

7 (1) "Confidential personal information" means personal information that is not a
8 public record for purposes of [insert citation].

9 (2) "State agency" does not include the courts or any judicial agency, any state-
10 assisted institution of higher education, or any local agency.

11 (B) Each state agency shall adopt rules under [insert citation] regulating access to the
12 confidential personal information the agency keeps, whether electronically or on paper. The rules
13 shall include all the following:

14 (1) Criteria for determining which employees of the state agency may access, and
15 which supervisory employees of the state agency may authorize those employees to access,
16 confidential personal information;

17 (2) A list of the valid reasons, directly related to the state agency's exercise of its
18 powers or duties, for which only employees of the state agency may access confidential personal
19 information;

20 (3) References to the applicable federal or state statutes or administrative rules
21 that make the confidential personal information confidential;

22 (4) A procedure that requires the state agency to do all of the following:

23 (a) Provide that any upgrades to an existing computer system, or the
24 acquisition of any new computer system, that stores, manages, or contains confidential personal
25 information include a mechanism for recording specific access by employees of the state agency
26 to confidential personal information;

27 (b) Until an upgrade or new acquisition of the type described in division
28 (B)(4)(a) of this section occurs, except as otherwise provided in division (C)(1) of this section,
29 keep a log that records specific access by employees of the state agency to confidential personal
30 information;

31 (5) A procedure that requires the state agency to comply with a written request
32 from an individual for a list of confidential personal information about the individual that the
33 state agency keeps, unless the confidential personal information relates to an investigation about
34 the individual based upon specific statutory authority by the state agency;

35 (6) A procedure that requires the state agency to notify each person whose
36 confidential personal information has been accessed for an invalid reason by employees of the
37 state agency of that specific access;

38 (7) A requirement that the director of the state agency designate an employee of
39 the state agency to serve as the data privacy point of contact within the state agency to work with
40 the chief privacy officer within the office of information technology to ensure that confidential
41 personal information is properly protected and that the state agency complies with this section
42 and rules adopted thereunder;

43 (8) A requirement that the data privacy point of contact for the state agency
44 complete a privacy impact assessment form; and

45 (9) A requirement that a password or other authentication measure be used to
46 access confidential personal information that is kept electronically.

47 (C) (1) A procedure adopted pursuant to division (B)(4) of this section shall not require
48 a state agency to record in the log it keeps under division (B)(4)(b) of this section any specific
49 access by any employee of the agency to confidential personal information in any of the
50 following circumstances:

51 (a) The access occurs as a result of research performed for official agency
52 purposes, routine office procedures, or incidental contact with the information, unless the
53 conduct resulting in the access is specifically directed toward a specifically named individual or
54 a group of specifically named individuals.

55 (b) The access is to confidential personal information about an individual,
56 and the access occurs as a result of a request by that individual for confidential personal
57 information about that individual.

58 (2) Each state agency shall establish a training program for all employees of the
59 state agency described in division (B)(1) of this section so that these employees are made aware
60 of all applicable statutes, rules, and policies governing their access to confidential personal
61 information. The office of information technology shall develop the privacy impact assessment
62 form and post the form on its Internet Web site by the [first day of December] each year. The
63 form shall assist each state agency in complying with the rules it adopted under this section, in
64 assessing the risks and effects of collecting, maintaining, and disseminating confidential personal
65 information, and in adopting privacy protection processes designed to mitigate potential risks to
66 privacy.

67 (D) Each state agency shall distribute the policies included in the rules adopted under
68 division (B) of this section to each employee of the agency described in division (B)(1) of this
69 section and shall require that the employee acknowledge receipt of the copy of the policies. The
70 state agency shall create a poster that describes these policies and post it in a conspicuous place

71 in the main office of the state agency and in all locations where the state agency has branch
72 offices. The state agency shall post the policies on the Internet Web site of the agency if it
73 maintains such an Internet Web site. A state agency that has established a manual or handbook of
74 its general policies and procedures shall include these policies in the manual or handbook.

75 (E) No collective bargaining agreement entered into under [insert citation] shall prohibit
76 disciplinary action against or termination of an employee of a state agency who is found to have
77 accessed, disclosed, or used personal confidential information in violation of a rule adopted
78 under division (B) of this section or as otherwise prohibited by law.

79 (F) The [auditor of the state] shall obtain evidence that state agencies adopted the
80 required procedures and policies in a rule under division (B) of this section, shall obtain evidence
81 supporting whether the state agency is complying with those policies and procedures, and may
82 include citations or recommendations relating to this section in any audit report issued under
83 [insert citation].

84 (G) A person who is harmed by a violation of a rule of a state agency described in
85 division (B) of this section may bring an action in the court of claims, as described in [insert
86 citation], against any person who directly and proximately caused the harm.

87 (H) (1) No person shall knowingly access confidential personal information in
88 violation of a rule of a state agency described in division (B) of this section.

89 (2) No person shall knowingly use or disclose confidential personal information
90 in a manner prohibited by law.

91 (3) No state agency shall employ a person who has been convicted of or pleaded
92 guilty to a violation of division (H)(1) or (2) of this section.

93 (4) A violation of division (H)(1) or (2) of this section is a violation of a state
94 statute for purposes of [insert citation].

95 (I) Whoever violates division (H)(1) or (2) of this section is guilty of a [misdemeanor of
96 the first degree].

97
98 Section 3. [*Tax Commissioner to Adopt Rules to Track Searches of Databases*
99 *Maintained by the Department of Taxation.*]

100 (A) The [tax commissioner] shall adopt rules under [insert citation] that, except as
101 otherwise provided in division (B) of this section, require that any search of any of the databases
102 of the [department of taxation] be tracked so that administrators of the database or investigators
103 can identify each account holder who conducted a search of the database.

104 (B) The rules adopted under division (A) of this section shall not require the tracking of
105 any search of any of the databases of the [department of taxation] conducted by an account
106 holder in any of the following circumstances:

107 (1) The search occurs as a result of research performed for official agency
108 purposes, routine office procedures, or incidental contact with the information, unless the search
109 is specifically directed toward a specifically named individual or a group of specifically named
110 individuals.

111 (2) The search is for information about an individual, and it is performed as a
112 result of a request by that individual for information about that individual.

113
114 Section 4. [*Severability.*] [Insert severability clause.]

115
116 Section 5. [*Repealer.*] [Insert repealer clause.]

117
118 Section 6. [*Effective Date.*] [Insert effective date.]