CALIFORNIA CONSUMER PRIVACY ACT

DEPARTMENT OF JUSTICE

OFFICE OF THE CALIFORNIA ATTORNEY GENERAL

Transcript of proceedings had for
California ConsumerPrivacy Act, Department of Justice,
Office of the California Attorney General, held at Cesar
Chavez Community Center, 2060 University Avenue,
Riverside, California 92507, on January 24, 2019 at
10:00 a.m.
MS. KIM: Hello. Welcome. On behalf of California Department of Justice and the attorney general, Xavier Becerra, we want to welcome you to the third public forum on the California Consumer Policy Act.

First, we want to thank the Cesar Chavez Community Center for hosting us at today's event.

We want to give you a little bit of background before we get started and let you guys speak to us. We are at the beginning stages of our ruling process on the CCPA. So these forums are an informal period where we want to hear from you.

There will be future opportunities where members of the public can be heard including, after we draft the texts of the regulations and enter the formal ruling process.

But today our goal here is to listen. We are not able to answer questions or respond to comments.

Before we begin, I want to introduce ourselves.

My name is Lisa Kim. I am a deputy attorney general in the privacy unit at the AG's office.

MR. MAUNEY: I am Devin Mauney. I am a deputy attorney general in Consumer Laws Action at the AG's office.

MR BERTONI: And I am Daniel Bertoni. I am an
analyst in the AG's office.

    MS. KIM: So I am going to give you a little background before we get started. I just want to go over a few process points before we get started. Each speaker will have approximately five minutes. I don't think we have a ton of speakers here; so if you go a little over, that's fine; but if you can please be respectful to other people's time.

    We also have a court reporter here to the right of me, and she will transcribing comments so please speak slowly and clearly. As for the transcript for all of the processing forums, once they are available, they will be posted on our CCPA website. The PowerPoint slides that we present today are also going to be on the CCPA website.

    If you've registered as a speaker this morning, you should have received a name tag with a number identifying your speaker group. The front row is reserved for speakers -- oh, we're not doing that today. So if you are interested in speaking today, I ask that at the end of my little presentation, you come down to the front row and take your turn at the podium.

    It's requested but not required that you introduce yourself and identify yourself because these are public hearings. It would be helpful if you have a
business card to hand it to the court reporter. I am sure she would appreciate that.

We also welcome written comments by e-mail or by mail. You can see our e-mail address on the board and our address as well. Bathrooms are outside to the right and left to this hall.

And may I ask if any media is present today, if you can raise your hand.

If you would like to stay informed about this ruling process, please visit our website, www.oag.ca.gov/privacy/CCPA. CCPA section 1798.185 of the Civil Code identifies specific responsibilities for ruling by the AG. The areas are summarized here in Numbers 1 through 7. So we can that you please keep these in mind as you are providing comments today.

I will go through them. Number 1, should there be any additional categories of personal information. 2, should the definition of unique identifiers be updated. 3, what exceptions should be established to comply with state or federal law. 4, how should the consumer submit a request to opt-out of a sale, personal information, and how should a business comply with the consumer's request. 5, what type of uniform opt-out logo or button should developed for consumer's right to opt-out. 6, what type of notices and information should
businesses be required to provide including those relating to financial Incentive Offers. 7, how can a consumer or their agent submit a request for information to a business and how can those business reasonably verify these requests.

At this time we welcome comments from the public. So if you are registered to speak, if you can please come down to the front row or approach the podium. Thank you.

MS. MIRZA: Hi. My name is Sadia Mirza. I am an attorney at the Troutman Sanders in the Orange County Office. We have started trying to operationalize from the tax at the CCPA, and I think we ran in to a few issues that we would like further guidance on.

Specifically, I think the issues that we're looking at relate to how -- relate to section -- I think what would like guidance on is really section 130, which seems to be the section that tells businesses how to fulfill certain requests or what the requirements are. Some of them seem to conflict with section 110, which provides the access to certain information, and section 115.

So to provide an example, in section 110, consumers have the right to request, not only for information that's required in ceratin categories but
section 110a5 specifically says they have the right to request specific pieces of personal information collected about that.

If you read that, I might add, 130b -- I believe it's 133b. 133b only talks about providing information in terms of categories. So the issue we're facing is do businesses actually need to provide specific pieces of information when complying with a 110 request or is it that they would only need to disclose it in terms of categories.

Another issue similar to that, also comes into play with section 115, which is the consumers rights to receive information about onward disclosures. When comparing it to section 1304c, which talks about -- which also provides additional information about how to fulfill those requests.

So 115a, 1 through 3, tell you what information needs to be disclosed. Notably, missing from that list is that you need to disclose categories of third parties with whom selling of information was disclosed for a business purpose. That's not included in section 115a, 1 through 3. So if it is a requirement that business disclose, we request that 115A be updated to reflect that.

The only other additional consideration at this
point that we wanted to share is that there is an exception to 100 and 110. Both seem similar with slight bearing so we are not sure if that was intentional or if it was just inadvertently missed.

Specifically, there is a one-time transaction section. In 100e it says that you don't need to -- "This section shall not require a business to retain any personal information collected for a single one-time transaction if such information is not sold or retained."

If you go to 110 exception -- 110d, it has a similar exception but it only qualifies to provide information that is not retained. There is no similar not sold exception. So whether that was intentional, and if so, what the reasoning behind that. Those are my comments. Thank you.

MS. COHEN: Hi. My name is Alison Cohen, and I am attorney at Loeb & Loeb. I'm primarily in the privacy practice at Loeb. We represent a lot of companies that interact with California consumers, and the brands that we represent very much care about respecting the privacy rights of consumers.

So that's why I am here today because the comments that I would like to make are to suggest ways in which the regulation could clarify CCPA and help
these California companies provide their services to California consumers, services which are intended to benefit those consumers while also fully respecting consumers' privacy rights.

So my first comment is really related to the application of the CCPA to employee data. And it appears that the intent of CCPA is to protect consumers and customers of those covered companies, not necessarily employees. Yet, the CCPA does not provide a specific carveout for employees. So as drafted, the CCPA is pulling employees into the scope because they are California residence.

It would be helpful to see if the regulations could make two clarifications. The first, in cases where a company is not a consumer-facing business and only has employees. It doesn't have any customers. It doesn't have any consumers. These types of companies should be excluded from CCPA.

And then also, in cases where a company is a consumer-facing business, a California consumer as defined under CCPA as it's written, does not make an exception for that employee-employer relationship and personal information that's necessary to support that relationship. So if the regulation could clarify that these employees are not covered by CCPA, since employers
have a legitimate business purpose to collect and retain employee personal information, that would be most helpful.

So my second comment has to do with the GLBA exception and gaining some clarity around that. Many financial institutions regularly sell portfolios within their business. So for example, a credit card portfolio or a loan portfolio, another example would be like a delinquent account portfolio.

In those cases the personal information associated with those accounts is transferred with the commercial sale of that portfolio. The terms of that customers' contract don't change. It would really be helpful if the regulations would clarify that selling those types of portfolios -- portfolios of that nature and transferring the corresponding personal information to some commercial purchasers excluded from the definition of sale. These types of commercial sales are common in the financial industry, and they don't impact the customers directly. Those are my two main comments for today. Thank you.

MR. LACTIN: Hello everybody. My name Andrew Lactin. I am an attorney. Most of my clients are start-up between 0 to 50 employees. Most of them fall under the exceptions that probably would not fall under
this law, but many of them are service providers and as a result may indirectly fall underneath those requirements as well.

So there are a couple -- I have been to a couple of these hearings and I've heard some consistent comments. I wanted to reflect of those. This is my first time actually commenting. Mostly I have been listening and covering what has been discussed at some of these.

The most bearing exceptions or the problem we found there is the lack of clarity of the exception if you engage in a merger, you can include the data without having to ask consent. However, the statute does not make clear whether there should be exceptions for sale of inline businesses. Obviously there is a little bit of a sticky area where we don't want to sell a list and say that's the list of my business.

But at the same time, many transactions occur where you are not selling the entire (inaudible) that you are putting in your company, but you are selling an entire line but you want to be sure that is a covered because that is a problem.

There has been discussions about safe harbor provisions. I'm not sure to the extent of what extent the statute actually allows for such safe harbor
provisions, but it would seem that the use of certifications -- existing certifications should provide some sort of guidance.

GPR, for instance, has provisions that allow for third party certifications to create a standard for compliance as well. And I do understand that we are moving in to new territory here. We don't necessarily know everything that they are doing in GPR, but do understand that companies have spent millions trying to comply with this law already.

Unlike with respect to this law, they took a number of years to work out some of the problems and there is nothing wrong with learning from the experience of others, which actually brings to a related issue, which is the issue that has been brought up with respect to what happens to the data that you collect or did you confirm the identity of people who are making data requests -- data subject requests.

Perhaps, if it's possible to explore some sort of standardized technology for being able to confirm identities, that might be able to resolve the issue that many companies will be facing with having to collect personal data in order to confirm their right to share personal data.

As an example, there are many -- many of you
have seen when you are confirming their identity where
you get a series of questions where they pull
information off their credit report and only you have to
chose from a list to confirm, hey, I lived at this
place, or this is the city that I grew up in, or
something to that effect and something like that; but at
the end, the company in question that is providing that
information -- that's confirming your identity, doesn't
actually get any of that information to confirm who you
are. That might be a way to solve those problems.

This addresses just a couple of the issues that
I have seen so far in some of the flaws that have come
up that may -- I think the regulatory process may be
able to address within the existing statue.

I am going to mention one last thing. I am not
sure that this is something that could be handled in the
regulatory process, but it does fall into the uniform
opt-out logo, which I think is a great idea to have
something like that, but I do want to point out the
phrase "don't sell client information," doesn't make
sense for most of the industry, including companies that
would fall under CCPA.

I have represented close to 50 different
companies who I have done privacy policies and handled
privacy regulations in the last year, not one of them
sells information. Most companies don't and by having
that information, it creates an environment of
irrational fear that information might be sold, and it's
not.

To be clear, we should hold those companies
that are brokers that would sell data, they need to be
held accountable. We have a right to know about this
information or the right to control our information; but
the way the statute is drafted, it pulls in a whole bunch
of companies that have nothing to do with it but still
will have to put that non-sensible phrase that doesn't
make any sense with the businesses that they are in.

I hope this is all helpful and appreciate all
of the work that you all are doing traveling all over
the state. I have been there in San Diego and San
Francisco and still working out how I am going to get to
Fresno, but I think the work that you are doing is very
important and this is an area which is a bit arcane at
times, except for those of us who needs a 12-step
program because we care about this. So thank you very
much for doing what you do.

MR. DIAZ: Good morning. My name is Anthony
Diaz, and I am the chief compliance officer at Schools
First Federal Credit Union here in California serving
nearly 850,000 members. Schools First appreciates the
signing of the new law section 1121, which was an act subsequent to the passage of 375 and effectively served the purpose of cleaning up the uncertainty that was created for financial institutions in the original bill. Specifically SP 1121 clarified that with regard to financial institutions subject to the act and/or the financial privacy act, information that was collected pursuant to either of those statues by a private entity is exempt from CCPA.

However, there is still quite a bit of confusions surrounding this exemption which truly needs to be clarified. One of the key items that need to be clarified in our opinion is the inconsistent terminology that is found throughout the CCPA which makes it difficult for institutions to understand what information is not subject to the GOBP or the SFIPA subject to the protection of the act.

In other words, a credit union or financial institution obtaining employed application information from prospective employees, is it truly the intent of the CCPA to be so expansive that this information would be covered by the act even though other information received by the credit union or bank is not. We would like clarification on this point in order to facilitate our compliance.
Also, the CCPA finds personal information to include in part, quote, information that identifies, relates to, describes, capable of being associated with particular (inaudible) household, end quote. However, there is no example provided in this statute as to what might be reasonable constitute household or examples of what might reasonable be linked.

Therefore, we would also request additional information on this in order to facilitate our compliance.

And lastly, we would request clarification provided in the regulations as to the scope of the examples of personal information that are provided in the statute. Most importantly, as to those that appear to be outside the scope of the GOBA, such as audio regarding information. Is it the intent that recorded telephone calls, for example, be included in this example. In other words, it would enhance the ability of entities to comply if we were to be provided sufficient details in the final regulations to enable us to make these decisions.

I would like to thank you for the opportunity to comment. I fully understand the importance of protecting the rights of the residence of our state.

Thank you.
MS. KIM: Did we have any other additional speakers? We will give you a few minutes in case you want to gather your thoughts.

All right. If there are no other additional speakers, I just want to remind people that you can send written comments to the e-mail address that's listed here as well as mail them if you would like to mail them to the address above. Stay updated on our ruling and activities by going and signing up for updates via our CCPA website.

Thank you for coming, and we appreciate all of your comments. Have a good day.
REPORTER'S CERTIFICATION

I, Keisha Robinson, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 5th day of February, 2019.

Keisha Robinson, CSR No. 14214