



CITY OF PORTLAND

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Testimony by the City of Portland

HB 2429 - Relating to the removal of personal information from public agency devices...

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The City of Portland is supportive of legislation that would enhance and ensure the security of personal information that is owned and controlled by the public agency in the course of business. Therefore we are supportive of the goals of HB 2429, but have a few important amendments we respectfully request be considered.

SECTION I - subsection 1 – Definition of “personal information”

It is our understanding that an amendment is being prepared that would revise the definition of personal information in this legislation to be aligned with and consistent with such definitions as already established in the Oregon Consumer Identity Theft Protection Act. (ORS 646A.600 et seq). The City of Portland encourages and supports such an amendment.

SECTION I – subsection 2 – “All public bodies that have records that contain personal information shall develop and implement policies for securely removing all personal information from...devices used by the public body.”

With the phrase “used by”, the City of Portland is concerned a public agency would not be able to comply with the legislation. The phrase “used by” could be interpreted as applying to devices that are not owned, leased or under the control of the public agency. Examples could include devices used by an employee of the public agency, such as a personal cell phone, computer at home, laptops, tablets or at a third-party provider (such as an Internet café).

A public agency does not have the ability to require or compel an employee to remove information from employee-owned devices prior to the employee disposing of such equipment or before leaving the employ of the public agency. A public agency does not have access to employee smart phone data nor can it get such access. (Stored Communications Act 18 U.S.C. Chapter 121 – federal law re: who is the subscriber. See also Quon vs. Arch Wireless case).

As a technical and legal matter, once personal information is accessed by and/or stored on non-agency devices beyond the public agency’s control, the public agency cannot compel the employee

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(or third-party provider) to remove such data.

Because a public agency cannot control or access non-agency devices that would be encompassed under the “used by” phrase, we are concerned the legislation as written cannot be complied with.

The City of Portland respectfully suggests that the phrase “used by” be changed to “owned by, leased by, under the control of” language. In this way, the public agency will be able to legally and technically implement its policies regarding the removal of personal information prior to disposal of such devices.

Thank you for your consideration of this information.