

MEMORANDUM

TO: All ULC Commissioners

FROM: Drafting Committee: *Redaction of Personal Information from Public Records Act*
Vincent DeLiberato, Chair
Michael Houghton, Vice Chair
Barbara Bintliff, Co-Reporter
Amy Sanders, Co-Reporter

SUBJECT: Issues Memo for June 12, 2024, Informal Session

DATE: June 1, 2024

This draft of the *Redaction of Personal Information from Public Records Act* (with a suggested title change to *Redaction of Judicial Officer Personal Information Act*) is for consideration at an Informal Session on June 12, 2024. The text of the draft has been extensively debated by the Drafting Committee. The issues on which the committee seeks input are listed below. Included notes and comments on the text of the act are in very rough form, awaiting input from this Informal Session.

State governments owe a variety of duties to their citizens and residents. For example, the business of the state is typically carried out through legislative and administrative activities such as proceedings and recordkeeping. These activities generally are open and accessible to encourage transparency and accountability in government actions. States also owe citizens protection against harm, non-discrimination in laws, and an ability to exercise their rights, among other duties.

Most states have redaction laws, giving a wide range of officials and citizens an opportunity to have various pieces of personal information redacted from otherwise publicly accessible records. Numerous state legislative proposals in recent years, both new legislation and amendments to existing systems, highlight the on-going concern about the ease with which personal information can be found through public records. Bringing clarity and uniformity to the public record redaction process, within a constitutional framework, is an important reason for the ULC to consider drafting this act.

Ensuring a secure judiciary is part of the basic obligation of the state to protect its citizens. A secure judiciary helps shield the integrity of the judicial system and furthers the rule of law by reducing threats against judges that could impact their decisions. The objective of the drafting committee is to write an act that allows some modest level of security to judicial officers—judges—by making certain personal information unavailable via redaction from publicly accessible electronic public records. By redacting personal information, the possibly violent actions of a person acting irrationally against a judge can be allayed by the time and access barriers imposed by limited electronic information. It is anticipated that the necessity of actually

traveling to a governmental office to obtain the information from unredacted records, and the potential of being identified as the individual who seeks the information, will allow the heat of passion to cool. However, by redacting information in the name of security, potential conflicts with governmental openness and information access have been identified. Resolving these conflicts is the challenge facing the Drafting Committee.

In the process of drafting this text, the following set of issues arose that identified the questions faced by the Drafting Committee. These issues will form the main focus of the Informal Session:

1. whether the project is sufficiently limited in scope to address First Amendment issues;
2. whether a state's limitation of access to information in its possession restricts freedom of expression;
3. if a state's limitation of access to information in its possession does restrict freedom of expression, can the reason for the restriction withstand strict scrutiny; and
4. whether the project, as narrowed for First Amendment purposes, provides enough value to support enactment.

The Drafting Committee seeks input during the Informal Session on the sense of the Commission as to how to resolve these questions.

Commissioners are requested to read legal memoranda and an article on the First Amendment questions that are distributed with this draft. If time permits after consideration of the four issues listed, comments will be taken on the text of the draft act.

Following this Informal Session, the ULC Executive Committee will consider whether the project will continue.