



Oregon Citizens'
Utility Board

OSPIRG

HB 2866

Oregon Data Transparency and Privacy Protection

What is HB 2866

Oregon Data Transparency and Privacy Protection?

HB 2866 policy components include:

1. **“Right to Know”** empowerment for **“resident individuals”** (anyone physically in Oregon); and
 2. Additional protections for **“geolocation”** and **“audiovisual”** information.
- HB 2866 is an important, first step in what will be a multi-step policy development process.
 - Federal and state policy trends and learnings gleaned from Right to Know could inform follow-up policy development steps and additional data privacy protections.
 - The bill in its current form requires some additional, technical amendments.

What is Right to Know and why is it so important?

- Right to Know will empower Oregonians to submit once-yearly data requests to a **“person”** (business entity operating in Oregon) to learn the extent to which that entity has collected, analyzed, derived, sold, leased, or otherwise transferred the Oregonian’s **“personal information”** over the previous 24 months.
- “Personal information” is derived from an Oregonian’s use of their **“digital electronic device.”**
- Examples of personal information include but are not limited to name, email address, race, ethnicity, sexual or gender identity, religious or political affiliation, or any piece or category of information that, if or when combined with other pieces or categories, could re-identify someone.

Right to Know continued

- **Oregonians have a fundamental Right to Know** what happens with personal information derived from their activities on their digital electronic devices.
- Right to Know is the **data transparency cornerstone** to any digital privacy policy or set of policies.
- California's Consumer Protection Act (CPA) and the European Union's General Data Protection Rules (GDPR) both include a Right to Know component.
- Note that CPA and GDPR include numerous provisions that are not included in this bill.

Right to Know continued

- **What** personal information do entities collect from Oregonians' use of their digital electronic devices?
- **What** are the items and categories of Oregonians' personal information collected?
- **From** which other entities do entities receive Oregonians' personal information?
- **Where** does Oregonians' personal information go after collection and to what other entities are Oregonians' personal information sold, leased, or otherwise transferred?
- **What** are entities' policies and procedures regarding the collection, usage, storage, analysis, and derivation of Oregonians' personal information?
- **What** are the business purposes for entities collecting, using, storing, analyzing, and deriving inference from Oregonians' personal information?

Right to Know concluded

- Right to Know **disclosures are free** of charge to the Oregonian submitting the request.
- Oregonians will have the ability to authorize entities to facilitate disclosures on their behalf.
- Right to Know cannot be waived by contract; any such contract is void and unenforceable.

What about geolocation and audiovisual information?

- Geolocation refers to data **collected from an individual's digital electronic device** displaying the location of their device (phone, tablet, laptop computer, etc.) on a map or similar depiction.
- Audiovisual information refers to either video or audio data **captured by an individual's digital electronic device** of the individual's movements, gestures, conversations, interactions, etc.

Geolocation and audiovisual information continued

- HB 2866 would require an entity that collects, analyzes, derives, sells, leases, or otherwise transfers geolocation or audiovisual information **from an Oregonian's digital electronic device(s)** to first disclose clear intent and methodology, and receive express consent from the Oregonian.
 - The entity must first identify the geolocation or audiovisual information it intends to collect, analyze, derive, sell, lease, or otherwise transfer;
 - Describe how often and the methodology of collection, analysis, derivation, etc.; and
 - Specify the purpose for such collection, analysis, derivation, etc. to the Oregonian.

Why now? Why our three groups?

- Oregon Citizens' Utility Board (CUB), ACLU of Oregon, and OSPIRG all took notice in 2016 when the Federal Communications Commission (FCC) developed privacy rules regarding the relationship between Internet service providers and their customers.
- The rules, however, **did not regulate website or application activity**, other services from Internet access providers, or corporate surveillance and the monetization of personal information.
- In March of 2017, Congress employed the Congressional Review Act to revoke the rules that would have gone into effect in December 2017.
- This measure also stripped the FCC of the authority to create new rules in the future.

Why now and why our three groups continued

- Throughout 2017, in response to congressional action, [over 50 bills made their way to over 20 state legislatures \(including D.C.\)](#).
- Oregon was one of these states ([HB 2813](#))
- [HB 4155](#), which the Oregon Legislature passed in 2018 with bipartisan support, combined privacy goals from HB 2813 with targeted network neutrality provisions.
- Privacy language was ultimately stripped from HB 4155, but CUB, along with ACLU and OSPIRG, **promised to return in 2019** with meaningful data transparency and privacy protection legislation.

Why HB 2866?

- HB 2866 represents meaningful data transparency and privacy protection legislation.
- Business entities **collect directly or procure through a third party personal information** from individuals' digital electronic devices.
- Some of these companies are household names; many embody the largest and most profitable corporations the world has ever known.

Other companies are far less known

- [ALC Inc.](#) - the American List Counsel - is “the industry’s leading privately-held direct and digital data marketing services provider.”
- [ASL Marketing, Inc.](#) touts itself as “the nation’s premier provider of student marketing data, focused on the highly desirable 13-34 year old market.”
- [Confi-Chek, Inc.](#) is a search conglomerate that owns websites like [peoplefinders.com](#), [PublicRecordsNOW.com](#), and [PrivateEye.com](#) and says they’re “the industry standard in data services with more than 20 years of experience in public records aggregation.”
- [Healthcare.com](#) (not to be confused with Healthcare.gov) provides consumer marketing to insurance companies.
- [National Consumer Telecom & Utilities Exchange, Inc.](#) is a marketing agency that maintains data from 90 member-companies and over 460 million consumers.

Why now?

- Consumers hand over their personal information both **knowingly and unknowingly**.
- We all understand that our behavior, especially online and when using a digital electronic device (smartphone, computer, tablet, etc.), is being tracked or recorded in some way.
- But consumers **can't see the full picture** of how their use of digital electronic devices facilitates widespread collection, analysis, derivation, sale, or otherwise transfer of their personal information.

Why now?

- Individuals' geolocation is readily collected through their phone by way of various applications, and even their mobile service provider, and then sold to location aggregation companies such as LocationSmart and Zumigo.
- Location aggregators then sell personal information to the highest bidder, which often isn't much.
- Nest Secure, a home security and alarm system owned by Google, failed to disclose the existence of a microphone assistant feature embedded within Nest Guard (alarm, keypad, and motion-sensor components).
- These are just a few examples, and there are many more...

Conclusion

- Individuals hand over their personal information, often without their knowledge and without providing any level of consent.
- This is a growing problem and one about which this legislature can do something in 2019.
- Our daily lives require digital engagement to do our jobs, discover and apply for new employment, participate socially and civically, receive various services. The list goes on.
- Internet access and our usage of the Internet is an essential utility service on equal footing with electricity, heating and cooling, and water.
- HB 2866 is an **important and good faith effort** from CUB, ACLU of Oregon, and OSPIRG to begin a needed and time sensitive policy conversation around data transparency and privacy protection.
- We strongly encourage support from the Legislature in 2019.