

Supplement to the Preliminary Report to the Vermont General Assembly on the Vermont Data Broker Registry

May 20, 2019

Pursuant to Act 171 the Attorney General (after consultation with the Office of the Secretary of State) now submits this supplement to its preliminary report of March 1, 2019 concerning implementation of the new data broker law to the relevant committees of jurisdiction.

On March 1, 2019 the Attorney General submitted a preliminary report to the General Assembly indicating that additional information would be forthcoming pending dissemination of electronic information collected through the Secretary of State's vendor. Below is a summary of information provided to the Attorney General by the Secretary of State.

As previously noted, the Act is now in effect and has four basic elements: a data broker registry; minimum data security requirements for data brokers; a prohibition on fraudulent acquisition, or unlawful use, of brokered personal information; and elimination of credit freeze fees at credit reporting agencies.

Additional information provided to our office is provided in summary form below.

Total Registrations: 134*

Data Brokers Reporting by State: AR (1), AZ (2), CA (31), CO (6), CT (1), FL (15), GA (9), ID (1), IL (5), KS (1), MA (2), MI (3), MN (1), MO (2), NC (1), NE (2), NJ (4), NV (1), NY (7), OH (6), PA (1), SC (2), TN (3), TX (11), VA (5), VT (3), WA (7), WI (1)

* As of April, 2019.

Does the Data Broker Provide Consumer Opt-Out Provisions:

Yes – 95; No – 39

An “opt-out” provision is an opportunity for a consumer to contact a company and ask to be removed from a service or database.

Approximately 70% of registered data brokers reported they provide some form of opt-out provision for consumers for at least *some* services; 30% do not provide opt-out services for consumers.

Opt-out provisions vary in scope among data brokers. While several data brokers indicated that their opt-out policies applied to “all activities” or “applies to our entire database”, many others were selective and only applied to “marketing activities.” Only one indicated expressly that it would “immediately and permanently” remove a consumer from its database upon request.

Methods of Opt-Out: Various. Options range from accessing a webpage with instruction to requesting an opt-out telephonically or in writing (by email or letter).

Does the Data Broker Allow a 3rd Party to Opt-Out on Behalf of a Consumer:

Yes – 48; No – 26

Reported “N/A” – 2

Failed to Answer – 33

Attached other explanations: 25

** Of those declaring 3rd party opt-out policies, approximately 2/3 (63%) indicated some form of 3rd party opt-out is permissible. Roughly 1/3 of reporting data brokers do not allow 3rd party opt-outs.

Note: Many of the 3rd party opt-out rights are restricted to (for example): legal counsel, power of attorney, government officials, or after verification by the consumer, or on a case by case basis.

Did the Data Broker Initiate a Credentialing Program in the Last Year:

Yes: 78; No: 25

Reported “N/A”: 7

Attached other explanations: 24

A credentialing program is a way of verifying the identity of a prospective purchaser of data. One concern expressed during the legislative process was ensuring that data does not fall into the wrong hands: identity thieves, fraudsters, etc. A credentialing program may help to reduce the risk of bad actors acquiring data for nefarious purposes.

Note: The way this question was worded on the registration form could be more clear. Some data brokers may have credentialing programs, but may not have initiated them in the last year.

Has the Data Broker Experienced a Security Breach of Brokered Personal Information in the Last Year

(BPI) (and number of affected Vermonters): There were no reports of security breaches relating to “brokered personal information.”

Does the Data Broker Knowingly Possess Brokered Personal Information of Minors:

Yes: 31; No: 71

Reported “N/A”: 11

Attached other explanations: 21

Note: Many data brokers do not collect, or seek to collect information about minors. Some acknowledge that information about minors may inadvertently be collected. The Child Online Privacy Protection Act (COPPA) addresses data collection of children under 13 specifically through websites or applications; the Family Educational Rights and Privacy Act of 1974 (FERPA) offers protections for student education records, and some states have passed one or another version of a Student Online Personal Information

Protection Act (SOPIPA) (currently under consideration by Vermont lawmakers) which offers protections for student information that may be collected by education technology companies. However, these laws operate in specific ways and may not apply to some, perhaps many, data brokers.

Brokered Personal Information (“BPI”) Security Breaches in the Prior Year:

No data brokers reported known security breaches in the prior year. This may be because they did not monitor for “BPI” breaches. As a consequence there is no enumeration of Vermonters potentially affected by such breaches if they did occur.

Other Information Submitted by the Data Broker:

Many data brokers offered links to their website(s), or other contact information.

Conclusion:

This is a supplement to the preliminary report based on information provided by the Secretary of State. We expect to learn more about the data broker industry over time. We recommend that future registration submissions be collected online or electronically for ease of submission, use and analysis.