

Memorandum 2014-31

**State and Local Agency Access to Customer Information  
from Communication Service Providers  
(Scope of Study)**

In 2013, the Legislature approved Senate Concurrent Resolution 54 (Padilla), which assigned the Commission<sup>1</sup> a new study. The text of the resolution and three legislative analyses of the resolution are attached in the Exhibit, as follows:

|  | <i>Exhibit p.</i> |
|--|-------------------|
| • Senate Concurrent Resolution 54 (Padilla) .....                                | 1                 |
| • Senate Committee on Judiciary Analysis of SCR 54 (Padilla)<br>(7/2/13) .....   | 3                 |
| • Senate Rules Committee Floor Analysis of SCR 54 (Padilla)<br>(8/13/13).....    | 10                |
| • Assembly Committee on Judiciary Analysis of SCR 54 (Padilla)<br>(8/27/13)..... | 15                |

At its February 2014 meeting, the Commission considered Memorandum 2014-5, which discussed the scope of the Commission’s duty and authority under SCR 54. It is typical for the staff to prepare such an analysis at the beginning of a new study, to be sure that all involved agree on the permissible parameters of the work. Notably, Senator Padilla (the author of SCR 54) and Jacqueline Kinney (Principal Consultant for the Senate Committee on Energy, Utilities, and Communication) were both present at the February 2014 meeting. Neither have expressed any concerns about the staff’s analysis of the scope of the work assigned by SCR 54.

At the June 2014 meeting, the Commission again discussed the scope of the Commission’s authority under SCR 54. In particular, questions were raised about whether SCR 54 requires or authorizes the Commission to study:

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

- (1) The responsibilities of a communication service provider when presented with a government request for customer information.
- (2) Private party access to customer information of a communication service provider.
- (3) A police search of a cell phone.

The staff was directed to prepare a memorandum discussing those issues, for consideration at a future meeting.<sup>2</sup> This memorandum was prepared pursuant to that direction.

#### TEXT OF THE RESOLUTION

The best source of authority for the meaning of the resolution is the text of the resolution itself. If the text is unambiguous, we need look no further to discern its meaning. Only if the text is unclear should we look to evidence of legislative intent.<sup>3</sup>

As is typical for a resolution, the text of SCR 54 is divided into two parts, the “whereas clauses” followed by the “be it resolved” language. Those two parts are examined separately below.

#### **“Whereas Clauses”**

The whereas clauses are akin to legislative findings and declarations. They explain the need for the resolution, but do not mandate any action or result. In other words, they provide interpretive context for the legal mandate that is then set out in the “be it resolved” language. The text of each of the whereas clauses is presented below, followed by a brief discussion of the text.

WHEREAS, Widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect, and retain large quantities of information regarding customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications; ...<sup>4</sup>

The above clause describes the extent to which communication service providers collect and retain customer information. The passage seems to express concern about customer information that is “retained” by service providers.

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2. See Minutes (June 2014).

3. Kaufman & Broad Communities, Inc. v. Performance Plastering, 132 Cal. App. 4th 299, 302 (2005) (“resort to legislative history is appropriate only where statutory language is ambiguous”).

4. See Exhibit p. 1.

WHEREAS, Government requests to communications service providers for customer information have increased dramatically in recent years, especially by law enforcement agencies; ...<sup>5</sup>

The above clause discusses *government* access to customer information.

WHEREAS, California statutes governing access to customer information lack clarity and uniform definitions as to the legal standard for government agencies to obtain customer information from communications service providers, and many were enacted prior to the advent of wireless mobile services and the Internet; ...<sup>6</sup>

The above clause again discusses *government* access to customer information, noting the lack of “clarity and uniform definitions” in existing law on that topic. The clause also suggests that the governing statutes may not have kept pace with technological change.

WHEREAS, Revising and updating these statutes is necessary to reflect modern technologies and clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information; ...<sup>7</sup>

The above clause again expresses concern about technological obsolescence. It expressly refers to *government agencies* seeking customer information. It also refers to the rights and responsibilities of customers and communications service providers. While the latter references are fairly open-ended, there is no mention of private parties seeking access to customer information.

In summary, the whereas clauses contain clear evidence of legislative concern about government access to customer information. They do not contain any express discussion of private party access to such information.

#### **“Be It Resolved” Language**

The “be it resolved” language is the part of the resolution that requires action by the Commission. That language is divided into two parts. First, there is language mandating the Commission’s study and specifying its subject:

[T]he California Law Revision Commission shall report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from

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5. *Id.*

6. *Id.*

7. *Id.*

communications service providers, in order to do all of the following:<sup>8</sup>

That mandate seems fairly unambiguous. There is no mention of access by private entities or access from anyone other than a communication service provider.

Does the remainder of the resolution language expand the scope of the mandated study? It does not appear to do so.

The transitional language at the end of the mandate (“in order to do all of the following”) introduces and frames the subdivisions that follow. Given that transition, it seems clear that those subdivisions specify the *goals* that the Commission is to achieve in its study, rather than expanding the scope of the study. The stated goals are:

(a) Update statutes to reflect 21st Century mobile and Internet-based technologies.

(b) Protect customers’ constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures.

(c) Enable state and local government agencies to protect public safety.

(d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer’s service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required; ...<sup>9</sup>

If one were to disregard the transitional introductory language and instead read those subdivisions as establishing separate grants of authority, the result would be an impossibly broad study, touching a wide range of subjects. For example, under such a reading subdivision (a) would encompass *any* statute that involves the use of modern communications in *any* subject area (e.g., professional licensing, contracts, civil procedure, evidence, government administration, insurance, etc.). The only limitation would be the direction that such statutes be “updated.” That cannot be correct.

Thus, the plain language of the resolution states the duty and authority of the Commission fairly clearly: recommend revisions to statutes on government access to customer information from communication service providers, to

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8. *Id.*

9. *Id.* at 1-2.

achieve the specified ends. The staff sees nothing in the resolution that directs or authorizes study of access by private parties or from anyone other than a communication service provider.

#### LEGISLATIVE HISTORY

Despite the fairly clear language used in SCR 54, it is worth taking a moment to walk through the main evidence of legislative intent. As will be seen, that evidence supports the view that the resolution was not intended to address private party access to customer information. It also sheds some light on one potential point of ambiguity, the meaning of the word “from” in the phrase “from communication service providers.” The latter issue is discussed separately below, under the heading “Information Obtained from Person Other Than Communication Service Provider.”

Two types of cognizable legislative history<sup>10</sup> are discussed below, the Legislative Counsel’s Digest of SCR 54 and three legislative analyses of the resolution.

#### **Legislative Counsel’s Digest**

When the Office of Legislative Counsel prepares a bill, it includes a “Legislative Counsel’s Digest” that summarizes the effect of the bill. The Legislative Counsel’s Digest for SCR 54 is very brief. In its entirety, it reads:

##### Legislative Counsel’s Digest

SCR 54, Padilla. California Law Revision Commission: referral for study.

Existing law requires the California Law Revision Commission to study any topic referred to it for study by concurrent resolution of the Legislature.

This measure would require the commission to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers, as specified.

Fiscal Committee: YES<sup>11</sup>

As can be seen, the digest only mentions *government* access to information from communication service providers. There is no mention of private access or access to information from anyone other than a communication service provider.

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10. Kaufman & Broad Communities, Inc. v. Performance Plastering, 132 Cal. App. 4th 299, 302, 307 (2005) (and cases collected therein).

11. See Exhibit p. 1.

## Senate Committee on Judiciary

The Senate Committee on Judiciary, which was the first to hear SCR 54, prepared a written analysis of the measure. It begins with a brief “Description” of SCR 54:

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (i.e., telephone, DSL, broadband companies).<sup>12</sup>

In the “Background” portion of the analysis, the committee states:

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers.<sup>13</sup>

In the “Changes to Existing Law” portion of the analysis, the committee states:

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers...<sup>14</sup>

In discussing the “stated need for the bill,” the committee quotes the author, Senator Padilla:

California statutes governing access by state and local government agencies to customer information from communications service providers lack a clear framework and defined legal standard for when government can obtain customer information and from whom. These statutes are scattered throughout the California Code, [and] lack consistent and clear definitions for what is required when a service provider gets a request for information. Many of the statutes were enacted in the era of monopoly landline telephone service [and] do not reflect the vast amount of information available with modern technologies from numerous providers.<sup>15</sup>

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12. *Id.* at 3.

13. *Id.*

14. *Id.* at 4.

15. *Id.* at 5.

The committee goes on to discuss “increased cell phone data collection by law enforcement and [the] need to update consumer privacy protections.”<sup>16</sup> In discussing that issue, the analysis states:

This Senate Concurrent Resolution seeks to require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (i.e., telephone, DSL, broadband companies).<sup>17</sup>

The analysis concludes by listing a number of existing statutes that address “government access to private information.”<sup>18</sup> That discussion concludes:

As noted ..., there are a myriad of state laws relating to government access to communications customer’s information and restrictions of customer communications. This measure would require the CLRC to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (telephone, DSL, broadband companies). The concept behind this measure is to update the statutes to reflect current mobile and Internet-based technologies, protect consumer constitutional rights, including privacy, free speech, and freedom from unlawful searches and seizures, address appropriate public safety concerns of state and local government agencies, and clarify the disclosure process when communications companies release information to state and local agencies.

As can be seen, the exclusive focus of the analysis is on *government* access to customer information. The staff finds no language in the analysis discussing a study of private party access to customer information.

### **Senate Rules Committee Floor Analysis**

In preparation for a floor vote on SCR 54, the Senate Rules Committee, Office of Senate Floor Analyses, prepared a written analysis of the resolution.

In the “Digest” portion of that analysis, the committee stated:

This resolution requires the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government

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16. *Id.*

17. *Id.*

18. *Id.* 6-8.

agencies to customer information from communications service providers, as specified.<sup>19</sup>

In its “Analysis” of the measure, the committee writes:

This resolution: ... Requires the CLRC to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers....<sup>20</sup>

Again, the analysis focuses exclusively on *government* access to customer information from communication service providers. There is no mention of access by private parties or from anyone other than a communication service provider.

### **Assembly Committee on Judiciary**

The Assembly Committee on Judiciary was the last policy committee to analyze the resolution.<sup>21</sup>

The committee’s analysis describes the “Subject” of SCR 54 as follows: “Government Access to Communication Service Providers.”<sup>22</sup>

It describes the “Key Issue” presented in the resolution as follows:

Should the California Law Revision Commission make recommendations to the Legislature on revising statutes regulating government access to customer information held by a communications service provider?<sup>23</sup>

The “Synopsis” portion of the analysis states:

This non-controversial resolution requires the California Law Revision Commission (CLRC) to report and make recommendations to the Legislature relating to the statutes that govern local and state agency access to customer information held by a communications service provider. Several existing law provisions distributed throughout the California Code address specific instances in which a state or local agency may request information from a service provider, but according to the author these varied provisions lack clear and consistent standards. The author also contends that these often dated statutory provisions do not always take into account 21st century online and mobile technology. In addition to requiring the CLRC to make

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19. *Id.* at 10.

20. *Id.* at 11.

21. There was also an analysis prepared by the Assembly Committee on Appropriations, but it focused on fiscal issues.

22. *Id.* at 15.

23. *Id.*



recommendations, the resolution also makes declarations relating to the new technologies that allow service providers to collect large amounts of customer information, the increasing number of government requests for such information, the lack of clear and consistent standards relating to such requests, and the need to update and clarify existing law accordingly. There is no known opposition to the measure and it has yet to receive any negative floor or committee votes.<sup>24</sup>

As with the Senate analyses, the committee is focused exclusively on *government* access to customer information from communication service providers. There is no mention of private party access or access from anyone other than a communication service provider.

### **Information Obtained from Person Other Than Communication Service Provider**

All of the authorities discussed above speak of government access to customer information *from* communication service providers. What does that mean?

In Memorandum 2014-5, the staff interpreted that language to mean access to information that is being held by communication service providers. In other words, it describes a situation where a government agency approaches a service provider and requests that certain information in the provider's possession be turned over. As discussed in that memorandum, the staff did not construe the language as including information that government seizes directly from a customer (e.g., by searching a detainee's cell phone), because in such cases the information is not being obtained "from" a service provider.

At the Commission's June meeting, another possible interpretation was suggested. Perhaps the word "from" is not being used to describe the source from which government *obtains* customer information, but instead refers to the ultimate *origin* of the customer information. Because all communication information in a person's cell phone gets there "from" a communication service provider, SCR 54 encompasses any government access to information in a person's cell phone. (This reading would also seem to extend to tablet devices, book readers, laptops, desktop computers, GPS navigational devices, wearable computing technology, and numerous devices in the expanding "Internet of

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24. *Id.*

Things,” all of which can contain information received “from” a communication service provider.)

Both readings are linguistically possible. But the staff does not believe that they are equally plausible.

There is ample evidence that the Legislature intended the Commission to study government requests for information that are submitted directly to a communication service provider. For example, the resolution expressly refers to “[g]overnment requests to communications service providers”<sup>25</sup> and “the process communications service providers are required to follow in response to requests from state and local agencies for customer information...”<sup>26</sup> Also, the three analyses contain more than a dozen express references to government requests for customer information that are submitted to service providers.<sup>27</sup>

By contrast, the only evidence that might support a broader interpretation, encompassing cell phone searches, is a single sentence in the Senate Committee on Judiciary’s analysis. In the relevant portion of that analysis, the committee is discussing “increased cellphone data collection by law enforcement.” Much of that discussion focuses on requests made directly to cell phone providers, but there is also a brief mention of a *New York Times* article that discusses cell phone searches.<sup>28</sup>

Neither that article nor cell phone searches are mentioned in the analysis prepared by the Assembly Committee on Judiciary. Its analysis repeatedly uses language that supports the narrower interpretation of the study’s scope. It

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25. *Id.* at 1.

26. *Id.* at 2.

27. See, e.g., Exhibit pp. 5 (“what is required when a service provider gets a request for information,” “law enforcement requests to providers,” “requests to service providers from law enforcement”), 12 (“service provider gets a request for information”), 13 (“law enforcement requests to providers,” “requests to service providers from law enforcement”), 15 (“government access to customer information held by a communications service provider,” “local and state agency access to customer information held by a communications service provider,” “[g]overnment requests to communication service providers”), 16 (“law enforcement has correspondingly increased the number of requests for information that it makes to the providers of those services,” “law enforcement requests to service providers,” “local and state agency access to customer information held by a communications service provider”), 17 (“government’s authority to access customer information in the possession of a communications service provider,” “state or local agency may request information from a service provider,” “clarify the process that communications providers will be required to follow when responding to a state or local agency request for information”), (“government’s authority to access customer information in the possession of a communications service provider”), 18 (“what is required when a service provider gets a request for information”).

28. See Exhibit p. 5.

describes the “Subject” of SCR 54 as “Government Access to Communication Service Providers.”<sup>29</sup> And the “Key Issue” presented by the resolution is:

Should the California Law Revision Commission make recommendations to the Legislature on revising statutes regulating government access to customer information *held by* a communications service provider?<sup>30</sup>

Similarly, in the first sentence of its “Synopsis,” the analysis states that the resolution would require the commission to study “local and state agency access to customer information *held by* a communications service provider.”<sup>31</sup> Later, the analysis refers to information “*in the possession of* a communications service provider.”<sup>32</sup> Such language does not seem to contemplate a direct search of information that is “held by” or “in the possession of” the customer.

#### ANALYSIS

In general, the Commission must limit its studies to those that have been expressly authorized by the Legislature, by concurrent resolution or statute.<sup>33</sup> There is a narrow exception to that limitation, granting general authority to “correct technical or minor substantive defects.”<sup>34</sup> The staff does not believe that exception can be stretched to serve as authority for a study involving major policy issues. In order to avoid over-reaching in this study, the Commission needs to stay within the scope of authority established by SCR 54.

At the June 2014 meeting, Commissioners asked whether SCR 54 authorizes the Commission to study the following matters:

- (1) The responsibilities of a communication service provider when presented with a government request for customer information.
- (2) Private party access to customer information of a communication service provider.
- (3) A police search of a cell phone.

The analysis below addresses those questions.

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29. *Id.* at 15 (emphasis added).

30. *Id.* (emphasis added).

31. *Id.* (emphasis added).

32. *Id.* at 17 (emphasis added).

33. Gov’t Code § 8293.

34. Gov’t Code § 8298.

## **Responsibility of Communication Service Provider Regarding Government Request for Customer Information**

SCR 54 specifically directs the Commission to clarify the procedure that a communication service provider must follow in response to a government request for customer information.<sup>35</sup> That direction is reinforced by one of the whereas clauses, which states that the law must be revised to “clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information.”

That seems correct and unobjectionable. Any well-developed statutory procedure for submitting a government request for customer information will spell out the responsibilities of all parties to the request. Similarly, a well-developed scheme of limitations on disclosure will address the consequences of non-compliance. **The Commission will need to address such matters in this study.**

### **Private Party Access to Customer Communication Information**

In the staff’s opinion, SCR 54 does not authorize the Commission to study private party access to customer communication records.

This does not seem like a close call. The resolution text and the legislative history repeatedly and clearly state that the Commission is to study government access to customer information. There is no mention of private party access to such data.

That omission is significant. A study of private party access to private communication data would be an enormous, complex, and controversial undertaking. It would involve major policy questions that have little overlap with the study of government access. For example:

- What are the existing legal limits on private party access to and use of customer data?
- Are there any existing public policy limitations on the enforceability of a service agreement that authorizes such access and use?
- Should California law trump such agreements? How? Why? With what economic effect?

It is implausible that the Legislature would have intended the Commission to study such important issues, without any express reference to them in the

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35. See Exhibit p. 2.

resolution or the legislative history. **The staff strongly recommends that the Commission limit its study to customer information accessed by government.**

### **Cell Phone Searches**

As discussed above, the language of the resolution is susceptible to two possible interpretations, based on differing meanings of the word “from” in the phrase “information from communication service providers.” Those two interpretations are as follows:

- (1) *The Commission is to study government access to customer information that it obtains directly from a communication service provider.* This would not include a search of a cell phone or other access to information directly from a customer.
- (2) *The Commission is to study government access to any customer information that involves communication services, regardless of where it is held.* This would include a cell phone search, because communications data within a cell phone came “from” a communication service provider.

The first meaning is plainly supported in the text of the resolution and the legislative history. But that does not necessarily preclude the second meaning. It is possible that the Legislature meant both (in fact, the former is probably subsumed within the latter).

However, there is almost no support in the legislative history for the second interpretation. The only relevant language is a brief reference to cell phone searches, which is part of a broader discussion of increasing government access to private communication data.

Furthermore, the Assembly Committee on Judiciary’s analysis repeatedly uses language that seems incompatible with the second interpretation (i.e., the various references to information “held by” or “in the possession of” communication service providers). Such language is used in passages directly touching on the scope of the resolution (the “Subject,” “Key Issue,” and “Synopsis” sections of the analysis).

It is also worth noting that the broader study would introduce major new policy issues that are not discussed anywhere in the resolution or legislative history. For example, if we were to study direct searches of computing devices, we would need to consider a number of different factual contexts: traffic stops, vehicle searches, border searches, search incident to arrest, search of found property, and student searches in public schools. As noted earlier, the study

would likely reach beyond cell phones to include any device that receives data from a service provider, including desktop computers. It seems unlikely that the Legislature would have included such issues within the scope of the study without providing much clearer guidance of its intentions, in both the resolution and the legislative history. By way of comparison, issues relating to government requests to service providers are discussed repeatedly throughout the materials.

On balance, the staff finds much stronger support for the narrower interpretation — i.e., the Commission is required to study government access to information that it obtains directly from providers. In other words, the study does not encompass cell phone searches or other access to information directly from a customer. That said, the second interpretation is not impossible, and **the Commission needs to decide how broadly to frame this study.**

#### ONE FINAL ISSUE

In closely revisiting the resolution and its legislative history, the staff noticed one issue that it had previously overlooked.

In specifying the objectives of the Commission's study, the resolution requires that the Commission do the following:

Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information *or in order to take action that would affect a customer's service*, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required....<sup>36</sup>

What is the meaning of the italicized language?

The Senate Committee on Judiciary's analysis of SCR 54 mentions a Legislative Counsel opinion that refers to statutes that restrict an individual's use of a communications service:

Government's authority to restrict communications service to a customer

The Opinion also noted that numerous provisions of state law relate to the government's authority to restrict communications service to a customer and provided the following examples:

- Business and Professions Code Section 149 authorizes a government agency to notify a telephone company to

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36. See Exhibit p. 2 (emphasis added).

disconnect service to any customer unlawfully advertising in a telephone directory.

- Penal Code Section 4576 authorizes the Department of Corrections and Rehabilitation to use available technology to restrict communications to or from a wireless device brought by a person, without authorization, within the secure perimeter of a detention facility.
- Public Utilities Code Section 5322 requires the Public Utilities Commission to disconnect telephone service provided to an unpermitted household goods carrier (moving service). ...<sup>37</sup>

The Assembly Committee on Judiciary's analysis also refers to statutes that are relevant to "government's authority to take action on the provision of communications service to a customer...."<sup>38</sup>

In light of the foregoing, it appears that in addition to the matters previously described, SCR 54 directs the Commission to recommend statutory revisions in order to clarify the procedure used when government takes action that would affect a customer's service.

**If the Commission agrees that SCR 54 requires a study of that issue, the staff recommends that it be addressed in a second, separate phase of the study.** The legal and operational issues involved in government action to "affect" communication services are likely to be very different from those that relate to surveillance. It would probably be best to study the two issues separately.

Respectfully submitted,

Brian Hebert  
Executive Director

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37. *Id.* at 6.

38. *Id.* at 17.

## Senate Concurrent Resolution No. 54

### RESOLUTION CHAPTER 115

Senate Concurrent Resolution No. 54—Relative to the California Law Revision Commission.

[Filed with Secretary of State September 10, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

SCR 54, Padilla. California Law Revision Commission: referral for study. Existing law requires the California Law Revision Commission to study any topic referred to it for study by concurrent resolution of the Legislature. This measure would require the commission to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers, as specified.

WHEREAS, Widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect, and retain large quantities of information regarding customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications; and

WHEREAS, Government requests to communications service providers for customer information have increased dramatically in recent years, especially by law enforcement agencies; and

WHEREAS, California statutes governing access to customer information lack clarity and uniform definitions as to the legal standard for government agencies to obtain customer information from communications service providers, and many were enacted prior to the advent of wireless mobile services and the Internet; and

WHEREAS, Revising and updating these statutes is necessary to reflect modern technologies and clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the California Law Revision Commission shall report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:

(a) Update statutes to reflect 21st Century mobile and Internet-based technologies.

(b) Protect customers' constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures.



- (c) Enable state and local government agencies to protect public safety.
- (d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer's service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

**SENATE JUDICIARY COMMITTEE**  
**Senator Noreen Evans, Chair**  
**2013-2014 Regular Session**

SCR 54 (Padilla)  
As Introduced  
Hearing Date: July 2, 2013  
Fiscal: Yes  
Urgency: No  
TMW

**SUBJECT**

California Law Revision Commission: Referral for Study

**DESCRIPTION**

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (i.e., telephone, DSL, broadband companies).

**BACKGROUND**

The California Law Revision Commission (CLRC) was created in 1953 and tasked with the responsibility for a continuing substantive review of California statutory and decisional law. The CLRC studies the law in order to discover defects and make related recommendations to the Legislature for needed reforms.

The CLRC's enabling statute recognizes two types of topics the CLRC is authorized to study: (1) those that the CLRC identifies for study and lists in the Calendar of Topics that it reports to the Legislature; and (2) those that the Legislature assigns to the CLRC directly, by statute or concurrent resolution. In the past, the bulk of the CLRC's study topics have come through the first route - matters identified by the CLRC and approved by the Legislature. Once the CLRC identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the CLRC to conduct the study. Direct legislative assignments have become much more common in recent years, and many of the CLRC's recent studies were directly assigned by the Legislature.

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers.

## CHANGES TO EXISTING LAW

Existing law authorizes the California Law Revision Commission to study topics approved by concurrent resolution of the Legislature. (Gov. Code Sec. 8293.)

Existing law prohibits an employee or member of the CLRC, with respect to any proposed legislation concerning matters assigned to the commission for study, advocate for the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature unless requested to do so by the committee or its chairperson. (Gov. Code Sec. 8288.)

This measure would require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:

- update statutes to reflect 21st Century mobile and Internet-based technologies;
- protect customers' constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures;
- enable state and local government agencies to protect public safety; and
- clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer's service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required.

This measure would make the following legislative statements:

- widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect, and retain large quantities of information regarding customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications;
- government requests to communications service providers for customer information have increased dramatically in recent years, especially by law enforcement agencies;
- California statutes governing access to customer information lack clarity and uniform definitions as to the legal standard for government agencies to obtain customer information from communications service providers, and many were enacted prior to the advent of wireless mobile services and the Internet; and
- revising and updating these statutes is necessary to reflect modern technologies and clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information.

## COMMENT

### 1. Stated need for the bill

The author writes:

California statutes governing access by state and local government agencies to customer information from communications service providers lack a clear framework and defined legal standard for when government can obtain customer information and from whom. These statutes are scattered throughout the California Code, lack consistent and clear definitions for what is required when a service provider gets a request for information. Many of the statutes were enacted in the era of monopoly landline telephone service do not reflect the vast amount of information available with modern technologies from numerous providers.

An update is needed because widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect and retain large quantities of information about customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications. Nearly all Californians (92 [percent]) have a cell phone, 58 percent of them have a smartphone, and nearly all (86 [percent]) use the Internet at least occasionally, according to a new survey by the Public Policy Institute of California released June 26, 2013. As use of these services increases, so have law enforcement requests to providers for customer information. A Congressional inquiry last year found that requests to service providers from law enforcement increased between 12 percent and 16 percent in each of the previous five years. The time is now to update California law to reflect when and how state and local government can obtain customer information related to the ever-expanding use of modern communications services.

### 2. Increased cellphone data collection by law enforcement and need to update consumer privacy protections

This Senate Concurrent Resolution seeks to require the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (i.e., telephone, DSL, broadband companies).

Last year, a Congressional inquiry made by Congressman Ed Markey (D-Massachusetts), senior member of the United States House of Representatives Energy and Commerce Committee and Co-Chair of the Congressional Bi-Partisan Privacy Caucus, found that requests to telecommunications service providers from law enforcement officials increased between 12 percent and 16 percent in each of the previous five years. The inquiry also revealed that federal, state, and local law enforcement made approximately 1.3 million requests for cell phone records to wireless

carriers in 2011. The information provided by the wireless carriers to law enforcement included geolocation information, text message content, wiretaps, and “cell tower dumps,” in which carriers provide all the phone numbers of cell users that connected with a tower during a discreet period of time. (See Markey: Law Enforcement Collecting Information on Millions of Americans from Mobile Phone Carriers (July. 9, 2012) <<http://markey.house.gov/press-release/markey-law-enforcement-collecting-information-millions-americans-mobile-phone-carriers>> [as of June 27, 2013].)

Furthermore, a recent New York Times article stated that judges and lawmakers across the country are now wrangling over whether and when law enforcement authorities should have access to consumer cellphone data and how the information may be used as evidence in criminal cases. (Sengupta, *Courts Divided over Searches of Cellphones* (Nov. 25, 2012) N.Y. Times <<http://www.nytimes.com/2012/11/26/technology/legality-of-warrantless-cellphone-searches-goes-to-courts-and-legislatures.html?pagewanted=all>> [as of June 27, 2013].) In California, a January 2013 report of the California Attorney General indicated that the explosion in use of mobile and Internet-based services requires new approaches to protect consumers in connection with service providers’ collection, use, and disclosure to third parties of personal information. (Cal. Atty. Gen., *Privacy on the Go, Recommendations for the Mobile Ecosystem* (Jan. 2013) <[http://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/privacy\\_on\\_the\\_go.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/f2704030-39d9-44a1-8217-39a325a9a46c/3/hilite/](http://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/privacy_on_the_go.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/f2704030-39d9-44a1-8217-39a325a9a46c/3/hilite/)> [as of June 27, 2013] p. i.)

### 3. Legislative Counsel Bureau Opinion on government access to private information

According to a Legislative Counsel Bureau opinion issued at the author’s request, there are multiple laws relative to the government’s authority to access information conveyed or acquired through or related to the use of technology, or to restrict an individual’s use of a communications service. (Ops. Cal. Legis. Counsel, No. 1304153 (Apr. 25, 2013) p. 1.) That Opinion noted that the scope of the government’s authority is generally dependent on federal and constitutional law, and provided examples of codified state law relevant to the government’s authority to access or take action relative to an individual’s communications. (*Ibid.*)

#### a. Government’s authority to access customer information from a communications service provider

According to that Opinion, there are numerous provisions of codified state law that relate to the government’s authority to access customer information from a communications service provider. Some examples are as follows:

- Code of Civil Procedure Section 1985.3 establishes procedures for a law enforcement agency to subpoena a consumer’s personal records maintained by a telephone company; this provision requires the consumer’s consent to the release of information.

- The California Public Records Act, Government Code Sec. 6250 et seq., generally requires documents maintained by public agencies to be open for public inspection. Government Code Section 6254.16 provides an exemption from public disclosure for information of a public utility customer unless the information is requested by another governmental agency or upon a court order or the request of a law enforcement agency relative to an ongoing investigation.
- The Penal Code authorizes a government agency to obtain customer information pursuant to a search warrant, without notifying the customer. (*See* Pen. Code Secs. 1473 et seq., 1524.3, 4576.)
- The Public Utilities Code authorizes an employee of a district attorney office to request and receive from telephone, gas, and electric public utilities customer information, as specified, and authorizes release of customer information to the Public Utilities Commission without customer consent. (Pub. Util Code Secs. 588, 2891.) (*Id.* at pp. 1-7.)

b. Government's authority to restrict communications service to a customer

The Opinion also noted that numerous provisions of state law relate to the government's authority to restrict communications service to a customer and provided the following examples:

- Business and Professions Code Section 149 authorizes a government agency to notify a telephone company to disconnect service to any customer unlawfully advertising in a telephone directory.
- Penal Code Section 4576 authorizes the Department of Corrections and Rehabilitation to use available technology to restrict communications to or from a wireless device brought by a person, without authorization, within the secure perimeter of a detention facility.
- Public Utilities Code Section 5322 requires the Public Utilities Commission to disconnect telephone service provided to an unpermitted household goods carrier (moving service). (*Id.* at pp. 7-12.)

c. Government's authority to use technology to access personal information

The Opinion also identified numerous provisions of state law relating to the government's authority to use technology to access an individual's personal information as follows:

- Penal Code Section 629.50 et seq. authorizes a law enforcement agency to intercept wire or electronic cellular telephone communications related to a crime.
- Penal Code Sections 632 and 632.5 authorize a public utility providing communications services to eavesdrop or record a customer's confidential communication without the consent of all parties, and authorizes a telephonic communication system within a state, county, city and county, and city correctional facility to eavesdrop and record confidential communications.

- Penal Code Section 633.8 authorizes a peace officer to use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record any oral communication under specified emergency situations. (*Id.* at pp. 12-23.)

4. Report regarding state and local government agency access to communications service provider customer information

As noted in Comment 3, there are a myriad of state laws relating to government access to communications customer's information and restrictions of customer communications. This measure would require the CLRC to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers (telephone, DSL, broadband companies). The concept behind this measure is to update the statutes to reflect current mobile and Internet-based technologies, protect consumer constitutional rights, including privacy, free speech, and freedom from unlawful searches and seizures, address appropriate public safety concerns of state and local government agencies, and clarify the disclosure process when communications companies release information to state and local agencies.

Support: None Known

Opposition: None Known

### HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation:

AB 567 (Wagner, Ch. 15, Stats. 2013) repealed the requirement that the CLRC make the decennial recommendations, and retained the CLRC's general authority to study, review, and make recommendations regarding the enforcement of judgments law.

ACR 98 (Wagner, Res. Ch. 108, Stats. 2012) required the CLRC, before commencing work on any project within the calendar of topics the Legislature has authorized or directed the CLRC to study, to submit a detailed description to legislative members, as specified, and required the CLRC to provide a copy of a commission recommendation to each member of a policy committee that is hearing a bill that would implement the recommendation.

ACR 49 (Evans, Res. Ch. 98, Stats. 2009) required the CLRC, prior to commencing work on any project within the list of topics authorized or directed for study by the Legislature, to submit a detailed description of the scope of work to the Chairs and Vice

Chairs of the Committees on Judiciary of the Senate and Assembly, and if during the course of the project there is a major change to the scope of work, submit a description of the change.

ACR 125 (Papan, Ch. 167, Stats. 2002) authorized the CLRC to study, report on, and prepare recommended legislation concerning the issue of financial privacy to address protection and control of a consumer's personal information and provide both administrative and civil penalties.

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**SENATE RULES COMMITTEE**

SCR 54

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

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CONSENT

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Bill No: SCR 54  
Author: Padilla (D)  
Amended: As introduced  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 6-0, 7/2/13  
AYES: Walters, Anderson, Corbett, Jackson, Leno, Monning  
NO VOTE RECORDED: Evans

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT**: California Law Revision Commission

**SOURCE**: Author

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**DIGEST**: This resolution requires the California Law Revision Commission (CLRC) to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers, as specified.

**ANALYSIS**:

Existing law:

1. Authorizes the California Law Revision Commission to study topics approved by concurrent resolution of the Legislature.
2. Prohibits an employee or member of the CLRC, with respect to any proposed legislation concerning matters assigned to the commission for study, advocate for the passage or defeat of the legislation by the Legislature or the approval or

veto of the legislation by the Governor or appear before any committee of the Legislature unless requested to do so by the committee or its chairperson.

This resolution:

1. Requires the CLRC to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:
  - A. Update statutes to reflect 21st Century mobile and Internet-based technologies;
  - B. Protect customers' constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures;
  - C. Enable state and local government agencies to protect public safety; and
  - D. Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer's service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required.
2. Makes the following legislative statements:
  - A. Widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect, and retain large quantities of information regarding customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications;
  - B. Government requests to communications service providers for customer information have increased dramatically in recent years, especially by law enforcement agencies;
  - C. California statutes governing access to customer information lack clarity and uniform definitions as to the legal standard for government agencies to obtain customer information from communications service providers, and

many were enacted prior to the advent of wireless mobile services and the Internet; and

- D. Revising and updating these statutes is necessary to reflect modern technologies and clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information.

### Background

The CLRC was created in 1953 and tasked with the responsibility for a continuing substantive review of California statutory and decisional law. The CLRC studies the law in order to discover defects and make related recommendations to the Legislature for needed reforms.

The CLRC's enabling statute recognizes two types of topics the CLRC is authorized to study: (1) those that the CLRC identifies for study and lists in the Calendar of Topics that it reports to the Legislature; and (2) those that the Legislature assigns to the CLRC directly, by statute or concurrent resolution. In the past, the bulk of the CLRC's study topics have come through the first route - matters identified by the CLRC and approved by the Legislature. Once the CLRC identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the CLRC to conduct the study. Direct legislative assignments have become much more common in recent years, and many of the CLRC's recent studies were directly assigned by the Legislature.

### Comments

According to the author's office, California statutes governing access by state and local government agencies to customer information from communications service providers lack a clear framework and defined legal standard for when government can obtain customer information and from whom. These statutes are scattered throughout the California Code and lack consistent and clear definitions for what is required when a service provider gets a request for information. Many of the statutes were enacted in the era of monopoly landline telephone service do not reflect the vast amount of information available with modern technologies from numerous providers.

An update is needed because widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect and retain large quantities of information about customers,

including when and with whom a customer communicates or transacts business, location data, and the content of communications. Nearly all Californians (92%) have a cell phone, 58% of them have a smartphone, and nearly all (86%) use the Internet at least occasionally, according to a new survey by the Public Policy Institute of California released June 26, 2013. As use of these services increases, so have law enforcement requests to providers for customer information. A Congressional inquiry last year found that requests to service providers from law enforcement increased between 12% and 16% in each of the previous five years. The time is now to update California law to reflect when and how state and local government can obtain customer information related to the ever-expanding use of modern communications services.

### Prior Legislation

AB 567 (Wagner, Chapter 15, Statutes of 2013) repealed the requirement that the CLRC make the decennial recommendations, and retained the CLRC's general authority to study, review, and make recommendations regarding the enforcement of judgments law.

ACR 98 (Wagner, Resolution Chapter 108, Statutes of 2012) required the CLRC, before commencing work on any project within the calendar of topics the Legislature has authorized or directed the CLRC to study, to submit a detailed description to legislative members, as specified, and required the CLRC to provide a copy of a commission recommendation to each member of a policy committee that is hearing a bill that would implement the recommendation.

ACR 49 (Evans, Resolution Chapter 98, Statutes of 2009) required the CLRC, prior to commencing work on any project within the list of topics authorized or directed for study by the Legislature, to submit a detailed description of the scope of work to the Chairs and Vice Chairs of the Committees on Judiciary of the Senate and Assembly, and if during the course of the project there is a major change to the scope of work, submit a description of the change.

ACR 125 (Papan, Resolution Chapter 167, Statutes of 2002) authorized the CLRC to study, report on, and prepare recommended legislation concerning the issue of financial privacy to address protection and control of a consumer's personal information and provide both administrative and civil penalties.

**FISCAL EFFECT:** Fiscal Com.: Yes

AL:nl 8/13/13 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\* **END** \*\*\*

Date of Hearing: August 27, 2013

ASSEMBLY COMMITTEE ON JUDICIARY  
Bob Wieckowski, Chair  
SCR 54 (Padilla) – As Introduced: June 24, 2013

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: GOVERNMENT ACCESS TO COMMUNICATION SERVICE PROVIDERS

KEY ISSUE: SHOULD THE CALIFORNIA LAW REVISION COMMISSION MAKE RECOMMENDATIONS TO THE LEGISLATURE ON REVISING STATUTES REGULATING GOVERNMENT ACCESS TO CUSTOMER INFORMATION HELD BY A COMMUNICATIONS SERVICE PROVIDER?

FISCAL EFFECT: As currently in print this measure is keyed fiscal.

**SYNOPSIS**

*This non-controversial resolution requires the California Law Revision Commission (CLRC) to report and make recommendations to the Legislature relating to the statutes that govern local and state agency access to customer information held by a communications service provider. Several existing law provisions distributed throughout the California Code address specific instances in which a state or local agency may request information from a service provider, but according to the author these varied provisions lack clear and consistent standards. The author also contends that these often dated statutory provisions do not always take into account 21<sup>st</sup> century online and mobile technology. In addition to requiring the CLRC to make recommendations, the resolution also makes declarations relating to the new technologies that allow service providers to collect large amounts of customer information, the increasing number of government requests for such information, the lack of clear and consistent standards relating to such requests, and the need to update and clarify existing law accordingly. There is no known opposition to the measure and it has yet to receive any negative floor or committee votes.*

SUMMARY: Requires the California Law Revision Commission to report to the Legislature recommendations to revise statutes governing state and local agency access to customer information from communications service providers. Specifically, this measure:

- 1) Makes the following declarations:
  - a) Widespread use of 21st Century mobile and Internet-based communications technologies and services enable service providers to monitor, collect, and retain large quantities of information regarding customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications.
  - b) Government requests to communications service providers for customer information have increased dramatically in recent years, especially by law enforcement agencies.

- c) California statutes governing access to customer information lack clarity and uniform definitions as to the legal standard for government agencies to obtain customer information from communications service providers, and many were enacted prior to the advent of wireless mobile services and the Internet.
  - d) Revising and updating these statutes is necessary to reflect modern technologies and clarify the rights and responsibilities of customers, communications service providers, and government agencies seeking access to customer information.
- 2) Requires the California Law Revision Commission to report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:
- a) Update statutes to reflect 21st Century mobile and Internet-based technologies.
  - b) Protect customers' constitutional rights, including, but not limited to, rights to privacy, free speech, and freedom from unlawful searches and seizures.
  - c) Enable state and local government agencies to protect public safety.
  - d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer's service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required.

EXISTING LAW:

- 1) Authorizes the California Law Revision Commission to study topics approved by concurrent resolution of the Legislature. (Government Code Section 8293.)
- 2) Prohibits an employee or member of the CLRC, with respect to any proposed legislation concerning matters assigned to the commission for study, advocate for the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature unless requested to do so by the committee or its chairperson. (Government Code Section 8288.)

COMMENTS: According to a Public Policy Institute of California survey, 92 percent of all Californians have a cell phone, 58 percent have a smartphone, and 86 percent use the Internet at least occasionally. As use of these services increases, law enforcement has correspondingly increased the number of requests for information that it makes to the providers of those services. For example, last year a Congressional inquiry found that law enforcement requests to communication service providers has increased between 12 and 16 percent in each of the last five years. In light of these trends, this resolution would require the California Law Revision Commission (CLRC) to report and make recommendations to the Legislature for revising the statutes that govern local and state agency access to customer information held by a communications service provider.

Several existing statutes address specific instances in which a state or local agency may request information from a service provider, but according to the author these varied provisions are scattered throughout different codes and lack clear and consistent standards. In addition, the author contends that existing provisions do not always take into account 21<sup>st</sup> century online and mobile technology. Accordingly, this measure specifies that the purpose of the required CLRC report and recommendations is to accomplish all of the following: (1) update statutes to reflect 21<sup>st</sup> century mobile and Internet-based technologies; (2) protect customers' constitutional rights, including rights to privacy, free speech, and freedom from unreasonable searches and seizures; (3) enable state and local agencies to protect public safety; and (4) clarify the process that communications providers will be required to follow when responding to a state or local agency request for information.

Legislative Counsel's Summary of Relevant Statutory Provisions: In response to a request by the author, Legislative Counsel Bureau (LCB) produced a summary of California statutes that might be relevant to government's authority to access customer information in the possession of a communications service provider, as well as regulations on how that information can be used. LCB's summary found more than thirty potentially relevant code sections in the Code of Civil Procedure, Government Code, Penal Code, Public Utilities Code, and Business and Professions Code. LCB grouped these several code sections into three general categories: (1) codified law that is potentially relevant to government's authority to access information from a communications provider; (2) codified law that is potentially relevant to government's authority to take action on the provision of communications service to a customer; and (3) codified law that is potentially relevant to government's authority to use technology to access personal information. (Ops. Cal. Legis. Counsel, No. 1304153, April 25, 2013.)

Specific Provisions in California Code: A few representative examples cited in the LCB summary illustrate the author's concerns. Government Code Section 6254.16 generally exempts a customer's public utility information from disclosure under the California Public Records Act, but *requires* disclosure of a customer's name, usage, home address, or telephone number in the following situations: to an authorized agent or family member; to an officer or employee of another governmental agency "when necessary for the performance of its official duties;" upon court order or the request of a law enforcement agency "relative to an ongoing investigation;" upon determination by a local agency that a customer has used utility services "in a manner inconsistent with applicable local utility usage policies;" or upon determination by the local agency that "the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure." Provisions in the Penal Code, on the other hand, require "a provider of electronic communication service or remote computing service" to disclose a customer's personal information pursuant to a warrant, and it gives the service provider the right to quash or modify the warrant if the information requested is unusually voluminous or if the request would otherwise cause an undue burden on the provider. Provisions of the Code of Civil Procedure establish procedures by which a party or law enforcement agency may subpoena customer records maintained by a telephone company.

Provisions of the Public Utilities Code address the disclosure of information held by a public utility, including those that would be deemed a "communications service provider." Section 2891 of the Public Utilities Code generally prohibits a telephone or telegraph corporation from disclosing a subscriber's personal information without the written consent of the



subscriber. However, notwithstanding Section 2891, Section 2894 provides a complete defense against any civil action to any provider that discloses information "in good faith reliance" on any warrant, court order, or subpoena, or that discloses information at the request of a law enforcement agency for "law enforcement purposes."

The LCB summary includes many other examples that could be recited. However, the representative examples noted above appear to adequately support the author's contention that existing law includes an array of restrictions, authorizations, and exemptions thereto. Thus CLRC recommendations that would clarify and update these provisions may well be in order.

ARGUMENTS IN SUPPORT: According to the author, "California statutes governing access by state and local government agencies to customer information from communications service providers lack a clear framework and defined legal standard for when government can obtain customer information and from whom. These statutes are scattered throughout the California Code and lack consistent and clear definitions for what is required when a service provider gets a request for information." The author believes that, in addition to the need for greater coherence and consistency, the statutes should be updated to reflect "widespread use of 21st century mobile and Internet-based communications technologies and services enable service providers to monitor, collect and retain large quantities of information about customers, including when and with whom a customer communicates or transacts business, location data, and the content of communications."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334