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OFFICE OF THE ATTORNEY GENERAL
State of California

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Attorney General

OPINION	:	No. 20-303
of	:	March 10, 2022
ROB BONTA Attorney General	:	
SUSAN DUNCAN LEE Deputy Attorney General	:	

THE HONORABLE KEVIN KILEY, ASSEMBLYMEMBER, has requested an opinion on a question of law arising under the California Consumer Privacy Act of 2018.

QUESTION PRESENTED AND CONCLUSION

Under the California Consumer Privacy Act, does a consumer's right to know the specific pieces of personal information that a business has collected about that consumer apply to internally generated inferences the business holds about the consumer from either internal or external information sources?

Yes, under the California Consumer Privacy Act, a consumer has the right to know internally generated inferences about that consumer, unless a business can demonstrate that a statutory exception to the Act applies.

BACKGROUND

The California Consumer Privacy Act of 2018 (Civil Code, §§ 1798.100 et seq.) is the first law of its kind in the nation.[1] It allows consumers in California the ability to find

[1] As of this writing, a number of other states have passed or are considering similar legislation. (See Scott, *Consumer Privacy Protection Continues to Be a Key Issue for State Lawmakers* (April 2021) vol. 27, No. 7, HR Compliance Law Bull. 1.)

out what information a covered business is holding about them, and to opt out of certain transfers and sales of their personal information.

The question before us asks for clarification of one of the provisions in the CCPA, having to do with the consumer's right to request and receive specific pieces of information collected about them.[2] Before we proceed with a detailed analysis of the question, however, we will take a moment to introduce the general contours of this statutory scheme.[3]

How the CCPA Came To Be

Information privacy law has been developing for decades in the United States, along with the development of internet commerce. In 1998, the Federal Trade Commission published a report titled "Privacy Online: A Report to Congress," which noted that "[g]overnment studies in the United States and abroad recognize certain core principles of fair information practice, widely accepted as essential to ensuring fair collection, use, and sharing of personal information in a manner consistent with consumer privacy interests."[4] Those core principles are:

- Consumers should have notice of an entity's information practices.
- Consumers should have choices about how their information is used.
- Consumers should have access to the information about them that an entity holds.
- An entity should take appropriate steps to ensure the security of the information it holds.
- Fair information-practice rules should incorporate enforcement mechanisms to ensure compliance with core principles.

[2] Civ. Code, § 1798.110, subd. (a).

[3] We note that the CCPA includes a provision allowing a business to "seek the opinion of the Attorney General for guidance on how to comply" with the statute. (Civ. Code, § 1798.155.) This Opinion is not given pursuant to that statute. This Opinion is given under the Attorney General's traditional authority to give opinions on questions of law to specified public officials upon their request. (Gov. Code, § 12519.)

[4] Federal Trade Com., Privacy Online: A Report to Congress (June 1998) at p. 2.

- With respect to children's information, parental controls should be required.[5]

For the next 20 years, information privacy law developed largely on a sector-by-sector basis, with federal statutory schemes designed to regulate the information practices of entities holding large amounts of sensitive consumer information. Well-known examples of such programs include the Health Insurance Portability and Accountability Act, governing information practices of health care providers and insurers;[6] the Gramm-Leach-Bliley Act, governing information practices of financial institutions;[7] and the Children's Online Privacy Protection Act, governing the use of information collected from children under 13.[8] Despite these statutory schemes, more than eight in ten adults in the United States feel they have little or no control over the information collected about them online, according to a 2019 poll by the Pew Research Center.[9]

Starting in 2014, a British political consulting firm called Cambridge Analytica (now defunct) surreptitiously obtained personal information about roughly 87 million Facebook users.[10] Cambridge Analytica then used the information to send targeted political messages during the 2016 presidential campaign.[11] When Cambridge Analytica's conduct began receiving significant press coverage in 2018,[12] there arose a public perception that the time had come to give consumers greater control over the

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[5] *Id*. at pp. 7-11.

[6] 42 U.S.C. §§ 1320d; 45 CFR §§ 160, 162, 164.

[7] 15 U.S.C. §§ 6801-6809.

[8] 15 U.S.C. §§ 6501-6506.

[9] Auxier and Rainie, *Key Takeaways on Americans' Views about Privacy, Surveillance, and Data-Sharing* (Nov. 15, 2019), https://www.pewresearch.org/fact-tank/2019/11/15/key-takeaways-on-americans-views-about-privacy-surveillance-and-data-sharing/.

[10] See *In re: Facebook, Inc. Consumer Privacy User Profile Litigation* (N.D. Cal. 2019) 402 F.Supp.3d 767, 776-778.

[11] See Stats. 2018, ch. 55, § 2(f)-(h) (CCPA legislative findings and declarations).

[12] See, e.g., Meredith, *Facebook-Cambridge Analytica: A Timeline of the Data Hijacking Scandal*, N.Y. Times (Apr. 10, 2018); Confessore, *Cambridge Analytica and Facebook: The Scandal and the Fallout So Far*, N.Y. Times (Apr. 4, 2018); McKenzie, *Facebook's Mark Zuckerberg Says Sorry in Full-Page Newspaper Ads*, N.Y. Times (Mar. 25, 2018).

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