

HCR 225, Twenty-first Century Privacy Law Task Force

Meeting Minutes

3:00 p.m., August 21, 2019

Hawaii State Capitol, Conference Room 325

Task Force Members in attendance (6):

Senator Michelle Kidani (Co-Chair); Representative Chris Lee (Co-Chair); Deputy Attorney General Bryan Yee (Designee of Attorney General Clare Connors); Executive Director of the Office of Consumer Protection Stephen Levins (Designee of Director of Commerce and Consumer Affairs Catherine Awakuni Colon); Chief Information Security Officer Vincent Hoang (Designee of Chief Information Officer Douglas Murdock); and Deputy Prosecuting Attorney Chris Van Marter (Designee of Acting Prosecuting Attorney of the City and County of Honolulu).

Others in Attendance:

Danny Cup Choy, Hawaii Public Policy Advocates; Mandy Fernandes, ACLU; Danicia Honda, Senator Kidani; David Louie, Kobayashi, Sugita, and Goda, LLP (Facebook); Kelly McCanlies; Myoung Oh, Spectrum; Blake Oshiro, CTIA; Kathryn Pacheco, Representative Lee; Mericia Palma Elmore, SAG-AFTRA; Matthew Prellberg, Representative Lee; Luis Salaveria, SANHI (Microsoft); Radji Tolentino, Department of Commerce and Consumer Affairs-Office of Consumer Protection.

Agenda

A. Chairs' welcome

Representative Lee opened the meeting and welcomes the members and audience at 3:03pm.

B. Introductions

Members of the task force, audience members, and legislative staff introduce themselves.

C. Task Force outcomes

Representative Lee: The Task Force is tasked to issue a report to the Legislature by December 1, 2019, and the Task Force is asked to include any potential proposed legislation to increase digital privacy in Hawaii.

D. Task Force schedules and procedures

Lee: The Task Force is asked to submit its report by December 1, 2019, and that if the group meets once a month, there will be four meetings. Between four meetings and the time period between meetings, a lot of work can be done. Will that work for everyone?

Task force members nod in agreement.

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Lee: We have today to review the issues, with privacy expert Kelly McCanlies giving a presentation regarding the current state of digital privacy law and practices. In a September meeting, we will nail down what issues specifically are facing Hawaii that we want to tackle. In an October meeting, we can discuss and develop recommendations to address the specific issues identified in the September meeting. And in November, the Task Force will review the report and provide and comments and recommendations for changes. My office will send out a poll regarding dates for the future meetings. Generally speaking, we anticipate the meetings will be toward the end of each month. Are there any comments or questions?

No comments or questions.

Lee: If not, to get us started, we have a presentation from Kelly McCanlies, a local resident, who has worked in data privacy since 2005. She is a member of the International Association of Privacy Professions.

E. Presentation by privacy expert regarding current state of digital privacy law and practices

Kelly McCanlies gives presentation. See HCR 225, Twenty-first Century Privacy Law Task Force webpage on capitol.hawaii.gov/specialstudies.aspx for a copy of Kelly McCanlies's presentation slides.

Lee: Thank you Kelly. Are there any questions?

Senator Kidani: I have some questions on the Internet of Things and HIPAA, but I can get to those later if someone else would like to go first.

Lee: Are there any groups or places that are tracking the legislation that is introduced, or are there any big movements across the country?

Kelly McCanlies: I can give you a heads up of any big movements.

Kidani: With all of the graphics that you went through and knowing the laws from each state, is there any one state that has a better handle on these issues?

McCanlies: California was the first with its data breach notification laws. California is also one of the best with the California Consumer Privacy Act. Illinois has good definitions and laws for protecting medical privacy, including biometrics and genetic data. I expect to see other California Consumer Privacy Act-like laws in other states.

Kidani: Hawaii is smaller than many other states, does California or other states have separate groups to monitor or enforce data breaches?

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Chief Information Security Officer Hoang: Typically, it falls to the state Attorneys General.

Executive Director Levins: A lot of these cases fall under unfair trade practices, so in Hawaii the Attorney General and the Office of Consumer Protection can enforce.

Lee: Are we seeing a lot of those cases?

Levins: There have been ones such as the Equifax breach, which in Hawaii, both offices were a part of. There have been several large cases, and the Office of Consumer Protection is currently investigating some security breaches.

Hawaii's definitions are narrow. I helped draft the original language of the security breach legislation. I think that it needs to be updated. The obligation of the state to inform of security breaches is high, one thousand people must be affected. Many states have reduced that threshold to, I think, two hundred. The point you made about companies not always informing authorities of a breach, there is that, but in Hawaii the threshold is so high that large national companies just inform every state, because other states requirements are more stringent. Technically, they don't have to inform the Office of Consumer Protection if less than one thousand people are affected.

Deputy Attorney General Yee: In most states consumer protection is performed by the Attorney General, but that's different in Hawaii, in part because the Attorney General isn't elected. The Office of Consumer Protection is often tasked with what would usually be the jurisdiction of the Attorney General.

Levins: The Office of Consumer Protection has spreadsheet of security breach notifications received.

Lee: Kelly, of the sixteen privacy provisions mentioned in your presentation, I know Hawaii has some, but is it clear to say what Hawaii does or does not have?

McCanlies: Hawaii has data breach notification, and that is pretty much all. That is one of the reasons data brokers are scary and why right to access personal information collected is first on the list, having the right to know who has our data is crucial. Right to access personal information can happen, see the Fair Credit Report.

Yee: Often laws are passed to a perceived problem, many of these sixteen provisions seem to be solutions or preemptive. Is there a perception as to the biggest problem? And is there a reason why this is appropriate for the State to address rather than federal government?

McCanlies: It is proper for the State to address this because federal laws are not comprehensive, while the State can be comprehensive.

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Yee: So, it is a reaction to lack of federal action?

McCanlies: Yes, I think getting a federal law is unlikely. There may be something like the Internet of Things law shown, but we have two groups that are opposites, state Attorneys General tend to be proponents of privacy, while companies want federal laws for cohesiveness. Attorneys General also do not want to give up preemption on the issue.

Is there a priority problem? These are each building blocks to fix problems. For example, look at data brokers or facial recognition. The items on this list could address these broadly. Do we want to give notice that facial recognition technology is being used? If we want to address a problem, these are building blocks that can be used.

Yee: I take it that there is no perception of problem.

McCanlies: I think there is low hanging fruit; specifically, updating the definition of personal information in statute. You could also look to what other states are doing toward data brokers, such as registration. Look to what San Francisco is doing with facial recognition.

Lee: I realize the job of Chief Information Officer is slightly different from discussion here, but has this or similar conversations come up with the Chief Information Officer?

Hoang: I use the phrase "crawl, walk, run" when discussing what Hawaii is doing. We are following what the big corporations are doing. There is concern that we are not capable of enforcing a comprehensive law. We want to protect the assets that we have.

Lee: What of this is relevant to consumer protection or are there plans from the administration?

Levins: It is all relevant. There is nothing unique here to what is going on in the United States or the world. There were no administration bills to touch this, but I do think that there are parts of the law that need to be updated. I was a part of conversations over the years that went nowhere. There has been other legislation that went nowhere. I think that we need to update the personal information definition.

Lee: This is the first time we are hearing a lot of this and putting this together. It will be good to start considering these problems. There are personal privacy risks, and people that are hoping we or someone else can do something about it.

Is there anyone who wants to dive into certain issues, and our staff can help too, so we can break down what issues we want to address, such as data breaches?

Senator Kidani: We only have one?

Levins: Yes, one -- notification. We have considered notice a couple times.

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Yee: I assumed we has rectification or deletion. I think under certain sectors that may be true, such as credit report, but my understanding is that many states have not addressed these other issues. I think we have relied on the feds to provide protection, but in the near-term, I don't expect action.

Lee: I recently spoke with the Chair of the California Assembly Judiciary committee, and asked their thoughts, and they had the same thought that we cannot expect federal intervention in the near future.

Levins: States are concerned with preemption. Companies want uniformity, but the thought is federal would be less protective than federal.

Kidani: I am wondering if there is any data collected on complaints from residents on the issues raised?

Levins: There is, but it is not representative of what the problem is, such as the Zippy's breach. Most people aren't aware of the risks associated with data, so the information that we have would be of limited value. It's more reactive.

McCanlies: And I think that what was true back in 2002 is true today, there were not many people taking about breaches because they did not know they needed to be told.

Lee: That is the hard thing, how do you know what you don't know. It is hard to get an idea of what is out there. What opened this up to me was when a journalist asked me about location data, and people following others' entrances into buildings, which turned into House Bill No. 702 (2019). This lead me to an interest in what is out there, including in the biometrics and other fields.

F. Public input

Senator Kidani and Representative Lee asked the public in attendance for comments. No one spoke.

G. Next steps

Lee: If anyone has other thoughts about voices that should be at the table let us know. Senator Kidani and I met and discussed other voices that could be helpful to this conversation, specifically those in the education and healthcare fields. Between now and the next meeting, we will consider them and others, and reach out to others who may want to participate.

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At next meeting, we will identify what issues we are really facing in Hawaii, so we can hone in on where we want to focus, and have a baseline of what we want to do, and launch into the discussions for the other hearings. Going forward, we will identify what days and times are best for the next meeting.

Kidani: If you, members or audience, have an idea on an issue we should discuss, please alert myself or our staffs. Or if you want to stay involved, please let us know.

McCanlies: I'd like to stay involved.

Deputy Prosecutor Van Marter: Can we add to the agenda the criminal privacy statutes?

Lee: Yes. Could you help us identify those issues?

Van Marter: Yes.

Matthew Prellberg: We are working at getting this information, documents, and presentations compiled on the Capitol website but have run into some technical issues. Please keep an eye out, it should be up soon.

Lee: Thank you to everyone for their time. Thank you staff for helping out. And thank you to Kelly for sharing your knowledge.

We are adjourned.