



1997 ASSEMBLY BILL 796

February 19, 1998 - Introduced by Representatives SCHNEIDER, CARPENTER, REYNOLDS, MURAT, BOCK, PLALE, RYBA, NOTESTEIN, STASKUNAS, LORGE, MEYER, RILEY, HAHN, LA FAVE, KREUSER, STEINBRINK and BALDWIN. Referred to Joint committee on Information Policy.

1 **AN ACT to renumber** 895.50 (2) (a) and 895.50 (2) (b); **to renumber and amend**
2 85.105, 341.17 (6) and 895.50 (2) (c); **to amend** 6.15 (3) (a) 3., 6.45 (1), 6.45 (2),
3 6.46, 6.89, 11.21 (5), 11.21 (10), 11.22 (5), 11.22 (8), 19.55 (1), 19.71, 23.16 (3),
4 23.165 (4), 62.03 (1), 77.265 (9), 108.14 (7) (a), 108.14 (7) (b), 146.40 (4g) (b),
5 341.17 (5) and 895.50 (2) (intro.); and **to create** 19.35 (1) (jm), 19.72, 61.34 (4m),
6 62.11 (4m), 85.105 (2), 341.17 (6) (b), 341.17 (10), 343.235 (5m), 343.24 (5),
7 895.50 (2) (am), 895.50 (2) (bm) 2m., 895.50 (2) (bm) 2r. and 895.50 (2) (cm) of
8 the statutes; **relating to:** creating a cause of action for invasion of privacy
9 against a person who sells, leases, rents, trades or otherwise discloses any
10 personally identifiable information about any living person, for any commercial
11 purpose, without having first obtained the consent of the person who is the
12 subject of the information.

Analysis by the Legislative Reference Bureau

Under current law, a person whose privacy is unreasonably invaded is entitled to equitable relief to prevent and restrain the invasion, compensatory damages based on either plaintiff's loss or defendant's unjust enrichment and a reasonable amount for attorney fees. Current law defines "invasion of privacy", in part, to include the use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person.

This bill extends the right of privacy to include as an “invasion of privacy” for which a person is entitled to relief the sale, lease, rental, trading or other disclosure of any personally identifiable information, as defined in the bill, about any living person, without having first obtained, not less than one year before the date of the sale, lease, rental, trade or other disclosure, the written consent of the person who is the subject of the information, if the person to whom the personally identifiable information is to be sold, leased, traded or otherwise disclosed intends to use the information for any commercial purpose, as defined in the bill. The bill also includes as an “invasion of privacy” for which a person is entitled to relief requiring the person, as a condition for receiving a good or a service, that the person provide his or her consent to the sale, lease, rental, trading or other disclosure of any personally identifiable information about the person for any commercial purpose of the person to whom the information is to be sold, leased, rented, traded or otherwise disclosed. Under the bill, “personally identifiable information” means information that can be associated with a particular individual through one or more identifiers or other information or circumstances and “commercial purpose” means the purpose of accruing any gain, benefit or advantage, either directly or indirectly, including the purpose of advertising or marketing any property, good or service, soliciting business or setting the terms and conditions of any commercial transaction or relationship. The bill, however, excludes from the definition of “commercial purpose” the gathering and reporting of news and the communication of information or the solicitation of funds for any political, lobbying, charitable or religious purpose.

Under current law, subject to certain exceptions, any requester has the right to inspect any public record (open records law). This bill prohibits a requester who receives any personally identifiable information under the open records law from using that information for any commercial purpose without first obtaining the written consent of the individual who is the subject of that information.

Under current law, an authority (defined, generally, to include a state or local office, elected official, agency, board, commission, council, department or other public body) may not sell or rent a public record that contains an individual’s name or address unless the release of that information is specifically authorized by state law. This bill prohibits an authority from selling, leasing, renting, trading or otherwise disclosing a public record that contains personally identifiable information, other than under the open records law, for any commercial purpose of the person to whom the information is disclosed, unless the authority first obtains the written consent of the individual who is the subject of the information and unless the disclosure is specifically authorized by law.

Under current law, the department of revenue may sell information obtained from real estate transfer fee returns. Under this bill, those sales may be made only with the permission of the buyer and seller.

Under current law, the department of natural resources (DNR) may refuse to reveal names and address of persons on subscriber lists DNR maintains for distributing its publications. This bill requires DNR to refuse to reveal the name and address of a person on such a subscriber list unless DNR first obtains the written consent of the person who is the subject of the information.

Under current law, the department of health and family services (DHFS) maintains a registry that contains a listing of all individuals who have successfully completed a competency evaluation program for nurse's assistants, home health aides or hospice aides. The registry also contains a listing of individuals against whom DHFS has made a finding of abuse or neglect or of misappropriation of property of a nursing home resident, hospital patient or home health agency patient. This bill prohibits DHFS from selling, leasing, renting, trading or otherwise disclosing personally identifiable information contained in the registry without obtaining the written consent of the individual to whom the information pertains, if the person requesting the information intends to use the information for any commercial purpose.

Current law authorizes the department of transportation (DOT) to disclose personally identifiable information obtained through motor vehicle registration or titling, operator's licenses, traffic citations and reports of traffic accidents to property and casualty insurers for the purpose of issuing or renewing a policy and related underwriting, billing or processing or paying a claim. This bill authorizes DOT to continue to disclose this information to insurers for those activities without providing proof of the individual's written consent to the disclosure, if the insurer limits its use of the personally identifiable information to those specified activities and does not redisclose the information.

Current law authorizes DOT to contract with any person to periodically provide the person with personally identifiable information obtained from motor vehicle accidents or uniform traffic citations. This bill does not affect personally identifiable information disclosed under such a contract, but information disclosed under a contract entered into after this bill takes effect is subject to the limitations and consent required under this bill.

Under current law, a city or village may sell or otherwise disclose personally identifiable information within its possession to a person who intends to use such information for a commercial purpose. This bill prohibits any city or village, or any officer or employe of a city or village, from selling, leasing, renting, trading or otherwise disclosing any personally identifiable information contained in city or village records without first obtaining the written consent of the individual to whom the personally identifiable information relates if the person to whom the personally identifiable information is to be sold, leased, rented, traded or otherwise disclosed intends to use the information for any commercial purpose.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 6.15 (3) (a) 3. of the statutes is amended to read:

1 6.15 (3) (a) 3. The clerk shall keep open to public inspection a list of all new
2 residents who have voted under this section. The list shall give the name, address
3 and application date of each elector. The clerk shall not provide access to the list for
4 any commercial purpose, as defined in s. 895.50 (2) (am), unless the clerk first
5 complies with s. 19.72.

6 **SECTION 2.** 6.45 (1) of the statutes is amended to read:

7 6.45 (1) After the deadline for revision of the registration list, the municipal
8 clerk shall make copies of the list for election use. The registration list and any
9 supplemental lists which are prepared at polling places or other registration
10 locations under s. 6.55, shall be open to public inspection. Under the regulations
11 prescribed by the municipal clerk, any person may copy the registration list at the
12 office of the clerk. A registration list maintained at a polling place may be examined
13 by an observer when such use does not interfere with the conduct of the election. The
14 clerk shall not provide access to the list for any commercial purpose, as defined in s.
15 895.50 (2) (am), unless the clerk first complies with s. 19.72.

16 **SECTION 3.** 6.45 (2) of the statutes is amended to read:

17 6.45 (2) The municipal clerk shall furnish upon request to each candidate who
18 has filed nomination papers for an office which represents at least part of the
19 residents of the municipality one copy of the current registration list for those areas
20 for which he or she is a candidate for a fee not to exceed the cost of reproduction. The
21 clerk shall not furnish the name of any elector on the list for any commercial purpose,
22 as defined in s. 895.50 (2) (am), unless the clerk first complies with s. 19.72.

23 **SECTION 4.** 6.46 of the statutes is amended to read:

24 **6.46 Poll lists; copying.** Poll lists shall be preserved by the municipal clerk
25 until destruction or other disposition is authorized under s. 7.23, and shall be open

1 to public inspection. The municipal clerk shall furnish upon request to each
2 candidate who has filed nomination papers for an office which represents at least
3 part of the municipality one copy of the current poll list for those areas for which he
4 or she is a candidate for a fee not to exceed the cost of reproduction. If a copying
5 machine is not accessible, the clerk shall remove the lists from the office for the
6 purposes of copying, and return them immediately thereafter. The clerk shall not
7 provide access to the lists or furnish the name of any elector on the lists for any
8 commercial purpose, as defined in s. 895.50 (2) (am), unless the clerk first complies
9 with s. 19.72.

10 **SECTION 5.** 6.89 of the statutes is amended to read:

11 **6.89 Absent electors list public.** The municipal clerk shall keep a list of all
12 electors who make application for an absent elector's ballot and who have voted
13 under the absent elector provisions giving the name, address and date of application.
14 The list shall be open to public inspection. The clerk shall not provide access to the
15 list for any commercial purpose, as defined in s. 895.50 (2) (am), unless the clerk first
16 complies with s. 19.72.

17 **SECTION 6.** 11.21 (5) of the statutes is amended to read:

18 11.21 (5) Make the reports and statements filed with it available for public
19 inspection and copying, commencing as soon as practicable but not later than the end
20 of the 2nd day following the day during which they are received, and permit copying
21 of any report or statement by hand or by duplicating machine at cost, as requested
22 by any person. ~~No~~ Notwithstanding ss. 19.35 (1) (jm) and 19.72, no information
23 copied from such reports and statements may be sold or utilized by any person for
24 the purpose of soliciting contributions from individuals identified in the reports or
25 statements or for any commercial purpose.

1 **SECTION 7.** 11.21 (10) of the statutes is amended to read:

2 11.21 (10) Make available a list of delinquents for public inspection. The board
3 shall not provide access to the list for any commercial purpose, as defined in s. 895.50
4 (2) (am), unless the board first complies with s. 19.72.

5 **SECTION 8.** 11.22 (5) of the statutes is amended to read:

6 11.22 (5) Make available a list of delinquents for public inspection. The filing
7 officer shall not provide access to the list for any commercial purpose, as defined in
8 s. 845.50 (2) (am), unless the clerk first complies with s. 19.72.

9 **SECTION 9.** 11.22 (8) of the statutes is amended to read:

10 11.22 (8) Make the reports and statements filed with the filing officer available
11 for public inspection and copying, commencing as soon as practicable but not later
12 than the end of the 2nd day following the day during which they are received, and
13 permit copying of any report or statement by hand or by duplicating machine at cost,
14 as requested by any person. ~~No~~ Notwithstanding ss. 19.35 (1) (jm) and 19.72, no
15 information copied from such reports and statements may be sold or utilized by any
16 person for the purpose of soliciting contributions from individuals identified in the
17 reports or statements or for any commercial purpose.

18 **SECTION 10.** 19.35 (1) (jm) of the statutes is created to read:

19 19.35 (1) (jm) A requester who receives any personally identifiable information
20 under pars. (a) to (f) may not use that information for any commercial purpose, as
21 defined in s. 895.50 (2) (am), without first obtaining the written consent of the
22 individual who is the subject of the personally identifiable information or, if that
23 person is a minor, of his or her parent or legal guardian.

24 **SECTION 11.** 19.55 (1) of the statutes is amended to read:

1 19.55 (1) Except as provided in sub. (2), all records in the possession of the
2 board are open to public inspection at all reasonable times. The board shall require
3 an individual wishing to examine a statement of economic interests or the list of
4 persons who inspect any statements which are in the board's possession to provide
5 his or her full name and address, and if the individual is representing another
6 person, the full name and address of the person which he or she represents. Such
7 identification may be provided in writing or in person. The board shall record and
8 retain for at least 3 years information obtained by it pursuant to this subsection. No
9 individual may use a fictitious name or address or fail to identify a principal in
10 making any request for inspection. The board shall not provide access to any record
11 containing personally identifiable information, as defined in s. 19.62 (5), for any
12 commercial purpose, as defined in s. 895.50 (2) (am), unless the board first complies
13 with s. 19.72.

14 **SECTION 12.** 19.71 of the statutes is amended to read:

15 **19.71 (title) Sale or rental of names or addresses.** An authority may not
16 sell or rent a record containing an individual's name or address of residence, unless
17 specifically authorized by state law and, if the record is sold or rented for any
18 commercial purpose, as described in s. 19.72, unless the authority first obtains the
19 written consent of the individual or, if the individual is a minor, of his or her parent
20 or guardian. The collection of fees authorized by law is not a sale or rental under this
21 section.

22 **SECTION 13.** 19.72 of the statutes is created to read:

23 **19.72 Sale, lease, rental or trade of personally identifiable**
24 **information.** An authority may not sell, lease, rent, trade or otherwise disclose a
25 record containing personally identifiable information, for any commercial purpose,

1 as defined in s. 895.50 (2) (am), of the person to whom the personally identifiable
2 information is sold, leased, rented, traded or otherwise disclosed, unless the
3 authority first obtains the written consent of the individual who is the subject of the
4 personally identifiable information or, if the individual is a minor, of his or her parent
5 or guardian and unless the authority is specifically authorized to do so by state law.
6 The collection of fees is not a sale, lease, rental or trade under this section. The
7 disclosure of a record under s. 19.35 (1) is not a disclosure under this section.

8 **SECTION 14.** 23.16 (3) of the statutes is amended to read:

9 23.16 (3) SUBSCRIBER LISTS. ~~The Notwithstanding s. 19.35, the~~ department may
10 refuse to reveal names and addresses of persons on any magazine or periodical
11 subscriber list. The department may charge a fee to recover the actual costs for
12 providing or for the use of any magazine or periodical subscriber list. The department
13 shall refuse to reveal the name or address of a person on any such subscriber list
14 unless the department first obtains written consent as required under s.19.72. No
15 person who obtains or uses any magazine or periodical subscriber list from the
16 department may refer to the department, the magazine or the periodical as the
17 source of names or addresses unless the person clearly indicates that the provision
18 of or permission to use the subscriber list in no way indicates the department's
19 knowledge, involvement, approval, authorization or connection with the person or
20 the person's activities.

21 **SECTION 15.** 23.165 (4) of the statutes is amended to read:

22 23.165 (4) SUBSCRIBER LISTS. Notwithstanding s. 19.35, the department may
23 refuse to reveal names and addresses of persons on any publication subscriber list.
24 The department may charge a fee to recover the actual costs for providing or for the
25 use of a publication subscriber list. The department shall refuse to reveal the name

1 or address of a person on any such subscriber list unless the department first obtains
2 written consent as required under s. 19.72. No person who obtains or uses a
3 publication subscriber list from the department may refer to the department or the
4 publication as the source of names or addresses unless the person clearly indicates
5 that the provision of or permission to use the subscriber list in no way indicates the
6 department's knowledge, involvement, approval, authorization or connection with
7 the person or the person's activities.

8 **SECTION 16.** 61.34 (4m) of the statutes is created to read:

9 61.34 (4m) PERSONALLY IDENTIFIABLE INFORMATION. The village board, any
10 village officer or any village employe may not sell, lease, rent, trade or otherwise
11 disclose to any person any personally identifiable information contained in village
12 records without first obtaining the written consent of the individual to whom the
13 personally identifiable information relates or, if that individual is a minor, of his or
14 her parent or legal guardian, if the person to whom the personally identifiable
15 information is to be sold, leased, rented, traded or otherwise disclosed intends to use
16 the information for any commercial purpose, as defined in s. 895.50 (2) (am).

17 **SECTION 17.** 62.03 (1) of the statutes is amended to read:

18 62.03 (1) This subchapter, except ss. 62.071, 62.08 (1), 62.09 (1) (e) and (11) (j)
19 and (k), 62.11 (4m), 62.175 and 62.23 (7) (em) and (he), does not apply to 1st class
20 cities under special charter.

21 **SECTION 18.** 62.11 (4m) of the statutes is created to read:

22 62.11 (4m) PERSONALLY IDENTIFIABLE INFORMATION. The common council, any
23 city officer or any city employe may not sell, lease, rent, trade or otherwise disclose
24 to any person any personally identifiable information contained in city records
25 without first obtaining the written consent of the individual to whom the personally

1 identifiable information relates or, if that individual is a minor, of his or her parent
2 or legal guardian, if the person to whom the personally identifiable information is
3 to be sold, leased, rented, traded or otherwise disclosed intends to use the
4 information for any commercial purpose, as defined in s. 895.50 (2) (am).

5 **SECTION 19.** 77.265 (9) of the statutes is amended to read:

6 77.265 (9) The With the permission of the buyer and seller, the department of
7 revenue may sell information obtained from ~~the returns~~ any return about street
8 addresses, sale prices, the dates of sales and the types of conveyancing instruments.

9 **SECTION 20.** 85.105 of the statutes is renumbered 85.105 (1) and amended to
10 read:

11 **85.105 (1)** Notwithstanding s. 343.24 (2m), the department may contract with
12 a person to periodically furnish that person with any records on computer tape or
13 other electronic media that contain information from files of motor vehicle accidents
14 or uniform traffic citations and which were produced for or developed by the
15 department for purposes related to maintenance of the operating record file data
16 base. The department and the person desiring to contract with the department shall
17 make a good faith effort to negotiate the purchase price for the records to be provided
18 under this section subsection.

19 **SECTION 21.** 85.105 (2) of the statutes is created to read:

20 85.105 (2) Any person who receives any personally identifiable information
21 under this section may not use or disclose that information for any commercial
22 purpose, as defined in s. 895.50 (2) (am), without first obtaining the written consent
23 of the individual to whom the personally identifiable information relates or, if that
24 person is a minor, of his or her parent or legal guardian. Written consent of the
25 individual or, if that person is a minor, of his or her parent or legal guardian, to the

1 disclosure by the department of his or her personally identifiable information for
2 commercial purposes shall be considered written consent under this subsection.

3 **SECTION 22.** 108.14 (7) (a) of the statutes, as affected by 1997 Wisconsin Act 39,
4 is amended to read:

5 108.14 (7) (a) The records made or maintained by the department or
6 commission in connection with the administration of this chapter are confidential
7 and shall be open to public inspection or disclosure only to the extent that the
8 department or commission permits in the interest of the unemployment insurance
9 program. The department shall not provide access to any record containing
10 personally identifiable information, as defined in s. 19.62 (5), for any commercial
11 purpose, as defined in s. 895.50 (2) (am), unless the department first complies with
12 s. 19.72. No person may permit inspection or disclosure of any record provided to it
13 by the department or commission unless that person complies with s. 19.72, if
14 applicable, and the department or commission authorizes the inspection or
15 disclosure.

16 **SECTION 23.** 108.14 (7) (b) of the statutes is amended to read:

17 108.14 (7) (b) The department may provide records made or maintained by the
18 department in connection with the administration of this chapter to any government
19 unit, corresponding unit in the government of another state or any unit of the federal
20 government. No such unit may permit inspection or disclosure of any record
21 provided to it by the department unless that unit complies with s. 19.72, if applicable,
22 and the department authorizes the inspection or disclosure.

23 **SECTION 24.** 146.40 (4g) (b) of the statutes is amended to read:

24 146.40 (4g) (b) The department shall provide, upon receipt of a specific, written
25 request, information requested that is contained in the registry under par. (a). The

1 department may not sell, lease, rent, trade or otherwise disclose to a requester any
2 personally identifiable information contained in the registry without first obtaining
3 the written consent of the individual who is the subject of the personally identifiable
4 information, if the requester intends to use the information for any commercial
5 purpose, as defined in s. 895.50 (2) (am).

6 **SECTION 25.** 341.17 (5) of the statutes is amended to read:

7 341.17 (5) Except as provided in sub. (9) (e), public officers and agencies
8 receiving free copies of registration lists under sub. (4) shall keep such lists current
9 and, subject to sub. (10), open to public inspection.

10 **SECTION 26.** 341.17 (6) of the statutes is renumbered 341.17 (6) (a) and
11 amended to read:

12 341.17 (6) (a) The Subject to par. (b), the department shall sell subscriptions
13 to the registration lists compiled under this section and may sell other registration
14 information. In computing the charge to be made for subscriptions to the registration
15 lists and for other registration information, the department shall determine the costs
16 of compiling the lists and other information and shall fairly apportion the major
17 share of those costs among the subscribers and other purchasers.

18 **SECTION 27.** 341.17 (6) (b) of the statutes is created to read:

19 341.17 (6) (b) The department may not sell registration lists and other
20 registration information that consists of any personally identifiable information to
21 be used for any commercial purpose, as defined in s. 895.50 (2) (am), unless the
22 person to whom the information relates has consented in writing to disclosure by the
23 department of his or her information to be used for a commercial purpose.

24 **SECTION 28.** 341.17 (10) of the statutes is created to read:

1 341.17 **(10)** Any person who receives any personally identifiable information
2 under this section may not use or disclose that information for any commercial
3 purpose, as defined in s. 895.50 (2) (am), without first obtaining the written consent
4 of the individual to whom the personally identifiable information relates or, if that
5 person is a minor, of his or her parent or legal guardian. This subsection does not
6 apply to an insurer, as defined in sub. (9) (a) 2., who uses personally identifiable
7 information obtained under this section only for purposes specified in sub. (9) (c) 3.
8 and who does not disclose the information.

9 **SECTION 29.** 343.235 (5m) of the statutes is created to read:

10 343.235 **(5m)** Any person who receives any personally identifiable information
11 under this section may not use or disclose that information for any commercial
12 purpose, as defined in s. 895.50 (2) (am), without first obtaining the written consent
13 of the individual to whom the personally identifiable information relates or, if that
14 person is a minor, of his or her parent or legal guardian. This subsection does not
15 apply to an insurer, as defined in sub. (1) (b) who uses personally identifiable
16 information obtained under this section only for purposes specified in sub. (3) (b) and
17 who does not disclose the information.

18 **SECTION 30.** 343.24 (5) of the statutes is created to read:

19 343.24 **(5)** Any person who receives any personally identifiable information
20 under this section may not use or disclose that information for any commercial
21 purpose, as defined in s. 895.50 (2) (am), without first obtaining the written consent
22 of the individual to whom the personally identifiable information relates or, if that
23 person is a minor, of his or her parent or legal guardian. This subsection does not
24 apply to an insurer, as defined in sub. (4) (a) 2., who uses personally identifiable

1 information obtained under this section only for purposes specified in sub. (4) (c) 2.
2 and who does not disclose the information.

3 **SECTION 31.** 895.50 (2) (intro.) of the statutes is amended to read:

4 895.50 (2) (intro.) In this section, ~~“invasion;~~

5 (bm) “Invasion of privacy” means any of the following:

6 **SECTION 32.** 895.50 (2) (a) of the statutes is renumbered 895.50 (2) (bm) 1.

7 **SECTION 33.** 895.50 (2) (am) of the statutes is created to read:

8 895.50 (2) (am) “Commercial purpose” means the purpose of accruing any gain,
9 benefit or advantage, either directly or indirectly. “Commercial purpose” includes
10 the purpose of advertising or marketing any property, good or service, soliciting
11 business or setting the terms and conditions of any commercial transaction or
12 relationship. “Commercial purpose” does not include the gathering and reporting of
13 news or the communication of information or the solicitation of funds for any
14 political, lobbying, charitable or religious purpose.

15 **SECTION 34.** 895.50 (2) (b) of the statutes is renumbered 895.50 (2) (bm) 2.

16 **SECTION 35.** 895.50 (2) (bm) 2m. of the statutes is created to read:

17 895.50 (2) (bm) 2m. The sale, lease, rental, trading or any other disclosure of
18 any personally identifiable information about any living person, without having first
19 obtained, not less than one year before the date of the sale, lease, rental, trade or
20 other disclosure, the written consent of the person who is the subject of the personally
21 identifiable information or, if that person is a minor, of his or her parent or guardian,
22 if the person to whom the personally identifiable information is to be sold, leased,
23 rented, traded or otherwise disclosed intends to use the personally identifiable
24 information for any commercial purpose.

25 **SECTION 36.** 895.50 (2) (bm) 2r. of the statutes is created to read:

1 895.50 (2) (bm) 2r. Requiring, as a condition for receiving a good or a service,
2 that a living person or, if the living person is a minor, his or her parent or guardian
3 provide his or her written consent to the sale, lease, rental, trading or other
4 disclosure of any personally identifiable information about that living person for any
5 commercial purpose of the person to whom the personally identifiable information
6 is to be sold, leased, rented, traded or otherwise disclosed.

7 **SECTION 37.** 895.50 (2) (c) of the statutes is renumbered 895.50 (2) (bm) 3. and
8 amended to read:

9 895.50 (2) (bm) 3. Publicity given to a matter concerning the private life of
10 another, of a kind highly offensive to a reasonable person, if the defendant has acted
11 either unreasonably or recklessly as to whether there was a legitimate public
12 interest in the matter involved, or with actual knowledge that none existed. It is not
13 an invasion of privacy under this subdivision to communicate any information
14 available to the public as a matter of public record.

15 **SECTION 38.** 895.50 (2) (cm) of the statutes is created to read:

16 895.50 (2) (cm) "Personally identifiable information" has the meaning given in
17 s. 19.62 (5).

18 **SECTION 39. Nonstatutory provisions.**

19 (1) This act does not apply to a contract under which personally identifiable
20 information, as defined in section 19.62 (5) of the statutes, about any living person
21 is sold, leased, rented, traded or otherwise disclosed, for any commercial purpose, as
22 defined in section 895.50 (2) (am) of the statutes, as created by this act, of the person
23 to whom that personally identifiable information is sold, leased, rented, traded or
24 otherwise disclosed, without the prior written consent of the person who is the

1 subject of that personally identifiable information or, if that person is a minor, of his
2 or her parent or guardian entered into before the effective date of this subsection.

3 (2) This act does not apply to a contract under which, as a condition for receiving
4 a good or a service, a person or, if the person is a minor, his or her parent or guardian
5 is required to consent to the sale, lease, rental, trading or other disclosure of any
6 personally identifiable information, as defined in section 19.62 (5) of the statutes,
7 about that person for any commercial purpose, as defined in section 895.50 (2) (am)
8 of the statutes, as created by this act, of the person to whom the personally
9 identifiable information is to be sold, leased, rented, traded or otherwise disclosed
10 entered into before the effective date of this subsection.

11 **SECTION 40. Initial applicability.**

12 (1) The treatment of section 85.105 (2) of the statutes first applies to contracts
13 under section 85.105 of the statutes that are entered into, modified, renewed or
14 extended on the effective date of this subsection.

15 (END)