

The COMPUTER & INTERNET *Lawyer*

Volume 37 ▲ Number 5 ▲ MAY 2020

Ronald L. Johnston, Arnold & Porter, LLP, Editor-in-Chief

Deletion Completion Under the CCPA

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The California Consumer Privacy Act (“CCPA”) has been in effect for some months now, and covered businesses are starting to field consumer requests. The CCPA affords several rights to consumers (defined as California residents) as to their personal information when it is collected by a covered business. Among these rights are:

1. The right to request disclosure of personal information collected and the uses therefor;¹
2. The right to request deletion of personal information collected by the covered business;² and
3. The right to receive that information from the covered business.³

This article focuses on a consumer’s right to request deletion of personal information under the CCPA (often called the “right to be forgotten”), and

the proposed regulations published by the California Attorney General on February 10, 2020.⁴

Deletion Requests

Consumers may submit deletion requests to covered businesses, which must respond and direct their service providers to respond, if applicable.

Under the CCPA:

(a) A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer. . . .

(c) A business that receives a verifiable consumer request to delete the consumer’s personal information pursuant to subdivision (a) of this section shall delete the consumer’s personal information from its records and direct any service providers to delete the consumer’s personal information from their records.⁵

In addition, the proposed regulations provide that before any information is deleted, the covered business must acknowledge within 10 business days the receipt of the verifiable consumer request to delete “and provide information about how the business will process the request.”⁶

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What Must Be Deleted?

What does it mean to “delete” personal information in the context of the CCPA? Unless an exception applies, the CCPA requires that a covered business remove from its files the requesting consumer’s personal information, and direct its service providers to do the same.

We stress that unlike requests for disclosure, requests for deletion are not limited to the 12 month “look back” period preceding the business’s receipt of the consumer’s request.

Further, under the proposed regulations, a business may present the consumer with the choice to delete select portions of their personal information, but only if it also gives the consumer the option to delete all of the consumer’s personal information.⁷

The CCPA leaves open the issue of the extent to which a covered business must delete personal information from its archives and back-up systems. However, the proposed regulations take a common sense approach, explaining that although personal information stored in archives or backup systems must be deleted, the deletion may be delayed:

If a business stores any personal information on archived or backup systems, it may delay compliance with the consumer’s request to delete, with respect to data stored on the archived or backup system, until the archived or backup system relating to that data is restored to an active system or next assessed or used for a sale, disclosure, or commercial purpose.⁸

What Are Exceptions to the Deletion Requirement?

The CCPA and the proposed regulations set forth several exceptions to the deletion requirement. Initially, covered businesses are allowed to forego deletion if the information is necessary to perform any of nine statutorily-specified activities including, for example, completing the transaction for which the personal information was collected, detecting security incidents, exercising free speech, engaging in public or peer-reviewed scientific, historical, or statistical research, and complying with a legal obligation.⁹

The CCPA also sets forth general exceptions to its mandates, providing that the deletion requirement shall not restrict a business’s ability to perform various tasks including complying with federal, state, and local laws, exercising or defending legal claims, using de-identified or aggregated consumer information, or collecting or selling a consumer’s personal information if every aspect

of the commercial conduct takes place wholly outside of California.¹⁰

When considering deletion requests, businesses should also consider the definition of “personal information,” which does not include de-identified, aggregated, or pseudonymized information.¹¹ Thus, it appears that only personal information, as defined, must be deleted, but information that does not permit reasonable identification of a consumer – such as deidentified, aggregated, or pseudonymized information – need not be deleted. Indeed, under the proposed regulations, deidentification or aggregation may actually serve as substitute methods for deletion.¹²

A business may deny a request to delete personal information if it cannot verify that the requestor is the consumer about whom the request is made.¹³ The proposed regulations reiterate this point, and impose the additional requirement that the business inform the requestor that their identity cannot be verified.¹⁴ Additionally, for a business that sells personal information, the proposed regulations also require the business to ask the consumer if they would like to opt-out of the sale of their personal information, and provide the contents of the business’s notice of right to opt-out of sale.¹⁵

What to Do After Personal Information Is Deleted?

Once personal information is deleted, then what? Although the CCPA does not specifically require a covered business to provide the consumer with any type of confirmation that his/her personal information has been deleted, the proposed regulations shed some light on the subject. Under the proposed regulations, a business must respond to the consumer’s request to delete within 45 calendar days, with the possibility of extending the time to respond by an extra 45 calendar days.¹⁶

In addition, the proposed regulations require that upon deletion of the consumer’s personal information, the covered business must (1) inform the consumer that it has complied with the consumer’s request, and (2) disclose that it will maintain a record of the consumer’s request as allowed by Civil Code Section 1798.105(d).¹⁷ Such records will be maintained subject to reasonable security procedures for at least 24 months, and the maintenance of such records, where the information is not used for any purpose except for compliance with the CCPA, is not a violation of the CCPA.¹⁸

Conclusion

As a practical matter, we encourage covered businesses to provide a written confirmation that the personal information has in fact been deleted. Such

confirmations may serve business purposes, such as to satisfy internal audit requirements for documentation that deletion was complete, or to establish compliance for potential litigation, enforcement or regulatory proceedings. Confirmations should have sufficient information to show that the covered business timely complied with the requirement.

If the business denies a deletion request, the proposed regulations require the business to notify the consumer of the basis for the denial (except if notification is prohibited by law), delete any personal information to which the basis for denial does not apply, and refrain from using any retained personal information for any purpose other than as permitted by the CCPA.¹⁹ Any information retained about the deletion of a consumer's personal information may remain in conflict with the request to delete personal information unless the retained information falls under an exception in Civil Code Sections 1798.105(d) or 1798.145, or is used solely for record-keeping purposes.

Notes

1. CAL. CIV. CODE § 1798.110(a).
2. CAL. CIV. CODE §§ 1798.105(a), (c).
3. CAL. CIV. CODE § 1798.100(d).
4. See CAL. CODE REGS. tit. 11, §§ 999.300 *et seq.* (proposed Feb. 10, 2020), <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-text-of-mod-clean-020720.pdf> (last visited Feb. 11, 2020). Although this article refers extensively to the proposed regulations, please note that the proposed regulations are subject to change and have not been adopted. Indeed, the February 10, 2020 version of the proposed regulations follows the version that was originally published October 11, 2019. The Attorney General must adopt final regulations by July 1, 2020, and may also begin bringing enforcement actions at that time. See CAL. CIV. CODE §§ 1798.185(a), (c).
5. CAL. CIV. CODE § 1798.105.
6. CAL. CODE REGS. tit. 11, § 999.313(a) (proposed Feb. 10, 2020). This proposed regulation further states that “The information provided shall describe in general the business’s verification process and when the consumer should expect a response, except in instances where the business has already granted or denied the request.”
7. CAL. CODE REGS. tit. 11, § 999.313(d)(7) (proposed Feb. 10, 2020).
8. CAL. CODE REGS. tit. 11, § 999.313(d)(3) (proposed Feb. 10, 2020).
9. CAL. CIV. CODE § 1798.105(d).
10. CAL. CIV. CODE § 1798.145.
11. CAL. CIV. CODE § 1798.140(o).
12. CAL. CODE REGS. tit. 11, §§ 999.313(d)(2)(a) – (c) (proposed Feb. 10, 2020).
13. CAL. CIV. CODE § 1798.105(c) (requiring businesses to delete personal information in response to a “verifiable” consumer request).
14. CAL. CODE REGS. tit. 11, § 999.313(d)(1) (proposed Feb. 10, 2020).
15. *Id.* Note that under the proposed regulations, these requirements only apply where the consumer has not already made a request to opt out.
16. CAL. CODE REGS. tit. 11, § 999.313(b) (proposed Feb. 10, 2020). Note that the proposed regulations specifically provide that if the business cannot verify the consumer within the initial 45 calendar day period, then it may deny the request and inform the consumer that it has not complied with the request. See CAL. CODE REGS. tit. 11, §§ 999.313(b); 999.313(d)(4) (proposed Feb. 10, 2020).
17. CAL. CODE REGS. tit. 11, §§ 999.313(d)(2), (4), and (5) (proposed Feb. 10, 2020).
18. CAL. CODE REGS. tit. 11, §§ 999.317(b) – (f) (proposed Feb. 10, 2020).
19. CAL. CODE REGS. tit. 11, § 999.313(d)(6) (proposed Feb. 10, 2020).

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