



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

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September 25, 2020

Mr. Sean M. SeLegue
Arnold & Porter
3 Embarcadero Center, 10th Floor
San Francisco, CA 94111

Dear Mr. SeLegue:

As the date for the online administration of the California Bar Examination (CBX) on October 5- 6, 2020 fast approaches, the court has received letters from applicants and supporters expressing deep concern regarding the sensitive nature of the personally identifiable information (PII), including biometric data, that the State Bar's third-party vendor, ExamSoft Worldwide Inc., intends to collect and retain from applicants in the course of administering the CBX. The court understands that collection of this data is critically important to ensure the integrity and security of the examination process. At the same time, ExamSoft's Privacy Policy appears to permit the company to use and disclose applicants' data for many purposes, some of which appear to be unrelated to the administration of the examination. Thus, the court shares applicants' concern that any unnecessary retention of their sensitive PII data may increase the risk of unintentional disclosure.

With this in mind, the court understands and supports the State Bar's decision to exercise its contractual authority to request ExamSoft and its third-party providers destroy all of the PII that it has collected, and will have collected, from the October 2020 CBX applicants as soon as possible after the exam and to the fullest extent permissible under the parties' agreement as amended. The court understands that such a request for destruction will likely need to be staggered to permit the retention of certain PII collected from applicants receiving Chapter 6 Notices for possible examination conduct violations while the conduct violation is being resolved. The State Bar has indicated that upon resolution of such conduct violations, or such earlier date as may be possible, the State Bar will exercise its authority to request the destruction of this PII as well. Therefore, the State Bar should prepare a proposed timetable for destruction of all applicants' PII retained by ExamSoft and its third-party providers that takes into account these and any other relevant considerations. The court directs the State Bar to submit the timetable to the court within 60 days of the date of this letter. The court hopes this will provide examinees with additional peace of mind as they prepare for the October online administration of the CBX.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Navarrete", written over a circular stamp.

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

cc: Donna Hershkowitz, Interim Executive Director, State Bar of California