

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

HARRISON NEAL

Plaintiff vs.

FILED DCTP

2015 JUL 31 PM 3:46

Civil Action No. CL 2015-5902

FAIRFAX COUNTY POLICE DEPARTMENT, ET AL

Defendant

JOHN T. FREY CLERK, CIRCUIT COURT FAIRFAX, VA

Previous Chancery No. CH

SERVE: HARRISON NEAL

FRIDAY MOTIONS DAY - PRAECIPE/NOTICE

Moving Party: [] Plaintiff [x] Defendant [] Other

Title of Motion: DEMURRER [] Attached [x] Previously Filed

DATE TO BE HEARD: AUGUST 28, 2015 Time Estimate (combined no more than 30 minutes): 30

Time to be Heard: [] 9:00 a.m. with a Judge [] 9:00 a.m. without a Judge [x] 10:00 a.m. (Civil Action Cases) Does this motion require 2 weeks notice? [x] Yes [] No [] 11:30 a.m. (DOMESTIC/Family Law Cases) Does this motion require 2 weeks notice? [] Yes [] No

Case continued from: (Date) continued to: (Date)

Moving party will use Court Call telephonic appearance: [] Yes [] No

Judge must hear this motion because (check one reason below):

- [] The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge. [] This Judge has been assigned to this entire case by the Chief Judge; or, [] The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or, [] This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by: Kimberly P. Baucom Office of the County Attorney Printed Attorney Name/ Moving Party Name Firm Name

12000 Government Center Parkway, Suite 549, Fairfax, VA 22035 Address

703-324-2421 703-324-2665 44419 kimberly.baucom@fairfaxcounty.gov Tel. No. Fax No. VSB No. E-Mail Address

CERTIFICATIONS

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia; and I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

Kimberly Baucom Moving Party/Counsel of Record

CERTIFICATE OF SERVICE

I certify on the 31 day of July, 2015, a true copy of the foregoing Praecipe was [x] mailed [] faxed [x] delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

Kimberly Baucom Moving Party/Counsel of Record

VIRGINIA:

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY 2015 JUL 31 PM 3:46

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

HARRISON NEAL,	:	
Plaintiff,	:	
	:	
v.	:	
	:	Case No. CL-2015-5902
	:	
FAIRFAX COUNTY POLICE	:	
DEPARTMENT, et al.,	:	
Defendants.	:	
	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

Defendants, Fairfax County Police Department (FCPD) and Colonel Edwin C. Roessler Jr. (Colonel Roessler), file this Memorandum in Support of their Demurrer previously submitted in the above-captioned case.

BACKGROUND

On May 5, 2015, the Plaintiff, Harrison Neal (Plaintiff), filed a Complaint against the FCPD and Colonel Roessler, Chief of Police of the FCPD. The Complaint alleges that the FCPD and Colonel Roessler violated the Data Collections and Dissemination Practices Act (the Act), Va. Code Ann. § 2.2-3800 *et seq.*, by retaining photographic images of the Plaintiff's vehicle's license plate. (Compl. ¶ 33.) The Plaintiff requests that the Court issue an injunction and/or a writ of mandamus pursuant to Va. Code Ann. § 2.2-3809, prohibiting future violations of the Act. The FCPD and Colonel Roessler filed a Demurrer to the Complaint on June 11, 2015.

FACTS

The Plaintiff's Complaint relates to the FCPD's use of Automated License Plate Readers (ALPRs), which are devices that capture and record photographs of vehicle license plates.

(Compl. ¶ 6.) Each time that an ALPR device captures a photo of a license plate, optical character technology converts the image into data. (Compl. Ex. C.)¹ The ALPR system records the license plate number data, as well as the date, time, and location that the photo was taken.

(Compl. ¶ 6.) The license plate number data captured by the system is then automatically compared electronically to a maintained “hot list” of license plate numbers of interest to law enforcement, including license plate numbers for stolen vehicles or related to the commission of a crime. (Compl. ¶ 7.) Regardless of whether the license plate number is matched to a license plate number on the hot list, the image is maintained by the FCPD for a period of 364 days.

(Compl. ¶¶ 8, 11.) The Plaintiff contends that the maintenance of license plate images by the FCPD that are not immediately matched to the “hot list” is a violation of the Act. (Compl. ¶ 8.)

On or about May 9, 2014, the Plaintiff submitted a written request to the FCPD pursuant to the Virginia Freedom of Information Act (FOIA), Va. Code Ann. § 2.2-3700, *et seq.*, for “all ALPR records” in the custody of the FCPD for the license plate number “ADDCAR,” which the Plaintiff alleges is the license plate number for a vehicle that the Plaintiff owns. (Compl. ¶ 13.)

On May 15, 2014, the FCPD sent the Plaintiff a response confirming that the license plate number about which he inquired had been captured by its ALPR equipment on two separate occasions during the previous 364 days. (Compl. ¶ 13, Ex. B.)² Attached to the response were the FCPD’s records related to the license plate number: two photographs of the license plate “ADDCAR,” with notation as to the date and time that the photo was taken. (Compl. ¶ 14;

Compl. Ex. B.) The Plaintiff contends that the information provided also noted the location of

¹ The Plaintiff attached an Attorney General’s opinion to his Complaint as Exhibit C, and incorporated Exhibit C into his Complaint by reference. It is therefore proper evidence for the Court to consider in the instant motion. *See TC MidAtlantic Dev., Inc. v. Commonwealth of VA, Dept. of Gen. Servs.*, 280 Va. 204, 210, 695 S.E. 2d 543, 547 (2010).

² The Plaintiff attached the FCPD’s response to his FOIA request to his Complaint as Exhibit B, and incorporated Exhibit B into his Complaint by reference.

the camera that captured the images. (Compl. ¶ 14.) The Plaintiff admits that the FCPD's maintenance of his license plate image was accomplished according to the FCPD's policy, SOP 11-039, which was enacted in January 2011 and establishes that the purpose for the use of the ALPR system and the subsequent retention of license plate images for 364 days is "to increase protection of the community by providing an investigative tool to aid in the detection or investigation of terrorism or a series of related crimes." (Compl. ¶¶ 10-11, Ex. A.)³

The Plaintiff alleges that license plate numbers are personal information as defined by the Act because "they are indexed to vehicle owners' social security numbers, driver's license numbers, addresses, vehicle liens, dates of birth, and photographs in Department of Motor Vehicles databases readily accessible to law enforcement agencies." (Compl. ¶ 19.) The Plaintiff contends that the FCPD's retention of two images of the license plate number "ADDCAR" is a violation of the Act because the Plaintiff qualifies as a "data subject" under the Act, and the maintenance of the license plate number constitutes the illegal maintenance of the Plaintiff's personal information. (Compl. ¶¶ 19, 23.)

ARGUMENT

I. LEGAL STANDARD

"The purpose of a demurrer is to determine whether a motion for judgment states a cause of action upon which the requested relief may be granted. A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof." *Abi-Najm v. Concord Condo., LLC*, 280 Va. 350, 356-57, 699 S.E. 2d 483, 486 (2010). To survive a demurrer, a complaint must "allege[] sufficient facts to constitute a foundation of law for the judgment sought, and not merely conclusions of law. To survive a challenge by demurrer, a pleading must be made with

³ The Plaintiff attached the FCPD's SOP to his Complaint as Exhibit A, and incorporated Exhibit A into his Complaint by reference

sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.” *Hubbard v. Dresser, Inc.*, 271 Va. 117, 122, 624 S.E. 2d 1, 4 (2006). While a demurrer assumes the accuracy of the facts alleged in a complaint, it does not admit the accuracy of legal conclusions made in the complaint. *Yusefovsky v. St. John’s Wood Apartments*, 261 Va. 97, 102, 540 S.E. 2d 134, 136-37 (2001).

II. THE PLAINTIFF HAS FAILED TO ALLEGE FACTS THAT WOULD ENTITLE HIM TO RELIEF PURSUANT TO VA CODE ANN. § 2.2-3809.

The Virginia General Assembly enacted the Act to address concerns related to the “collection, maintenance, use and dissemination of personal information.” Va. Code Ann. § 2.2-3800. As defined by the Act, “personal information” consists of

“all information that (i) describes, locates or indexes anything about an individual including, but not limited to his social security number, driver’s license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record; or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution.”

Va. Code Ann. § 2.2-3801. The Act establishes “procedures to govern information systems containing records on individuals.” *Id.* Political subdivisions of the Commonwealth are prohibited by the Act from collecting an individual’s personal information unless authorized by law. *Id.*

The Act places legal requirements only upon agencies that maintain information systems that include personal information, as previously defined. *See* Va. Code Ann. § 2.2-3803 (requirements for agencies that maintain an information system that includes personal information); Va. Code Ann. § 2.2-3805 (requirements for agencies maintaining an information

system that disseminates data based on personal information); Va. Code Ann. § 2.2-3806 (requirements for agencies maintaining personal information). As such, the legal requirements of the Act are triggered when an agency such as the FCPD maintains an information system that contains individuals' personal information.

To qualify as an information system, the database of information maintained by the agency must "contain[] personal information and the name, personal number, or other identifying particulars of a data subject." Va. Code Ann. § 2.2-3801. A data subject is further defined by the Act as "an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system." *Id.* Thus, to succeed in the instant case, the Plaintiff must show that he is a data subject whose personal information has been maintained by the FCPD in an information system in a manner not otherwise authorized by law.

a. The Plaintiff Cannot Establish That a Vehicle's License Plate Number is Personal Information of a Data Subject.

To qualify as an aggrieved person who is entitled to an injunction or writ of mandamus pursuant to Va. Code Ann. §2.2-3809, the Plaintiff must prove that he is a data subject whose personal information has been retained by Colonel Roessler or the FCPD in an agency information system without authorization by law. Va. Code Ann. § 2.2-3800.⁴ These terms as defined in the Act impose upon the Plaintiff the obligation to prove that the two images of the license plate "ADDCAR" and corresponding date, time and location of the camera that captured the images, constitute the Plaintiff's personal information as defined by the Act. As such, the meaning of the term "personal information" is paramount to the Court's consideration.

⁴ The Plaintiff does not contend that Colonel Roessler or the FCPD have disseminated his personal information, only that they have maintained it in an information system.

It is well settled that “[t]he plain, obvious, and rational meaning of a statute is always preferred to any curious, narrow or strained construction.” *Rasmussen v. Commonwealth*, 31 Va. App. 233, 238, 522 S.E. 2d 401, 403 (1999) (quoting *Gilliam v. Commonwealth*, 21 Va. App. 519, 522-23, 465 S.E. 2d 592, 594 (1996)). “Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation.”

Rasmussen, 31 Va. App. at 238, 465 S.E. 2d at 403. Furthermore,

“[u]nder the rule of *ejusdem generis*, when a particular class of persons or things is enumerated in a statute and general words follow, the general words are to be restricted in their meaning to a sense analogous to the less general, particular words. Likewise, according to the maxim *noscitur a sociis* . . . when general and specific words are grouped, the general words are limited by the specific and will be construed to embrace only objects similar in nature to those things identified by the specific words.”

Surles v. Mayer, 48 Va. App. 146, 164-65, 628 S.E. 2d 563, 572 (2006) (finding that the ex-boyfriend of the mother of a child who was the subject of a visitation petition was entitled to be considered a person with a legitimate interest pursuant to Va. Code Ann. § 20-124.1, which defines such persons as “including, but not limited to” a child’s grandparent, stepparent, former stepparent, blood relative and family members). *See also Wood by and Through Wood v. Henry Cnty. Public Schs.*, 255 Va. 85, 495 S.E. 2d 255 (1998) (holding that a pocketknife was not a weapon as defined by Va. Code Ann. § 18.2-308, which criminalizes the carrying in a concealed manner a “dirk, bowie knife, switchblade knife, ballistic knife . . . or . . . any weapon of like kind.”); *Kappa Sigma Fraternity, Inc. v. Kappa Sigma Fraternity*, 266 Va. 455, 470, 587 S.E. 2d 701, 710 (2003) (“when items with a specific meaning are listed together in a statute, and are followed by words of general import, the general words will not be construed to include matters within their broadest scope, but only those matters of the same import as that of the specific items listed.”)

The General Assembly has unambiguously defined “personal information” to include information that describes, locates or indexes anything about an individual, such as an individual’s “social security number, driver’s license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record,” or the personal characteristics of an individual, such as “finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution.” Va. Code Ann. § 2.2-3801. Unquestionably, a license plate number is not any of the specific terms contained in the definition of “personal information.” Therefore, the Court must determine whether the legislature, by use of the phrase “including, but not limited to,” intended to include a vehicle’s license plate number as a term similar in nature to the specific terms included in the statute. *Surles*, 48 Va. App. at 163-64, 628 S.E. 2d at 571-72.

Unlike all of the specific terms contained in the definition of “personal information,” the license plate number of a vehicle says absolutely nothing about an individual, his personal characteristics such as his fingerprints, or his membership in an organization. Indeed, assuming the truthfulness of the Plaintiff’s contention that he owns the vehicle to which the license plate “ADDCAR” is registered, the only way that Colonel Roessler and the FCPD have this information is because the Plaintiff himself furnished his name and address to the FCPD in his May 9, 2014, FOIA request, which connected his name and address to the license plate number. The only information that the FCPD has maintained in its information system relevant to the Plaintiff’s claims are two photographs of a license plate bearing the characters “ADDCAR,” and

the date, time, and location that each photo was taken.⁵ The FCPD's ALPR database contains no additional information associated with the license plate number, nor does it contain any information specific to the Plaintiff. As such, the license plate photo that is the subject of this Complaint cannot constitute personal information as defined by the Act.

The Plaintiff further alleges that the reason a vehicle's license plate number constitutes personal information as defined by the Act is because if a law enforcement officer were to query a separate database operated by the Department of Motor Vehicles (DMV) with the license plate number obtained from the ALPR database, the query would return a result that includes a "vehicle owners' social security numbers, driver's license numbers, addresses, vehicle liens, dates of birth, and photographs." (Compl. ¶ 19.) Colonel Roessler and the FCPD concede that the DMV maintains a database that contains personal information of individuals owning vehicles registered in Virginia. The license plates issued by the DMV to vehicles registered in Virginia are the property of DMV and remain the property of DMV after they are issued to individual vehicle owners.⁶ Va. Code Ann. § 46.2-713. However, this database is not the database at issue in the Plaintiff's Complaint, and the Act does not define "information system" to include databases maintained by entities separate from an agency. As such, the fact that information maintained in the FCPD's ALPR database may be used to query a second database not maintained by the FCPD, and that second query returns personal information, has absolutely no

⁵ As demonstrated by the photos attached to the Plaintiff's Complaint as Exhibit B, the database did not even indicate the state to which the license plate number relates.

⁶ Consequently, the license plate number issued by DMV cannot be the personal information of an individual.

relevance to the Plaintiff's claim, and cannot form the basis for a violation of the Act.⁷ Because a license plate number is not "personal information" as defined by the Act, the Plaintiff's Complaint must be dismissed.

b. The Plaintiff's Reliance on the Attorney General's Opinion is Misplaced and Does Not Establish That Colonel Roessler or the FCPD Have Violated the Act.

An Opinion of the Attorney General is not binding authority in the Court's consideration of this matter, although it is entitled to "due consideration." *See Twietmeyer v. City of Hampton*, 255 Va. 387, 393, 497 S.E. 2d 858, 861 (1998). On February 13, 2013, the Attorney General issued an opinion in response to a request by Colonel W.S. Flaherty of the Virginia State Police, regarding the legality of the State Police ALPR system.⁸ The opinion related to whether the State Police could maintain data such as license plate numbers in its ALPR database. In issuing the opinion, the Attorney General stated that ALPR data fell within the statutory definition of "personal information" because "for example, it may assist in locating an individual data subject, documenting his movements, or determining his personal property holdings. The collection of such information may adversely affect an individual who, at some point in time, may be suspected of and or charged with a criminal violation." (Compl. Ex. C.)

The opinion is wholly silent as to the manner in which a law enforcement officer could use a license plate number to monitor a data subject, or adversely affect some future criminal

⁷ Furthermore, the DMV database is not only maintained by the DMV in accordance with law, records maintained by DMV are deemed by statute to be confidential. Va. Code Ann. § 46.2-208. The confidentiality of the personal information contained therein is further protected by the proscription against law enforcement officers querying the database unless there is a legitimate law enforcement purpose for the query. Individuals who query the database without such a legitimate reason are subject to criminal prosecution. *See, e.g., Plasters v. Commonwealth*, 2000 WL 827940 (2000).

⁸ The Plaintiff included the Attorney General's Opinion as Exhibit C to his Complaint, and incorporated Exhibit C into his Complaint by reference.

case of a data subject, however, it appears that the Attorney General made the same error in reasoning that the Plaintiff has made in his Complaint: that because a law enforcement officer could take a license plate number from the ALPR database, input the number into a separate database, and obtain information from the separate database to utilize in a criminal investigation, the maintenance of the ALPR database violates the Act. The Attorney General's opinion ignores the definition of "information system," which is specific to the agency that maintains the system.

Furthermore, the General Assembly's action during its 2015 legislative session clearly demonstrates its disagreement with the Attorney General's legal reasoning. "When the General Assembly has known of the Attorney General's Opinion . . . and has done nothing to change it, [t]he legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view." *Beck v. Shelton*, 267 Va. 482, 492, 593 S.E. 2d 195, 200 (2004). On the other hand, "when a statute has been amended, there is a presumption that the General Assembly intended to effect a substantive change in the law." *Britt Constr., Inc. v. Magazzino Clean, LLC*, 271 Va. 58, 63, 623 S.E. 2d 886, 888 (2006) ("we will assume that a statutory amendment is purposeful, rather than unnecessary.")

Here, the Plaintiff cannot rely on *Beck* to ask the Court to rely on the Attorney General's opinion and hold that the General Assembly intended for ALPR data to be included in the category of data that cannot be maintained by an agency by not amending the Act after the Attorney General issued his opinion. The General Assembly proposed several pieces of legislation during the 2015 regular session, one of which, Senate Bill No. 965, passed both the

House and Senate and was vetoed by the Governor.⁹ In his veto, the Governor noted that “defining vehicle license plate numbers as ‘personal information’ could dramatically impact state and local agency operations and create public confusion. State law requires that license plates be attached to the front and rear of every vehicle, and license plates must be clearly visible and legible.” (Ex. 2.) The Governor’s veto refers repeatedly to the inclusion of license plate numbers in the definition of “personal information” as creating a “new” definition for personal information. (Ex. 2.) The obvious implication therein being that the current definition does not include license plate numbers.¹⁰

As demonstrated by the General Assembly’s proposed amendments to the Act, the clear intent of the legislature upon consideration of the Attorney General’s opinion was to substantively change the Act to include license plate numbers within the definition of “personal information” and to provide statutory authority for agencies to retain that information. *See Britt Construction, Inc.*, 271 Va. at 63, 623 S.E. 2d at 888 (“we will assume that a statutory amendment is purposeful, rather than unnecessary.”) Certainly, if the legislature agreed with the Attorney General’s opinion that license plate numbers are “personal information,” it would not have proposed amendments to the Act which, if passed, would have for the first time included license plate numbers within the definition. *Id.*

⁹ Senate Bill No. 965 and the Governor’s Veto are attached hereto as Exhibit 1 and Exhibit 2, respectively. The Court may take judicial notice of both documents because they constitute official publications of the Commonwealth. Va. Code Ann. § 8.01-388.

¹⁰ As illuminated by the Governor in his veto, the proposal to include license plate numbers in the Act’s definition of “personal information” would create an interesting irony; a vehicle’s license plate number would simultaneously be deemed an individual’s personal information, and the government would require that individual to publicly display that personal information on the front and rear bumpers of every vehicle that they own.

CONCLUSION

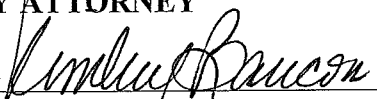
The Plaintiff's Complaint fails because it is predicated upon the Plaintiff's contention that the retention of a license plate number in the FCPD's ALPR database constitutes the unlawful retention of the Plaintiff's personal information. Because the Plaintiff can point to no binding authority holding that license plate numbers are personal information, and because the plain language of the Act does not permit such a conclusion, the Defendants' Demurrer must be granted and the Plaintiff's case dismissed with prejudice for failure to state a cause of action upon which relief may be granted.

Respectfully submitted,

**FAIRFAX COUNTY POLICE
DEPARTMENT
COLONEL EDWIN C. ROESSLER, JR.
By Counsel**

**DAVID P. BOBZIEN
COUNTY ATTORNEY**

By:



**Kimberly P. Baucom, Esquire
Assistant County Attorney**

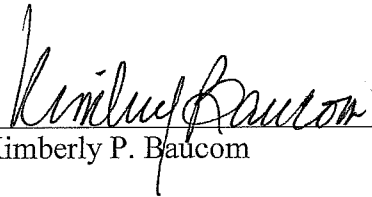
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Counsel for FCPD and Colonel Roessler

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 2015, a true copy of the foregoing document was sent via electronic mail and mailed, first-class mail, postage prepaid, to:

Rebecca K. Glenberg, Esquire
Hope R. Amezquita, Esquire
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Edward S. Rosenthal, Esquire
Rich Rosenthal Brincefield Mannitta Dzubin & Kroeger, LLP
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Alexandria, Virginia 22314
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Kimberly P. Baucom

NETSCAN

2014 Virginia Senate Bill No. 965, Virginia 2015 Regular Session

VIRGINIA BILL TEXT

TITLE: Government Data Collection and Dissemination Practices Act; use of personal information.

VERSION: Amended/Substituted

February 13, 2015

J. Chapman Petersen



Image 1 within document in PDF format.

SUMMARY: Government Data Collection and Dissemination Practices Act; passive collection and use of personal information by law-enforcement agencies. Limits the ability of law-enforcement and regulatory agencies to use technology to collect and maintain personal information on individuals and organizations where a warrant has not been issued and there is no reasonable suspicion of criminal activity by the individual or organization. The bill authorizes law-enforcement agencies to collect information from license plate readers, provided such information (i) is held for no more than seven days and (ii) is not subject to any outside inquiries or internal usage, except in the investigation of a crime or missing persons report. After seven days such collected information must be purged from the system unless it is being utilized in an ongoing investigation.

TEXT:

SENATE BILL NO. 965

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia, Police and Public Safety

on February 13, 2015)

(Patron Prior to Substitute--Senator Petersen)

A BILL to amend and reenact §§ 2.2-3800, 2.2-3801, 2.2-3802, and 52-48 of the Code of Virginia, relating to the Government Data Collection and Dissemination Practices Act; collection and use of personal information by law-enforcement agencies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3800, 2.2-3801, 2.2-3802, and 52-48 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3800. Short title; findings; principles of information practice.

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;
2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;
3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and
4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
3. Information shall be appropriate and relevant to the purpose for which it has been collected.
4. Information shall not be obtained by fraudulent or unfair means.
5. Information shall not be used unless it is accurate and current.
6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.
7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.
9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.
10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.
11. Unless a criminal or administrative warrant has been issued, law-enforcement and regulatory agencies shall not use license plate readers to collect or maintain personal information in a manner where such data is of unknown relevance and is not intended for prompt evaluation and potential use respecting suspected criminal activity or terrorism by any person. Notwithstanding the restrictions set forth in this subdivision, law-enforcement agencies shall be allowed to collect information from license plate readers without a warrant; however, any information collected from a license plate reader shall only be retained for seven days and shall not be subject to any outside inquiries or internal usage except for the investigation of a crime or a report of a missing person. Any information collected from license plate readers pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 2.2-3801. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

"Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

"Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

"Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer networks and the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

"Personal information" means all information that (i) describes, locates or indexes anything about an individual including, but not limited to, his social security number, driver's license number, **vehicle license plate number**, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual ; , and the record of his presence, registration, or membership in an organization or activity, **presence at any place**, or admission to an institution. "Personal information" shall ~~shall~~ **does** not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

"Purge" means to obliterate information completely from the transient, permanent, or archival records of an agency.

§ 2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;

3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;
7. Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity, ~~and maintained~~, **provided that this exception shall not apply to personal information collected without a warrant by any such law-enforcement agency in a manner through use of license plate readers where such personal information is of unknown relevance and not intended for prompt evaluation and potential use respecting suspected criminal activity or terrorism by any person;**
8. ~~Maintained~~ by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
- 8- ~~9.~~ ~~Maintained~~ by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;
- 9- ~~10.~~ Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;
- 10- ~~11.~~ Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;
- 11- ~~12.~~ Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);
- 12- ~~13.~~ Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;

13: 14. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

14: 15. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 63.2-1515.

§ 52-48. Confidentiality and immunity from service of process; penalties.

A. Papers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence or any terrorism investigation in the possession of the Virginia Fusion Intelligence Center shall be confidential and shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.). Every three years, the Department shall conduct a review of information contained in any database maintained by the Virginia Fusion Intelligence Center. Data that has been determined to not have a nexus to terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity.

B. No person, having access to information maintained by the Virginia Fusion Intelligence Center, shall be subject to subpoena in a civil action in any court of the Commonwealth to testify concerning a matter of which he has knowledge pursuant to his access to criminal intelligence information maintained by the Virginia Fusion Intelligence Center.

C. No person or agency receiving information from the Virginia Fusion Intelligence Center shall release or disseminate that information without prior authorization from the Virginia Fusion Intelligence Center.

D. Any person who knowingly disseminates information in violation of this section is guilty of a Class 1 misdemeanor. If such unauthorized dissemination results in death or serious bodily injury to another person, such person is guilty of a Class 4 felony.

E. For purposes of this chapter:

"Criminal intelligence information" means data that has been evaluated and determined to be relevant to the identification and criminal activity of individuals or organizations that are reasonably suspected of involvement in criminal activity or terrorism. "Criminal intelligence information" shall ~~not~~ **does** not include criminal investigative files or personal information collected without a warrant by any law-enforcement or regulatory agency in a manner through use of license plate readers where such personal information is of unknown relevance and not intended for prompt evaluation and potential use respecting suspected criminal activity or terrorism by any person.

Legislative Information System

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NETSCAN

2015 SESSION
(SB965)

GOVERNOR'S VETO

Pursuant to Article V, Section 6, of the Constitution of Virginia, I veto Senate Bill 965, which would significantly restrict the use of License Plate Readers (LPRs) and lead to many unintended consequences affecting public safety, transportation and the efficient conduct of business in the Commonwealth.

Despite their proven success in locating stolen vehicles, identifying drivers involved in hit-and-run accidents, locating missing children and enhancing overall public safety, this bill would drastically limit the use of LPRs by law enforcement agencies. In order to use a LPR without a warrant under this legislation, agencies must prove the LPR is being used for a "known relevance" data collected that is intended for prompt evaluation and there is suspected criminal or terrorist activity. This provision is extremely narrow and could impede day-to-day operations.

This bill also sets a strict, seven day retention period for all data collected by LPRs. Many localities in Virginia retain this data for 60 days to two years. Seven days is a substantial reduction. Additionally, law enforcement agencies demonstrate that crimes are often not reported until several weeks later. Under this bill, essential data would not be available at the time of those reports. This is particularly concerning when considering implications for the National Capitol Region, where cross-state collaboration and information-sharing are essential to responding to potential criminal or terrorist activity occurring near Virginia's borders.

Furthermore, defining vehicle license plate numbers as "personal information" could dramatically impact state and local agency operations and create public confusion. State law requires that license plates be attached to the front and rear of every vehicle, and license plates must be clearly visible and legible.

This new definition of personal information would likely prevent the live Internet transmission of video from VDOT's traffic cameras as a violation of the state's Government Data Collection and Dissemination Act.

The bill could potentially cripple the use of innovative, electronically-managed tolling lanes that improve the quality of life for Virginians by reducing commute times and expediting the tolling process. These projects use cameras that record license plate numbers for billing purposes, saving travelers the time they would spend waiting in line at a toll booth. The billing mechanism could be in violation of this legislation, eliminating the use of these time-saving travel options.

It would be unwise for me to sign legislation that could limit the tools available for legitimate law enforcement purposes and negatively impact public safety, or derail major transportation projects and jeopardize time-saving technologies that are essential to our economy, our citizens, tourism and the efficient conduct of business.

Accordingly, I veto this bill.

GOVERNOR'S RECOMMENDATION

1. Line 41, enrolled, after *use*

strike

any surveillance technology

insert

license plate readers

2. After line 64, enrolled

insert

“License plate reader” means a law-enforcement system that optically scans vehicle license plates.

3. Line 66, enrolled, after license number,

strike

the remainder of line 66 and through *number*, on line 67

4. At the beginning of line 72, enrolled

strike

presence at any place,

5. Line 77, enrolled

strike

all of lines 77 and 78

6. Line 81, enrolled, after *than*

strike

seven

insert

60

7. Line 83, enrolled, after *After*

strike

seven

insert

60

8. Line 85, enrolled

strike

all of lines 85 and 86