

COMPUTER PRIVACY AND SECURITY

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REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



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COMPUTER PRIVACY AND SECURITY

Report of the

Virginia Advisory Legislative Council

To

The Governor and The General Assembly of Virginia

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

I. INTRODUCTION

The citizens of this Commonwealth are living in a record-keeping society. They are finding that their opportunities, benefits and rights are being shaped by the contents of records that are being compiled in each area of personal activity (education, employment, credit, taxation, health, government licensing and benefits, law enforcement and so on). During the past two decades the large, personal records systems of most governmental agencies and private organizations have become computerized. As a result, fears have been expressed that these automated personal data systems are having a fundamental effect on our free society. And on the personal level, individuals are finding that they are significantly hampered in their attempts to affect the contents or usage or even discover the existence of many of the personal records systems which surround them.

These concerns, among others, prompted the General Assembly in 1974 to adopt a resolution directing the Virginia Advisory Legislative Council to study this matter of computer privacy and security and report its recommendations for legislation. The resolution was as follows:

SENATE JOINT RESOLUTION NO. 10

Directing the Virginia Advisory Legislative Council to study and report on Computer Privacy and Security.

Whereas, the computer is taking an ever-increasing role in our society; and

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Whereas, while these instruments are necessary and important in the business, industrial, and governmental growth of the country, if unchecked, they may cause grave inroads in the privacy of the individual; and

Whereas, a study committee of the federal Department of Health, Education and Welfare has made a study of the problems inherent in the untrammelled use of the computer, and has called upon Congress for legislation to "protect us from the protectors", and calls for the creation of a code of fair information practices for all automated data systems, whether run by governmental agencies or private organizations, and to provide criminal penalties for violations thereof; and

Whereas, other states have created Privacy and Security Councils, and it appears that a study should be made as to the feasibility of establishing such a Council in the Commonwealth; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to study and report on all aspects of the problems involving personal privacy and liberty in the use of computers. The Council shall study the experience of other states and make a recommendation concerning the establishment of a Privacy and Security Council in the Commonwealth of Virginia.

The Council shall complete its work and make its report to the Governor and the General Assembly no later than September one, nineteen hundred seventy-four.

Pursuant to this directive the Council appointed the Computer Privacy and Security Committee to conduct an initial study and report to the Council. A member of the Council, Senator Joseph V. Gartlan, Jr. of Fairfax, was appointed Chairman. The following were selected to serve on the Committee: Peter K. Babalas of Norfolk, J. Harry Michael, Jr. of Charlottesville, Mary A. Marshall of Arlington, Richard Barry of Arlington, Montgomery Knight of Norfolk, Robert Peck of Norfolk and Robert E. Summers of Norfolk. Senator Babalas was elected Vice-Chairman. During the course of its study the Committee met frequently and conducted public hearings. During four public hearings the Committee heard testimony from individuals representing groups from both the private and public sectors including: the Division of Justice and Crime Prevention, the Division of Automated Data Processing, the Criminal Litigation Division of the Attorney General's Office, the State Board of Elections, the Virginia Employment Commission, the Division of Personnel, the Council on Higher Education, the Department of Taxation, the Department of Welfare, the Department of Health, the State Department of Police, the Division of Motor Vehicles, the Right to Privacy Committee of the President's Domestic Council, the American Civil Liberties Union, the R. L. Polk Company, the Associated Credit Bureaus of Virginia, the Norfolk Police Department, the Norfolk Public Schools, the Fairfax County Computer Supervisor, the Virginia Citizens' Consumer Council, and other persons expressing their concerns as citizens and

representatives of industry of the Commonwealth. Additionally, the Committee requested the Division of Automated Data Processing to compile a Personal Information Survey which summarized the extent to which State and local agencies process identifiable personal data on citizens in the Commonwealth.

The Committee, throughout its study, has been in contact with the Criminal Justice Information System Task Force of the Virginia State Crime Commission in order that the studies of the two groups be coordinated.

Based on the study, findings and recommendations made by the Committee, the Council is now able to report as follows:

II. RECOMMENDATIONS

A. That the study be continued for another year in order that matters not fully reviewed might be considered and legislation can be developed which would: recognize the right of record privacy; place minimum administrative requirements on organizations maintaining information systems containing personal information; create rights in the subjects of personal information systems; set restrictions on the forced disclosure of social security numbers; create a Virginia Privacy Board to work through the Office of Consumer Affairs with rule-making powers to administer the Act; and establish a civil right of action in individuals and criminal penalties for violations of the Act.

B. That the sale of lists of vehicle registrations and titles be restricted solely for the use of notifying vehicle owners of vehicle defects and recalls for modifications.

C. That the authority of the Department of Taxation to transfer personal tax data to the Governor, as contained in § 58-46 of the Code, be deleted.

D. That personal information public school records be destroyed excepting information as to scholastic achievement.

III. DISCUSSION OF RECOMMENDATIONS

A. THE RECORDS PRIVACY ACT

The Council recognizes that automated personal information systems serve a very important and necessary role in our complex society. But while personal information systems are on the whole beneficial, the Council has found that these systems can at times be abused and may pose a real threat to the personal privacy of the citizens of this Commonwealth. While both manual and automated systems are of concern, computerized systems, because of their greatly increased capability to accumulate personal data and to increase the availability of this data through remote access

terminals, greatly magnify this threat to personal rights. The individual has found that it is easier for these records systems to affect him than for him to affect the record systems.

The Council determined that defining certain key concepts would aid in its analysis of the issues before it. These definitions are set out: Privacy is a concept which applies to individuals. In essence, it defines the degree to which an individual wishes to interact with his social environment and manifests itself in the willingness with which an individual will share information about himself with others.

Confidentiality is a concept that applies to data. It describes the status accorded to data and the degree of protection that must be provided for it. It is the protection of data confidentiality that is one of the objects of Security. Data confidentiality applies not only to data about individuals but to any proprietary or sensitive data that must be treated in confidence.

Security is the realization of protection for the data, the mechanisms and resources used in processing data, and the security mechanism(s) themselves. Data Security is the protection of data against accidental or unauthorized destruction, modification or disclosure using both physical security measures and controlled accessibility techniques. Physical Security is the protection of all computer facilities against all physical threats (e.g., damage or loss from accident, theft, malicious action, fire and other environmental hazards). Physical security techniques involve the use of locks, badges (for personnel identification), guards, personnel security clearances and administrative measures to control the ability and means to approach, communicate with, or otherwise make use of, any material or component of a data processing system. Controlled Accessibility is the term applied to the protection provided to data and computational resources by hardware and software mechanisms of the computer itself. (Definitions taken from "Government Looks at Privacy and Security in Computer Systems", National Bureau of Standards Technical Note 809, Feb. 1974.)

From these definitions, it is possible to see that there is no direct relationship between privacy (a desire by individuals, groups or organizations to control the collection, use or dissemination of information about them) and security (the realization of the protection of resources), although they are interrelated. It is even possible that a perfectly secure computer could be used in such a way as to violate individual privacy.

Records Privacy Act

The Council believes that as a matter of policy the preservation of personal privacy is a desirable goal. In the view of the Council, that which is needed is a comprehensive Records Privacy Act delineating administrative requirements to be followed by organizations maintaining information systems containing personal information and creating rights in the subjects of personal

information systems including adequate remedy procedures.

The principles which should be the essence of the Act, are as follows:

1. There should be no personal information system whose existence is secret.
2. Information should not be collected unless the need for it has been clearly established in advance.
3. Information should be appropriate and relevant to the purpose for which it has been collected.
4. Information should not be obtained by fraudulent or unfair means.
5. Information should not be used unless it is accurate and current.
6. There should be a prescribed procedure for an individual to learn the information stored about him, the purpose for which it has been recorded, and particulars about its use and dissemination.
7. There should be a clearly prescribed procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any organization collecting or holding personal information should, as the case may be, assure its reliability and take precautions to prevent its misuse.
9. There should be a clearly prescribed procedure for an individual to prevent personal information collected for one purpose from being used for another purpose without his consent.
10. The Commonwealth and any agency or political subdivision thereof should not collect personal information except as authorized by law.

If legislation can be developed and enacted which will embody these principles and apply in both the public and private sector, the Council believes a halt can be forced to the erosion of personal privacy as the legislation will adjust the balance of power between the citizen and record systems in such a fashion that the individual has the opportunity and the mechanism to contest, correct and control personal information held about him.

Having determined that which is desirable in principle and achieving the desired result are unfortunately not the same things. The preparation of a suitable bill draft while not impossible is exceptionally demanding in terms of time and thought. The Committee appointed by the Council had the opportunity to sample the views of government and private business officials and thereby gained an insight into the variety of personal information systems which might be affected by comprehensive legislation. The

ramifications of legislation which would satisfactorily protect personal privacy are immense, stretching to every facet of industry and government. Yet if procedures are not sufficiently far reaching the degree of protection afforded persons is barely worth the effort.

Time is needed to allow for the writing of a statute which will be of such breadth as to favor individual liberty while not stifling administrative efficiency. The most difficult aspect of regulation is applying any privacy law to the private sector in a manner not inadvertently causing absurd results which would generate much work for little benefit. Hopefully, an additional year of study will provide the time needed to strike the proper balance. Plans also include working closely with the Crime Commission in order to ensure the adequacy of a law which will cover the criminal justice system as well as all others.

B. THE RESTRICTION OF THE SALE BY THE COMMISSIONER OF MOTOR VEHICLES OF VEHICLE REGISTRATIONS AND TITLES ONLY FOR THE USE OF NOTIFYING VEHICLE OWNERS OF VEHICLE DEFECTS AND RECALLS.

It is currently the practice of the Division of Motor Vehicles to sell vehicle registration data to private companies. This data includes personal information furnished by individuals in compliance with State motor vehicle law. The data which is sold is used by car manufacturers in a number of ways, including the notification of owners of cars which are recalled by the manufacturers. But this data is also used to compile mailing lists. The Council was concerned upon the discovery that the citizens of this Commonwealth may be receiving annoying "junk mail" as a result of the compilation of such mailing lists. Reports were received of citizens receiving mail from automobile manufacturers informing them that the manufacturer knows the make of the automobile owned by them and that it is an inferior product compared to that offered by the manufacturer. The sale of personal data by the Division of Motor Vehicles permits, if not sanctions, this type of dunning advertisement. The Council feels that the compilation of such mailing lists from personal data which is by law required to be divulged tends to be a threat to personal privacy. We recommend a restriction in § 46.1-32 of the Code intended to limit this use of personal data supplied by individuals to the Division of Motor Vehicles.

C. THE DELETION OF THE DEPARTMENT OF TAXATION'S AUTHORITY TO TRANSFER PERSONAL TAX DATA TO THE GOVERNOR.

The Council recommends that the authority of the Department of Taxation to transfer personal tax data to the Governor, as contained in § 58-46, be deleted. This recommendation follows from the Council's concern over the abuse recently experienced in this area on the national level. The Council feels that this deletion of authority would aid the continuance of the Commonwealth's tradition of honoring its citizens' personal rights and safeguarding these rights from abuse by this State's executive branch.

D. THE DESTRUCTION OF PERSONAL INFORMATION SCHOOL RECORDS EXCEPTING INFORMATION AS TO SCHOLASTIC ACHIEVEMENT

Almost no where in the vast stores of personal data systems is there information whose potential for abuse is greater than the records held by our public schools. A person's life is charted from his earliest school experience until his final separation from the school system. The records maintained relate to all matter of things including scholastic achievement, activities, medical information and personal evaluations.

The Council finds no need to exist for the retention of these records which often contain erroneous information. It is our recommendation that the destruction of school records be required by law, excepting scholastic achievement data. Medical records should either be destroyed or at the option of the child's parents received by them.

Respectfully submitted,

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Willard J. Moody, Chairman	Robert R. Gwathmey, III
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Edward E. Lane, Vice Chairman	C. Hardaway Marks
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APPENDIX I

A BILL to amend and reenact § 46.1-32 of the Code of Virginia, relating to distribution of motor vehicle registration and title lists.

Be it enacted by the General Assembly of Virginia:

1. That § 46.1-32 of the Code of Virginia is amended and reenacted as follows:

§ 46.1-32. List of registrations and titles.—The Commissioner shall have prepared a list of registrations and titles which may be offered for sale to the public at a price which shall be determined by the Commissioner ; provided, that any such sale shall be only to such person or entity as represents that he will not use or allow another to use the information contained on the list other than for the purpose of notifying vehicle owners of vehicle defects and recalls for modifications. The list may be furnished the commissioner of the revenue of each county and city without cost.

APPENDIX II

A BILL to amend and reenact § 58-46, as amended, of the Code of Virginia, relating to secrecy of tax information; penalties therefor.

Be it enacted by the General Assembly of Virginia:

1. That § 58-46, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 58-46. Secrecy of information.—Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Commissioner or any agent, clerk, commissioner of the revenue, treasurer, or any other State or local tax or revenue officer or employee to divulge any information acquired by him in respect to the transactions, property, income or business of any person, firm or corporation while in the performance of his public duties. Any violation of the provisions of this section shall be punished by a fine not exceeding five hundred dollars or by confinement in jail not exceeding six months or by both; provided, however, that the Governor may at any time, by written order, direct that any information herein referred to shall be made public or be laid before any court; and, provided, that this inhibition does not extend to any matters required by law to be entered on any public assessment roll or book, nor to any act performed or words spoken or published in the line of duty under the law, and provided further, that this inhibition does not extend to inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study provided that any such information obtained shall be privileged; and provided further, that this inhibition does not extend to the sales price, date of construction, physical dimensions or characteristics of real property, or to any information required for building permits. Nothing contained herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who failed to timely pay their taxes, together with any relevant information which in the opinion of the Department of Taxation may assist in the collection of such delinquent taxes.

Notwithstanding the first paragraph of this section or any other provision of this title, the State Tax Commissioner is authorized to divulge or cause to be divulged tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who for the performance of his official duties, requests the same in writing setting forth the reasons for such request. The Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any

APPENDIX III

A BILL to amend the Code of Virginia by adding in Chapter 12 of Title 22 an article numbered 5 containing a section numbered 22-275.26, so as to provide for the destruction of non-academic school records.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 12 of Title 22 an article numbered 5 containing a section numbered 22-275.26 as follows:

Article 5.

Records of Pupils.

§ 22-275.26. A. For the purposes of this section "personal school records" shall mean any records or files containing information held or collected by any school in this State's system of elementary or secondary schools on pupils which information is not intended for public or general use or distribution such as, but not limited to, medical, psychological, psychiatric, behavioral or disciplinary information on a pupil, or personal comments about a pupil by a teacher, instructor or administrator.

B. All personal school records containing information on a pupil who has permanently departed from this State's system of public elementary and secondary schools, due to graduation, withdrawal or otherwise, shall be destroyed as promptly as possible after such departure, but in no event shall such records be destroyed later than one year after such departure; provided that this section shall not apply to transcripts or other records of a pupil's academic performance. Prior to the destruction of such records pursuant to this section, any records containing medical, psychological or psychiatric information on a pupil shall be turned over to such pupil's parents or guardians if the parents or guardians so request.

APPENDIX IV

SENATE JOINT RESOLUTION NO.....

Directing the Virginia Advisory Legislative Council to continue its study on Computer Privacy and Security.

WHEREAS, in 1974 the General Assembly directed the Virginia Advisory Legislative Council to undertake a study and report on computer privacy and security; and

WHEREAS, pursuant to the provisions of the study directive, Senate Joint Resolution No. 10, the Council appointed a committee to undertake such a study on its behalf; and

WHEREAS, the committee has held hearings, reviewed legislation and conferred with representatives of government and industry concerning the impact of possible privacy legislation; and

WHEREAS, the Congress of the United States has recently enacted personal information legislation which affects law and policy in all states; and

WHEREAS, it is further recognized that the Virginia State Crime Commission has gone forward with a study of the consolidation of criminal records with the view toward the protection of personal privacy as an adjunct thereto and with a study to determine the proper mechanism for the technical and policy management of criminal justice information; and

WHEREAS, additional time is needed by the committee in view of the enormity of the task set before it and in light of the coordination necessary to be achieved between federal trends and activities of other State agencies; and

WHEREAS, the General Assembly is able at this time to endorse as desirable norms for the initiation and maintenance of personal information systems certain elements of a code of fair information practices; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring; That

(1) It is the sense of the General Assembly that all personal information systems initiated and maintained by any public or private organization should be operated in conformity with the following principles of fair information practice provided that it is recognized that there is a necessity for the adaptation of the following principles for criminal justice information and for the use of additional principles and requirements for such criminal justice information:

(a) There should be no personal information system whose

existence is secret;

(b) Information should not be collected unless the need for it has been clearly established in advance;

(c) Information should be appropriate and relevant to the purpose for which it has been collected;

(d) Information should not be obtained by fraudulent or unfair means;

(e) Information should not be used unless it is accurate and current;

(f) There should be a prescribed procedure for an individual to learn the information stored about him, the purpose for which it has been recorded, and particulars about its use and dissemination;

(g) There should be a clearly prescribed procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information;

(h) Any organization collecting or holding personal information should, as the case may be, assure its reliability and take precautions to prevent its misuse;

(i) There should be a clearly prescribed procedure for an individual to prevent personal information collected for one purpose from being used for another purpose without his consent;

(j) The Commonwealth and any agency or political subdivision thereof should not collect personal information except as authorized by law; and

(2) That the study now underway by the Virginia Advisory Legislative Council relating to computer privacy and security is hereby continued. The present members shall continue as the members of the Committee, provided that if any member be unwilling or unable to serve, or for any other reason a vacancy occur, his successor shall be appointed in the same manner as the original appointment was made; and

(3) That the study now underway by the Virginia Advisory Legislative Council shall be conducted in coordination with the activities of the Virginia State Crime Commission in order that comprehensive legislation applicable to all government and private personal information systems may be developed; and

(4) The Virginia Advisory Legislative Council shall complete its study and make its report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five.

END