

00-044

ADMINISTRATION OF GOVERNMENT: GOVERNMENT DATA COLLECTION AND DISSEMINATION PRACTICES ACT.

Act prohibits collection by agency of personal information that is secret; permits installation of surveillance cameras and audio monitoring equipment in and on premises of recreation center, provided notices advising of such surveillance are clearly visible.

Mr. William J. McGhee
Town Attorney for the Town of Christiansburg
January 7, 2002

You ask whether the Privacy Protection Act of 1976 will permit the Town of Christiansburg to install surveillance cameras and audio monitoring equipment, visible and concealed, throughout the building and grounds of a recreation center located in the town.

You relate that the Town of Christiansburg operates a newly constructed recreation center. You report, however, that disturbances have emanated from the public and employees at the center, and that thefts have occurred, as well as accidents, which are attributable to employee negligence. The town contemplates the installation of surveillance cameras and audio monitoring equipment, visible and concealed, throughout the building and possibly on the grounds surrounding the building. You advise that the town proposes to erect conspicuous signs on the premises and at the entrances of the building to notify all persons that such surveillance equipment has been installed and is operational. You conclude that the town may install such cameras and equipment, provided the notices you describe are conspicuously installed.¹

The 1976 Session of the General Assembly enacted the Privacy Protection Act of 1976² pursuant to a recommendation of the Virginia Advisory Legislative Council ("Council").³ The Council's proposals were the result of a two-year study that included consideration of federal privacy legislation enacted by the Congress of the United States.⁴

The 2001 Session of the General Assembly replaced the Privacy Protection Act with the Government Data Collection and Dissemination Practices Act in Chapter 38 of Title 2.2, §§ 2.2-3800 through 2.2-3809.⁵ Chapter 38 imposes certain requirements on agencies that maintain personal information and on agencies that maintain an information system that includes personal information.⁶ Section 2.2-3803(A) provides, in part:

Any agency⁽⁷⁾ maintaining an information system that includes personal information shall:

....

5. Make no dissemination to another system without
(i) specifying requirements for security and usage including

limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed.

Section 2.2-3806(A) provides:

Any agency maintaining personal information shall:

....

2. Give notice to a data subject of the possible dissemination of part or all of [personal] information to another agency, nongovernmental organization or system not having regular access authority[.]

Section 2.2-3801(2) defines the term "personal information" as used in Chapter 38 as

all information that describes, locates or indexes anything about an individual including his 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 that 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. "Personal information" shall 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.

The entire legislative history of the Government Data Collection and Dissemination Practices Act (formerly the Privacy Protection Act of 1976),⁸ as well as the legislative history of the Federal Privacy Act of 1974,⁹ emphasizes "a concern to protect the privacy rights of citizens" and to afford means for challenging "personal data the dissemination of which could work ... economic harm or damage ... personal reputation."¹⁰

It is the intent of the Council that affirmative steps be taken now by the General Assembly to obviate the possibility of the emergence of cradle-to-grave, detailed dossiers on individuals, the existence of which dossiers would, "at the push of a button", lay bare to anyone's scrutiny, every detail, however intimate, of an individual's life.^[11]

The principles contained in the Government Data Collection and Dissemination Practices Act guide state agencies and political subdivisions in the collection and maintenance of information. The Supreme Court of Virginia has described the principles by which a personal information system may be established:

[N]o secret personal information system shall be established; the need to collect the information must be clearly established in advance; information must be relevant to the purpose for which it

has been collected; it should not be used unless accurate; the individual should be able to learn the purpose for which it is collected and particulars about its use and dissemination; the individual should be permitted to correct or erase inaccurate or obsolete information; and any agency maintaining such data should assure its reliability and prevent its misuse.^[12]

Consistent with these principles, the Government Data Collection and Dissemination Practices Act authorizes agencies to "[c]ollect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency."¹³ Chapter 38 requires that an agency collecting such information maintain it "with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject."¹⁴ Finally, § 2.2-3800(C)(1) requires that political subdivisions of the Commonwealth adhere to the principle that "there shall be no personal information system whose existence is secret."

A primary rule of statutory construction is that one must look first to the language of a statute, and if it is clear and unambiguous, the statute should be given its plain meaning, without resort to the rules of statutory interpretation.¹⁵ "A related principle is that the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹⁶ When the town places signs that are clearly visible warning that surveillance cameras and audio monitoring equipment are in operation and collecting data, then such collection is not a secret. Implied in your request is that the information collected by such a system may be used in enforcement of criminal penalties for destruction or damage to town property, as well as potential disciplinary action against town employees for acts of negligence. Consequently, I shall assume that the maintenance of the information collected by such a system will be pursuant to the requirements of the Government Data Collection and Dissemination Practices Act.

Therefore, I must conclude that the Government Data Collection and Dissemination Practices Act permits the installation of surveillance cameras and audio monitoring equipment in and on the premises of the recreation center, along with the described notices advising of such surveillance.

¹Any request by a town attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." Va. Code Ann. § 2.2-505(B) (LexisNexis Repl. Vol. 2001).

²See 1976 Va. Acts ch. 597, at 740.

³See 2 H. & S. Docs., *Computer Privacy and Security: Report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia*, S. Doc. No. 27 (1976) [hereinafter S. Doc. No. 27].

⁴See Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1897 (1974) (codified as amended at 5 U.S.C.A. § 552(a) (West 1996 & Supp. 2001)).

⁵See 2001 Va. Acts ch. 844, at 1194, 1410-13; see *id.* cl. 11, 14, at 1550 (repealing Title 2.1, inclusive of Privacy Protection Act of 1976, and enacting Title 2.2, effective October 1, 2001).

⁶See §§ 2.2-3806(A), 2.2-3803(A) (LexisNexis Repl. Vol. 2001).

⁷"'Agency' means ... any unit of local government including ... towns." Section 2.2-3801(6) (LexisNexis Repl. Vol. 2001).

⁸S. Doc. No. 27, *supra* note 3, at 3-12.

⁹4 U.S.C.C.A.N. 6916 (1974); *see supra* note 4.

¹⁰S. Doc. No. 27, *supra* note 3, at 7.

¹¹*Id.*

¹²*Hinderliter v. Humphries*, 224 Va. 439, 444, 297 S.E.2d 684, 686 (1982).

¹³Section 2.2-3803(A)(1).

¹⁴Section 2.2-3803(A)(4).

¹⁵*Loudoun Co. Dept. Soc. Serv. v. Etzold*, 245 Va. 80, 425 S.E.2d 800 (1993); *Last v. Virginia State Bd. of Medicine*, 14 Va. App. 906, 421 S.E.2d 201 (1992).

¹⁶*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

[Back to Jan. 2002 Index](#)