

REPORT ON
THE FORMULATION OF GUIDELINES FOR USE IN
DISTINGUISHING REPORTABLE PRIVACY PROTECTION ACT
PERSONAL INFORMATION
AND
A RECOMMENDATION FOR STATE DATA MANAGEMENT
AS REQUESTED BY SJR NO. 73
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



SENATE DOCUMENT NO. 14

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
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1979



COMMONWEALTH of VIRGINIA

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The Honorable John N. Dalton
Governor, Commonwealth of Virginia

and

Members of the General Assembly

I am pleased to transmit to you this report of a study on the Formulation of Guidelines for use in Distinguishing Reportable Privacy Protection Act Personal Information and a Recommendation for State Data Management. The study was authorized by SJR No. 73.

Its recommendations include development of the suggested guidelines, action believed necessary to address the State data management problem, and minor legislative changes to immediately reduce Privacy Protection Act reporting requirements.

Many individuals from State and Local Government assisted our Department in conducting this study.

Sincerely,

A handwritten signature in cursive script that reads "R. W. Miller".

R. W. Miller

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INTRODUCTION

The 1978 Session of the General Assembly of Virginia passed Senate Joint Resolution No. 73, requesting the Department of Management Analysis and Systems Development to formulate certain guidelines and conduct a study relating to State data systems.

The resolution resulted from a review of the first "Report of Existence of Information Systems Containing Personal Information". This report was a requirement of the Privacy Protection Act of 1976: Section 2.1-383 "every agency shall make report to the Department of Management Analysis and Systems Development of the existence of any information system which it operates or develops which will include a description of the nature of the data in the system and purpose for which it is used. The Department shall compile and arrange the information so received and annually provide the same to the Secretary of the Commonwealth. Such information shall be made available for inspection by the general public ..."

The first report, for fiscal year ending June 30, 1977, was a 760 page document that listed the 2,647 systems and approximately 140,000 data items by 491 jurisdictions of State and Local Government. Concerns expressed when the report was examined resulted in the three requirements of SJR No. 73:

1. Guidelines are needed to uniformly determine which personal data systems may be considered to contain only "routine information" within the meaning of the Act.
2. What is the possibility of eliminating duplication in State personal data systems through data systems centralization in order to bring about greater economies and efficiencies in State data management?
3. Is it appropriate and necessary to the purposes of State or local government to collect and maintain information concerning political or religious convictions of any person?

During the drafting of SJR No. 73 consideration was given to funding the development of guidelines, estimated at two person years of effort. An alternative to additional funding was to give the Department of Management Analysis and Systems Development (MASD) two years to absorb the task as a routine activity. However, SJR No. 73 was enacted with a one year reporting deadline: to the 1979 Session of the General Assembly.

This study was conducted within these constraints of no additional funding and reduced time expectations. Further, the reorganization of MASD by the 1978 Session of the General Assembly (setting up a separate Department of Computer Services and assigning new duties to MASD) severely limited time available to devote to SJR No. 73.

RECOMMENDATIONS

SJR No. 73, Part One:

Resolved, that the Department of Management Analysis and Systems Development is requested to formulate and transmit to State agencies guidelines for their use in uniformly determining which personal data systems may be considered to contain only "routine information" within the meaning of the Privacy Protection Act of 1976.

RECOMMENDATION: Develop a set of guidelines which establish routine use and non-routine use criteria for the major personal information systems of State and Local Governments.

See Appendix C for Personnel Systems Model.

Note: Funding will be required.

SJR No. 73, Part Two:

Resolved, that the Department of Management Analysis and Systems Development is requested to conduct a study of the possibility of eliminating duplication in State personal data systems through data systems centralization in order to bring about greater economies and efficiencies in State data management.

RECOMMENDATION: Legislative concern is required to achieve this often talked about and occasionally attempted objective.

Legislative involvement is considered essential because it is the Acts of the Legislature which create the organizational entities where separate data systems flourish.

An approach similar to House Joint Resolution No. 175, adopted by the 1978 Session of the General Assembly, is recommended. HJR No. 175 creates a joint subcommittee to study the development of a Virginia Resources Information System.

See Appendix B for a proposed Senate Joint Resolution, creating a joint subcommittee to study the centralization of the data systems of State and Local Governments.

SJR No. 73, Part Three:

Resolved, to consider whether it is appropriate and necessary to the purposes of State or Local Government to collect and maintain information concerning political or religious convictions of any person.

FINDINGS: There is no known need to require the collection and maintenance of information concerning political or religious convictions.

In some instances, such as hospital admission records, it is desirable to collect, voluntarily offered, religious affiliations.

Archival records do contain, or are believed to contain, political and religious affiliation data collected prior to more recent information privacy concerns.

THE STUDY

Analysis of the 1978 Report

The "Report of Existence of Information Systems Containing Personal Information" for the fiscal year ending June 30, 1978, including 3409 systems from 605 reporting jurisdictions of State and Local Government. These jurisdictions were: 110 State Agencies; 14 Higher Education Institutions; 74 counties; 36 cities; 51 towns; 310 school districts; 10 planning districts. Twenty-nine jurisdictions, mainly small towns, reported no system; and 207 "agencies" to whom questionnaires were mailed and no response received by the 1978 reporting deadline.

Kinds of systems reported were:

Personnel Records	818	29%
Payroll Records	185	
Pupil and Student Records	649	19%
Tax Records	262	8%
Social Service/Welfare (Not full reporting)	60	2%
Vehicle Registration/Licensing (Local property tax base)	58	2%
Library	58	2%
Approximately 700 other captions	<u>1319</u>	<u>38%</u>
Totals	<u>3409</u>	<u>100%</u>

Cost of Reporting

The cost of preparing the two annual reports was in the \$50,000 - \$60,000 range, per report. For the 1977 Report, MASD's costs were \$26,300 and Reporting Agencies' costs were estimated at \$25,300. For the 1978 Report, MASD's costs increased by approximately \$4,000, due to computer programming updates; while Reporting Agencies' costs were estimated to decrease slightly, because only new or changed systems had to be reported in detail. Of these amounts, approximately \$6,000 per year were new costs for postage, printing, forms, etc. The remainder was the allocation of time used by existing employees.

Questions Asked and Concerns Expressed by Reporting Agencies

MASD was contacted, mostly by telephone, by approximately 300 administrative employees of local and State government during the compilation of the 1977 and 1978 reports. For many, this was first knowledge of the Privacy Protection Act, of its Principles of Information practice, and of its compliance requirements. Questions and concerns included the following:

- o Why report?
 - Everyone at local level knows what public records exist, so why report?
 - My records are confidential, should not be reported.
 - We have Freedom of Information anyway, so why report?
 - I (especially county administrators) object strongly to this extra paperwork.

- o What to report?
 - All I've got is files, no systems!
 - I, the Commissioner of Revenue, am the system.
 - Every record I have could "adversely affect" data subject.
 - Necessary to report 3 X 5 personnel cards?
 - Yes/No requests about hundreds of systems by name: report or not?

- o Wide variation in applying meaning of terms.
 - Act defines "information system" as total components and operations of a record-keeping process, whether automated or manual, containing personal information
 - DMV reported 6 while Virginia Commission for the Visually Handicapped reported 143; VPI reported 11 while George Mason University reported 163; etc.

 - NOTE: Generally, the higher the degree of automation the more the reliance on a few comprehensive, automated systems.

 - Act excludes "routine information maintained for the purpose of internal office administration" but couples this with "whose use could not be such as to affect adversely any data subject".
 - Applied by most as a non-exclusion; one jurisdiction said "we get sued a lot, so every record has adverse potential."

Benefits of Reporting

- o Making most units of State and Local Government aware of the Privacy Protection Act and its provision (the extent to which agencies have gone beyond the reporting requirement to assure compliance with other provisions of the Act is for the most part unknown.)

- o Providing a mechanism to list, view and review the "personal information systems" of State and Local Government
(uniform naming by MASD and alphabetical compilation produced this first of its kind report).
- o Initiation of follow-up actions, e.g. SJR No. 73.

Development of a "Current Thinking" Paper

Building on the foundation of contacts made and knowledge acquired during the 1977 and 1978 reporting cycles, MASD contacted the agencies of State and Local Government that had developed the most comprehensive responses to the intent and requirements of the Act. Although the County of Fairfax initiated a comprehensive survey, the City of Virginia Beach's Department of Data Processing took the lead in developing a manual for complying with the Act, for training employees in its use, and for informing citizens about their rights under the provisions of the Act.

A working session with City of Virginia Beach employees in September 1978 produced the framework for a "Current Thinking" paper. This was followed by telephone conferences with other Privacy Protection Act knowledgeable individuals in numerous State and Local Government Agencies, to further develop the paper.

The product of these efforts was an approach to complying with the first two requirements (routine information, and data systems duplication) of SJR No. 73.

Routine Information

The Act excludes from the term "personal information" "routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject".

In each set or type or kind of information system there are generally combinations of data that could be used with adverse affect even though intended for internal administration.

On the other hand, there are expected, accepted (routine) uses for the various sets or types or kinds of information systems; and there are unacceptable uses. These distinctions apply whether the purpose is internal office administration, or whether the purposes are all inclusive.

An illustration is Personnel Systems, the largest category reported (29%).

Routine (Acceptable) when used to:

- recruit, employ, measure/reward performance, discipline, terminate
- exchange employment dates, position titles, salary ranges with other employers

- provide investigative information to the official criminal justice community
- release employment information for credit purposes, when explicitly authorized by employee
- provide payroll and payroll related data to payroll, employee benefit and payroll tax systems

Non-Routine when used to:

- disseminate non-employee authorized credit information
- provide investigative information to other than the official criminal justice community
- respond to casual inquiries

Similar guidelines could be developed for other major categories of systems.

Data Systems Duplications

With more than 800 identified State and Local Government reportable and 634 responding "agencies", most with legislative mandates to employ and thus by inference to create records containing "personal information", the possibility of eliminating duplication through voluntary data systems duplication is very remote.

Presentations to Coordinating Bodies

MASD next scheduled and made presentations of the "Current Thinking" Paper to the following coordinating bodies:

1. On September 28, 1978, to the Commonwealth Information Systems Policy Advisory Council (CISPAC)
This body consists of the Director of MASD, the Director of the Department of Computer Services, an Assistant to each of the Governor's Secretaries, and the Management Information System's Director for the Division of Legislative Services.
2. On October 18, 1978, to the Advisory Council for Educational Computing (ACEC)
This body consists of directors or equivalent positions from the management information systems/computing center function of the State institutions of higher education.
3. On November 17, 1978, to the Commonwealth of Virginia Information Sciences Group (COVIS)
This body consists of information systems/data processing managers from the counties and cities of local government, planning district personnel, and State information systems/data processing personnel.

These presentations resulted in the following additional, specific thoughts:

- o Discontinue centralized reporting
 - the effort has served its purpose
 - instead, maintain lists in the administrative center of each agency
 - eliminate reporting (or listing) by or within the sub-units of "agencies" (departments, bureaus, etc.)

- o The State should develop a model personnel-payroll system that could also serve the needs of local governments.

- o Tax systems need to be examined as a candidate for centralization or standardization
(A subsequent discussion with the State Tax Commissioner indicated that focal points of this concern are more the responsibilities of the Auditor of Public Accounts and the Department of Intergovernmental Affairs than the Department of Taxation.)

- o Legislators will have to get involved if data system centralization is to become a reality
 - an example is HJR No. 175, passed by the 1978 Session of the General Assembly, creating a joint subcommittee to study the development of a Virginia Resources Information System.

 - similar efforts are needed in areas of
Human Resources
Transportation
Education
Higher Education
Among "regions of" local governments

These additional thoughts have been incorporated into the RECOMMENDATIONS of this study.

Political or Religious Convictions Data

The 1978 Report of Existence of Information Systems Containing Personal Information indicates that 242 systems include religion as a data item, and 15 include political ideology.

A telephone sampling by MASD found that this information existed or was thought to exist in archival records.

There were no findings of current, mandatory requirements for the collection of information concerning political or religious convictions.

HJR No. 12, A RELATED STUDY

By request, a presentation was made by MASD on September 18, 1978, to members from the Committees on General Laws of the House of Delegates and the Senate who are conducting the HJR No. 12 study to identify and reconcile differences between the Freedom of Information Act and the Privacy Protection Act. MASD discussed lack of understanding and wide differences among agencies in administering the Privacy Protection Act.

CONCLUSIONS

MASD found that only a few agencies of State and Local Government became concerned enough about the Privacy Protection Act of 1976 to really examine and, if needed, change their information practices in terms of the Acts' principles. Most agencies were and are satisfied to wait until a problem is identified or an issue surfaces, and then respond. For example, the Act states that every agency shall make report to the Department of MASD, and the Department shall compile and arrange the information so received. Fewer than six agencies contacted MASD to initiate reporting. Mailings and follow-up by MASD were necessary to obtain compliance with the reporting requirement.

After the administrative and data processing units of State and Local Government became involved in the reporting process, interest in and cooperation to effect improvements were excellent.

The recommendations, recorded earlier in this study, are the product of these individuals from State and Local Government, enhanced by the advice of the coordinating bodies identified earlier in the study.

PROPOSED BILL FOR 1979 GENERAL ASSEMBLY CONSIDERATION

Code of Virginia, Chapter 26, Privacy Protection Act of 1976

(1) Revise Section 2.1-383 to read as follows:

Section 2.1-383. Agencies to report concerning systems operated or developed; publication of information - Every Agency shall make report of the existence of any information system which it operates or develops which will include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of such information shall be made available for inspection by the general public in the office of the head of each agency. Copies of such information shall be provided upon request and a fee shall be charged for the same sufficient to cover the reasonable costs of reproduction.

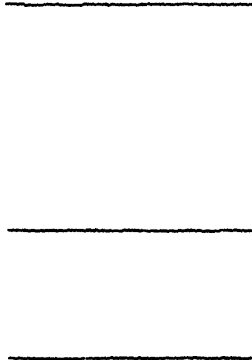
(2) Revise part 2 of Section 2.1-382 to read as follows:

Section 2.1-382

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing such information; however, documented permission for dissemination in the hands of such other agency or organization will satisfy this requirement. Such notice may be given on applications or other data collection forms prepared by data subjects.

SENATE JOINT RESOLUTION NO.

Creating a joint subcommittee to study the centralization of the data systems of State and Local Government.



WHEREAS, members of the General Assembly from time to time identify opportunities to bring about economies and efficiencies in the operations of State and local governments; and

WHEREAS, the 1978 Session of the General Assembly passed Senate Joint Resolution No. 73, which included a request that the Department of Management Analysis and Systems Development conduct a study of the possibility of eliminating duplication in State personal data systems through data systems centralization in order to bring about greater economies and efficiencies in State data management, as a result of Privacy Protection Act reporting which identified 1003 personnel-payroll systems, 649 pupil and student records systems, 262 tax records systems, and 1495 other systems for a total of 3409 systems of personal information among 605 "agencies" of State and local government; and

WHEREAS, the Department of Management Analysis and Systems Development study, which included participation by many individuals from the agencies of State and local government, concluded that the main cause of data systems duplication is the existence and operation of a great number of State and local government "agencies", each empowered by the General Assembly to employ personnel who in turn develop systems; and

WHEREAS, the basic solution to the problem is political and not technical, as evidenced by the very limited success of great efforts by a single State agency to expand the concept of data resource sharing beyond the boundaries of the many independent agencies; and

WHEREAS, a number of relevant information systems and data communications projects and studies are currently in progress within the Executive Branch of State government; and

WHEREAS, the 1978 Session of the General Assembly did initiate a political approach to the solution of data and information sharing in HJR No. 175 creating a joint subcommittee to study the development of a Virginia Resources Information Systems; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, that the General Assembly of Virginia expand the approach of HJR No. 175 to encompass the larger area of data systems centralization among the agencies of State and local government. In carrying out the purpose specified herein, a joint subcommittee to study the centralization of the data systems of State and local government is hereby created. The joint subcommittee shall study the most cost effective applications of modern information processing technology relative to the service programs and organizational structures of the agencies of State and local government, including capabilities to share data through electronic communications devices and systems. The joint subcommittee shall: give consideration to the possibility of a shared data/information system(s) for each of the Governor's Secretarial functional areas (Administration and Finance, Commerce and Resource, Education, Human Resources, Public Safety, and Transportation), and for regions of local government; give consideration to standardized systems, such as Personnel, Tax, Student Records, Medical Records, etc., that may be applied across all organizational boundaries; and give consideration to the production of a plan for data management in the Commonwealth during the decade of the 1980's.

The joint subcommittee shall be composed of nine legislative members to be appointed as follows: one person shall be appointed from the membership of the Senate General Laws Committee by the Chairman thereof; one person shall be appointed from the membership of the Senate Local Government Committee by the Chairman thereof; one person shall be appointed from the membership of the Senate Finance Committee by the Chairman thereof; one person shall be appointed from the membership of the Senate Transportation Committee by the Chairman thereof; one person shall be chosen from the membership of the Senate by the Senate Committee on Privileges and Elections; one person shall be appointed from the membership of the House of Delegates' Committee on General Laws by the Chairman thereof; one person shall be appointed from the membership of the House of Delegates' Committee on Counties, Cities and Towns by the Chairman thereof; one person shall be appointed from membership of the House of Delegates' Committee on Education by the Chairman thereof; and one person shall be appointed from the membership of the House of Delegates' Committee on Health, Welfare and Institutions by the Chairman thereof.

The members of the joint subcommittee shall elect a Chairman and Vice-Chairman from the membership thereof. If a vacancy occurs for any reason, successors shall be appointed by the appropriate person or Committee designated herein to make the appointment. The Committee, after considering the technical capabilities of State and local government employees, and after reviewing the recommendations of relevant studies made by consultants for various agencies of State and local government, and after considering the advice the Legislative Scientific and Technological Advisory Committee, may seek the advice of and/or engage outside consultants in the conduct of this study. All agencies of the Commonwealth shall assist the joint subcommittee upon request.

The joint subcommittee shall make an interim report to the Governor and the General Assembly not later than December One, Nineteen Hundred Seventy-Nine and shall make a final report not later than December One, Nineteen Hundred Eighty.

MODEL GUIDELINE FOR USE IN DISTINGUISHING REPORTABLE PRIVACY
PROTECTION ACT PERSONAL INFORMATION

Type of system: Personnel

Also combination of Personnel and Payroll

Routine when used to:

- recruit, employ, measure/reward performance, discipline, terminate
- exchange employment dates, position titles, salary ranges with other employers
- provide investigative information to the official criminal justice community
- release employment information for credit purposes, when explicitly authorized by employee
- provide payroll and payroll related data to payroll, employee benefit and payroll tax systems

Non-Routine when used to:

- disseminate non-employee authorized credit information
- provide investigative information to other than the official criminal justice community
- respond to casual inquiries

Personnel systems which meet the above Routine Use criteria need not be reported.

SENATE JOINT RESOLUTION NO. 73

Requesting the Department of Management Analysis and Systems Development to formulate certain guidelines and conduct a study relating to State data systems.

Agreed to by the Senate, February 18, 1978.

Agreed to by the House of Delegates, March 2, 1978

WHEREAS, the Privacy Protection Act of 1976 provides for the reporting to the Department of Management Analysis and Systems Development of the existence of personal data systems maintained by State agencies; and

WHEREAS, many of such data systems are of a variety that may be considered to be routine and necessary; and

WHEREAS, subsection 2. of § 2.1-379 of the Code of Virginia exempts from the application of the Privacy Protection Act of 1976 "routine information" maintained for the internal use of the agency maintaining such data systems; and

WHEREAS, the Privacy Protection Act of 1976, by requiring the reporting of the existent personal data systems to one central agency makes possible a unified, consistent review of State personal data systems policy; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, that the Department of Management Analysis and Systems Development is requested to formulate and transmit to State agencies guidelines for their use in uniformly determining which personal data systems may be considered to contain only "routine information" within the meaning of the Privacy Protection Act of 1976; and, be it

RESOLVED FURTHER, that the Department of Management Analysis and Systems Development is also requested to conduct a study of the possibility of eliminating duplication in State personal data systems through data systems centralization in order to bring about greater economies and efficiencies in State data management and, further, to consider whether it is appropriate and necessary to the purposes of State or local government to collect and maintain information concerning political or religious convictions of any person. The Department of Management Analysis and Systems Development shall present its findings together with any legislative recommendations to the Governor and the General Assembly prior to the nineteen hundred seventy-nine Session of the General Assembly.
