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Council Members
Virginia Freedom of Information Advisory Council
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General Assembly Building, 2nd Floor
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Dear Council Members:

Mary McGowan, legal counsel for Prince William County Schools ("PWCS"), and I are scheduled to meet with your Personal Identifying Information Subcommittee on November 6th to further discuss PWCS's request for a specific FOIA exemption covering certain personal information recorded by the Visitor Information System ("VIS"). This system is provided to PWCS through Raptor Technologies, Inc., one of several electronic identification systems in widespread use in schools throughout the country. In the meantime, we are anxious to respond to certain questions asked by Freedom of Information Advisory Council members at your September 21st meeting.

1. *Who makes the decision on what felonies will send up a "red flag" and prohibit entry to the schools of persons convicted of such felonies? Concern was also expressed that the VIS could have a chilling effect on convicted parents visiting a school facility, even in situations where the parent's conviction has nothing to do with child safety.*

Answer: VIS does not "flag" persons convicted of all felonies, only those felonies requiring registration as a sex offender. Raptor's VIS only searches the registered sex offender ("RSO") databases of states nationwide. These databases are accessible to the public via the internet. Each state sets its own criteria for those offenses requiring registration.

In Virginia, those offenses are listed in Va. Code § 9.1-902, "Offenses Requiring Registration." Offenses requiring registration include murder, criminal homicide and various sexually violent offenses referenced within the statute. Pursuant to Va. Code § 18.2-370.5, individuals convicted of such crimes are prohibited from entry upon elementary and secondary school property, regardless of whether they are parents of children

enrolled in the school. Thus, the Commonwealth of Virginia determines what convictions bar entry to school facilities. Va. Code § 18.2-370.5 also provides a method by which a person convicted of such an offense may, upon notice to the local superintendent of schools, petition the Juvenile and Domestic Relations Court to lift the statutory ban on entry to school property.

Also included within the registry requirements of Va. Code § 9.1-902 are other offenses involving the safety of children, such as charges relating to child pornography and inappropriate contact with minors using communication devices. Persons convicted of, and registered for, these less violent crimes are neither barred from school grounds by statute nor from participating in their child's education. Although a VIS alert is sent to the school because such persons are registered sex offenders, non-violent offenders are allowed entry on school grounds for educational reasons, provided they remain in the company of a staff member.

The other category of persons who may be "flagged" by VIS are those whose right to be present on school grounds or access to children has been prohibited by court order. Most often, such orders issue in cases involving divorce, child custody or other domestic relations matters. When a court order limiting or prohibiting a person's access to schools is presented to school personnel, they manually input into VIS the person's name, address, date of birth, the student name and grade, and often a description of the reasons for, and terms of, the limitation as contained in the court order. The VIS provides a central mechanism by which school personnel can quickly and easily determine the nature and extent of such prohibitions or limitations and carry out the order of the court.

2. *Is VIS used for visitors at heavily attended events such as sports, concerts, etc.?*

Answer: The VIS is not a security tool for large scale events. Similarly, no type of manual security check was used prior to the implementation of VIS for such events.

3. *What safeguards exist to assure that misidentification will not occur with use of the VIS?*

The VIS does not automatically identify visitors as registered sex offenders, but provides information which is then verified by the school and VIS, and if necessary, by the police department. VIS first produces a listing of the visitor information inputted at the school, side by side with a list of persons from state RSO databases with the same name and specific date of birth or age. (The system simply conducts an RSO database search using the visitor's first name, last name and date of birth.

Since some states only enter the name and age (versus specific birth date) of the offender into the RSO database, there is a larger field of potential matches for those states. Common names may also produce more than one match which must then be reviewed in conjunction with other criteria.) The VIS system user determines if the information provided is a match using procedures and criteria recommended by Raptor. Matches are typically resolved via photographs, different middle name, race, height, weight, eye color and other indicators noted on the RSO record.

If all indicators match, the Division's Office of Risk Management and Security Services, the School Resource Officer, and Raptor receive immediate electronic notification and the visitor is asked discreetly to step into a private location. If the visitor claims the match is incorrect, the PWCS Office of Risk Management, the School Resource Officer and Raptor work together to confirm whether the match is correct. Raptor is available instantly to assist school staff in determining matches.

Due to the ability to work immediately and directly with Raptor and, if necessary, the local police, PWCS has never had a situation where a person has been erroneously "flagged" by the VIS as a registered sex offender and has been mistakenly barred from the schools.

4. *In addition to these specific questions, some members of the Council expressed concern that VIS may be overly invasive and infringe upon individual rights.*

Answer: At least one federal court has held that VIS does not infringe upon parental or student rights, noting that it is a policy decision for local school districts to determine, in the wake of "the Columbine school shooting and the increased visibility of and sensitivity to sex offenders", the methods used to carry out the "duty to take appropriate steps to protect our children while at school." [Meadows v Lake Travis Independent School District, United States District Court for the Western District of Texas, Austin Division, Case No. A-08-CA-819-SS (August 18, 2009)].

In Meadows v. Lake Travis, a parent was refused entry into the secure part of a school when she refused to present a driver's license or other acceptable identification for a sex offender background check through the VIS. The Texas school division used the same Raptor system implemented by PWCS, which, as the court noted, has been endorsed by the U.S. Department of Justice, has received federal grant money, and by 2006-2007 was in use in 1400 schools in 100 school districts in 10 states. (The Raptor VIS system is now in use in over 6000 schools across the country.)

In ruling against the parent, the Court found, *inter alia*, that use of the Raptor system in no way infringed upon the plaintiff's (i) right to be free from unreasonable search and seizure, (ii) right of privacy, (iii) right of assembly, free speech and association, or (iv) right to due process. In upholding the school district's use of Raptor, the Court found that "schools have a compelling interest in ensuring the safety of their students, which includes protecting them from sex offenders" (emphasis added), that the school district's regulation and use of Raptor was narrowly tailored to further that interest, and that to require the schools to manually search all of the sex offender data bases readily accessed by Raptor would be administratively impossible. [Opinion at pp 15-16.]

It is important to note that since VIS was implemented at PWCS, there has been widespread support of the system by parents and the community, and overwhelming cooperation in implementation of VIS. In addition to protecting the security and operational aspects of the system, PWCS seeks a specific FOIA exemption for the VIS in order to prevent identity theft and protect the confidentiality of the school community which has come to rely on the VIS as a measure of protection for PWCS students.

5. *What other schools use VIS systems and why is such a system in use by PWCS?*

Answer: As noted above, the Raptor VIS system is now operational in more than 6000 schools across the nation. As of this date, both PWCS and Stafford County (VIS is in use in at least one Stafford high school) use the Raptor VIS system. However, there are at least two other VIS systems comparable to Raptor's in use both within Virginia and nationwide. For example, Fairfax County Public Schools, the largest school division in the state, makes two alternative systems available to schools and has VIS systems in approximately 90 schools. One of Raptor's competitors, School Check-In, has more than 4000 VIS systems in place across the country.

Certainly, larger urban school divisions (Prince William is the 43rd largest public school division nation-wide) have a greater need for electronic visitor identification systems due to the sheer number of students (76,656) and visitors, and the associated administrative burden in carrying out the statutory mandate prohibiting the unauthorized presence of sex offenders on school property.

6. *How does VIS affect parents or relatives of students who may be in the country illegally?*

Answer: PWCS, which is a separate legal entity from Prince William County, is very mindful of its obligation under Plyler v. Doe to educate all

children regardless of immigration status. PWCS interprets Plyler to also mean that it should take no actions to discourage parents or guardians who are here illegally from participating in the education of PWCS students. Accordingly, visitors to PWCS are not asked about their immigration status. The obligations imposed by Plyler were carefully considered when VIS was adopted and measures were taken to accommodate visitors who might not be able to produce proof of permanent residency, as well as the many parents/guardians employed by foreign embassies and governments with offices in the metropolitan D.C. area.

As reflected in PWCS Regulation 926-1, Visitor Identification, in addition to passports, re-entry permits and green cards, visitors may also produce a foreign driver's license or foreign government ID in order to access the VIS. In addition, visitors who are unable to produce identification acceptable to the VIS may meet with the building administrator or school security and will be provided with access for a legitimate educational purpose under such conditions as may be imposed by the school. These efforts have, to date, permitted PWCS to carefully balance its obligation to provide an education to all children with its duty to protect their safety and security.

7. *How often has VIS detected registered sex offenders?*

Answer: During the last school year, Raptor reports that it has identified over 1700 sex offenders attempting to enter school grounds nationally. Approximately 535 have been identified nationwide for the current school year. To date, PWCS has identified approximately eleven such individuals. In addition, VIS is used on a constant basis to comply with court-ordered restrictions on access to students, primarily involving domestic violence, divorce or custody matters. Given the large number of students enrolled in PWCS and the difficulty of ensuring that all school employees are aware of court-ordered limitations on access on any given school day, VIS is a valuable and necessary tool ensuring student safety in such situations.

We hope that this additional information will be helpful, and look forward to meeting with the Subcommittee on November 6th.

Sincerely,

James G. Council
Contract Lobbyist