

Public Records Subcommittee
of the Freedom of Information Advisory Council

Meeting Summary
November 6, 2009
1:00 PM
General Assembly Building
Richmond, Virginia

The Public Records Subcommittee¹ held its second meeting to consider an exemption for the visitor identification system (VIS) proposed by Prince William County Schools (PWCS). PWCS representatives originally presented a proposal to the FOIA Council at its meeting on September 21, 2009 that would exempt records of its visitor identification system. In brief, the system scans visitors' identification cards and runs background checks against multistate sex offender registries. The FOIA Council raised concerns about possible over collection of data, the need to retain the data collected, and other issues. The subcommittee was directed to further address this matter and report back to the full FOIA Council at the Council's next meeting on November 9, 2009.

After the meeting was called to order, James G. Council, appearing on behalf of PWCS, provided background information regarding VIS and the exemption sought by PWCS. Much of that information is detailed in a letter dated October 29, 2009, which Mr. Council prepared in response to concerns expressed by the FOIA Council at its meeting in September. Specifically, Mr. Council stated that VIS checks against sex offender registries in all 50 states, but does not perform a more general criminal background check. In response to a question of whether the system was only in use by PWCS and not other schools, he related statistics that in 2006-2007 the same VIS was used in 1400 schools across 100 school districts in 10 different states. Additionally, Mr. Council related that a federal court in Texas had ruled that the same VIS, as used in a Texas school, did not violate parental or student rights. He further expressed that the overall goal of VIS is to protect students, while the goal of the requested exemption is to protect the personal information of visitors to the schools. At the same time, Mr. Council agreed that the fact that some persons, such as commercial vendors, had visited the schools should be publicly available information.

The subcommittee raised questions and discussed various issues regarding the retention of the data collected, how to differentiate between different types of visitors (such as students' parents versus commercial vendors), whether or not the name of any visitor and the fact of the visit should be protected as a matter of public policy, and what is the compelling public interest in providing this exemption, if any. The subcommittee then considered the impact of the Protection of Social Security Numbers Act (PSSN Act),² which just went into effect July 1, 2009, and whether other laws might already protect much of the information to which the proposed VIS exemption would apply. It was agreed that the main concern was over information such as social security numbers

¹ Subcommittee members Fifer (Chair) and Malveaux were present; Mr. Selph was absent.

² Code of Virginia §§ 2.2-3815 through 2.2-3816.

and drivers' license numbers, although Mr. Council noted that there might be other types of identification documents, such as passports and diplomatic identification cards, that may need to be considered. It was generally agreed that the PSSN Act, which provides for the redaction of the first five digits of a social security number, took care of the most pressing concern, and that further research may be needed regarding laws applicable to other types of identification records.

In discussing drivers' licenses and other forms of identification, an inquiry was made regarding whether VIS actually scans an image of the identification presented by visitors, whether it processes the magnetic bar code strips on drivers' licenses without scanning an image, or whether the information is manually entered upon presentation of the identification. Unfortunately, the precise details of how VIS works were not available. Mr. Council indicated he would wish to check back with PWCS regarding these details. He also indicated he would check with PWCS if there was a policy concern about releasing only the names of visitors and the fact of their visits, given that a paper sign-in sheet as used prior to VIS would have been a public record subject to disclosure under FOIA.

The subcommittee further suggested that as a means of improving responses to FOIA requests, PWCS might wish to categorize and mark the VIS records regarding whether or not they are exempt from FOIA. In addition to the PSSN Act, the subcommittee further noted that the existing exemptions found at subdivisions 3 and 6 of § 2.2-3705.2 appear to protect records that could reveal access control and specific operational details about VIS. It was also clear that the existing scholastic records exemption, subdivision 1 of § 2.2-3705.4, and the federal Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, would exempt certain records related to students. Noting that some questions remained, but that the majority of VIS records that raise security and privacy concerns appear to be protected already under existing exemptions, and that there was not yet any agreement on the proposed legislation, the subcommittee agreed by consensus to report to the full FOIA Council its recommendation that no action be taken at this time. The subcommittee then asked if there was any public comment before the meeting adjourned. Mark Hjelm, a citizen of Woodbridge, Virginia, indicated he had had problems getting copies of records related to VIS, and that another parent he knew was denied access because she did not have a driver's license. He indicated he would have spoken in opposition to the proposed exemption, but since the subcommittee recommended no action be taken, he had no further comment. The subcommittee meeting was then adjourned.