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Information Technology: The Conflict Between Freedom of Information laws and the Right to Privacy

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QUESTIONNAIRE
ACADEMIC INTEGRITY

All questions pertain to your University experience.

1. Have you ever cheated?

a) On an assignment?	Yes _____	No _____
b) On a paper?	Yes _____	No _____
c) On an exam?	Yes _____	No _____
d) On any other school work:	Yes _____	No _____

2. Have you ever seen anyone cheat? Yes _____ No _____

3. Would you cheat:

a) If you believed you would not get caught?	Yes _____	No _____
b) If you knew you would not get caught?	Yes _____	No _____

4. If you have ever cheated, describe how you did it. (On the back of this page).

5. If you believed you would not be caught, describe methods of cheating you could or would use. (On the back of this page).

6. If you saw someone cheating or knew that someone had cheated, would you feel it was your duty to report them to the University? Yes _____ No _____

7. If you felt it was your duty to report them, would you report them to the University? Yes _____ No _____

8. Which statement is most accurate:

a) I know of no one that has ever cheated.	b) I know of a few people that have cheated.	c) I know many people that have cheated.	d) Most people I know have cheated.
a) _____	b) _____	c) _____	d) _____

9. If you knew someone had cheated, would it affect your friendship?

a) Not at all.	b) Could no longer be friends.	c) Would think less of that person.	d) Would think more of that person.
a) _____	b) _____	c) _____	d) _____

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Exhibit "A"

INFORMATION TECHNOLOGY: THE CONFLICT BETWEEN
FREEDOM OF INFORMATION LAWS AND THE RIGHT TO PRIVACY

by

Diana D. Juetner* and Anthony F. Libertella**

*Count not him among your
friends who will retail
your privacies to the world.
Publius Syrus, 1st Century B.C.*

INTRODUCTION

Consider the following scenarios:

1. An unwanted suitor sent several unsavory letters to a 17 year old "pop" singer. He was able to obtain her home address from the California Department of Motor Vehicles database for a fee. She was forced to go to court to obtain an order of protection to prevent him from harassing her.¹

2. A school district in Texas released the contents of a teacher's personnel file that included her college transcript. The file was released against her wishes pursuant to the state's freedom of information laws in response to requests made by two citizens.²

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3. The United States Department of Education badgered a man to repay a college loan he claimed he never applied for or received. He contended that it was a computer matching error that confused him with another person with the same name. In spite of his contention, agents for the Department reported the loan as unpaid to the credit reporting bureau causing him to be denied a car loan.³

4. The California State Bureau of Criminal Identification supplied information from their database to private employers, licensing agencies and other state agencies about arrests of potential employees that did not result in convictions. A class action suit was brought on behalf of the affected individuals and the court barred the state agency from releasing arrest information that did not result in a disposition.⁴

The above cases illustrate the ongoing conflict between freedom of information laws and the right to privacy. The Freedom of Information Act (FOIA)⁵ was enacted by Congress in 1966 to ensure greater public access to government information in order to facilitate public scrutiny of agency action. Subsequently, Congress passed the Privacy Act of 1974⁶ because it was concerned about the rapid growth of computer technology and the amount of personally identifiable data that was being collected, stored, disseminated and accessed electronically. This act tried to strike a delicate balance between government's need to gather, disseminate and use personal information while maintaining the individual's right to privacy.

By the 1990's, the upsurge in technological advancements, involving computers, computer systems, data, data storage and retrieval and other related areas has caused the federal and state governments to reexamine the requirements of freedom of information laws in the light of the privacy rights of those individuals whose computerized records are maintained by governmental agencies. Has the computerization of information stolen the right to privacy from Americans? Should there be consistent procedures developed that set forth policies and procedures regarding the collection, processing, use or shaping of personally identifiable data utilized by all levels of government and by those who acquire the information from government?

Americans are highly concerned about their privacy. They feel it slipping away from them in this highly technical era. Public pressures and concerns have arisen regarding the safeguard of the collection and retention of personally identifiable computer information. There is a desire to curtail privacy abuses that arise primarily in the collection and retention of unnecessary or inaccurate information.

An Equifax poll conducted in 1990 using a cross section of people in this country revealed that 79% of those polled were highly concerned about the confidentiality of their personal records.⁷ A Time/CNN poll showed that people felt that companies selling personal information should be required to ask permission from individuals before making information about them available.⁸ Congress's Office of Technology Assessment has revealed that it is impossible to know where files about you exist, making it almost impossible to seek redress for misuse of the information.⁹ Today all levels of government which are the custodians of public information are faced with the dilemma

of meeting the requirements of freedom of information laws while protecting the privacy rights of their citizens.

PURPOSE OF THE PAPER

The escalation of the computer age has revolutionized the way government on all levels accumulates, uses and disseminates personal information. This escalation in information technology has put freedom of information laws into conflict with the privacy rights of individuals. This paper first examines the Freedom of Information Act and the Privacy Act of 1974 whereby Congress attempted to strike a balance between government's need to collect personal information with the individual's right to privacy. Next, the paper will review New York's Freedom of Information Law and its Personal Privacy Protection Law, both modeled after the FOIA and the federal Privacy Act. The paper then highlights the concerns of legislators about the public's use of personal information that is obtained from Motor Vehicle Bureaus and discusses some enacted and proposed legislation introduced by various state legislative bodies to restrict access to some of this data. Lastly, the newly emerging trends in information technology will be discussed with a brief commentary on various approaches offered by legislative bodies, freedom of information specialists and privacy experts to reconcile the conflict between freedom of information laws and the privacy rights of individuals.

FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) was enacted in 1966 to facilitate public scrutiny of agency action to keep government officials from operating under a veil of secrecy.¹⁰ The FOIA amended Section 3 of the Administrative Procedure Act (APA)¹¹ which was the original government information disclosure statute. Section 3 of the APA was generally looked upon as poorly drafted and falling short of its disclosure goals because it was more of a withholding statute than a disclosure statute.

The FOIA is an access mechanism into the activities of the executive branch of the federal government. Each agency of the executive branch is required: to publish statements of general policy, procedure and a description of their central and field organizations; to index and make available final opinions, unpublished statements of policy and staff directives that affect members of the public; to make such documents promptly available; and to release on written request all records not covered by the nine exemptions to disclosure.¹²

Information subject to the disclosure exemptions are as follows: (1) matters that are authorized and classified by executive order to be kept secret in the interests of national defense or foreign policy; (2) internal regulations and personnel practices of governmental agencies; (3) information specifically protected by other statutes provided such statutes mandate that the material be withheld from the public in such a way that there is no discretion on the issue or requires special criteria for withholding or indicates

the particular types of material withheld; (4) trade secrets, privileged or confidential financial information received from an individual; (5) inter or intra-agency memoranda that would be privileged from discovery in litigation; (6) personnel, medical or other similar files that would clearly establish an unwarranted invasion of privacy, if revealed; (7) investigative records used for law enforcement purposes subject to specific criteria;¹³ (8) reports made, utilized or on behalf of an agency accountable for the regulation or supervision of financial institutions; and (9) geological and geophysical information relating to wells.¹⁴

Following the passage of the FOIA, Congress attempted to strike a balance between the government's need to gather, use and disseminate personal information and the individual's right to privacy regarding personally identifiable information by enacting the Privacy Act of 1974.

The Privacy Act sets forth the following requirements that every agency must follow regarding disclosure of personally identifiable information. These requirements function as safeguards to assist in the protection of personal information.

The first requirement or safeguard prohibits any federal agency from disclosing information from a record within a system of records without the written consent of the individual to whom the record pertains.¹⁵ However, this requirement is subject to many exceptions that are quite expansive in scope.¹⁶

The second safeguard permits an individual to gain access to his or her record for review. The individual may also request that his or her record be amended and further permits an individual to request a review of an agency's refusal to amend the record.¹⁷

The third requirement empowers an agency to adopt rules and regulations for limiting the collection, maintenance, use and dissemination of personal information by the agency.¹⁸ It also establishes procedures for an individual to: identify the system of records that exists pertaining to himself or herself; make the records available; and identify the individual who wants to see the record.¹⁹

The fourth and final safeguard enables an individual to bring suit against an agency for failing to meet the requirements of the Privacy Act. The court may impose civil penalties²⁰ and criminal penalties for willful disclosure of records without complying with the notice requirement.²¹

The FOIA and the Federal Privacy Act have been used by many states as a standard to create their own freedom of information and privacy statutes. New York was one of the first states to enact statutes patterned upon FOIA and the Privacy Act.

NEW YORK'S FREEDOM OF INFORMATION LAW

On September 1, 1974 New York enacted a "freedom of information" statute modeled upon the FOIA.²² The enactment of the Freedom of Information Law (FOIL)²³ was a bipartisan effort to increase the accountability of government to its citizens. The underlying policy of the FOIL is the citizens' right to know. The essential purpose of the law is to make available to the public all documents generated by and in the possession of government unless a compelling reason requires their confidentiality. This was to make agency officials more responsive to the citizens of the state who have developed distrust and alienation toward government officials.²⁴

The New York courts have consistently held that any request to examine government documents should be afforded liberal statutory construction to maximize legitimate access to government records. When examining sections of the FOIL, the New York courts have considered and relied on the constructions made by the Federal courts regarding the parallel sections of the FOIA.²⁵

The FOIL provides for the creation of a Committee on Public Access to Records to consider exclusively questions and problems that arise concerning the nature or application of any FOIL provision.²⁶ Although the Committee's principal function is advisory, it issues model regulations for agency procedures under the FOIL and it is required to issue annual reports to the governor and the state legislature. The reports must describe the committee's activities, findings, and recommended changes in the law.²⁷ The courts have relied on the expertise of the Committee thereby giving the Committee latitude in determining legislative intent and in suggesting principles of disclosure that will most effectively serve the public interest.²⁸

In 1977, the FOIL was amended to provide easier access to government documents by changing the method of disclosure from an enumerated list of records to be disclosed to requiring complete disclosure of all government records unless the information sought falls under one of eight enumerated exemptions.²⁹

The FOIL's right to privacy exemptions recognize the tension between the public's interest for open government and each individual's right to privacy. The amendment also sought to significantly broaden the statute's reach by creating a rebuttable presumption in favor of disclosure.³⁰

The drafters of the FOIL recognized that disclosure resulting in limited invasions of privacy is in the best interests of the public and is therefore permissible. Hence, the courts have ordered disclosure of information when the public interest outweighs the interest of privacy of the individual being affected by the disclosure.³¹

NEW YORK'S PERSONAL PRIVACY PROTECTION LAW

The Personal Privacy Protection Law (PPPL)³² was enacted in 1983 to protect against the increasing invasion into personal privacy posed by modern computerized data, collection and retrieval systems. The New York legislators were primarily concerned with the potential misuse of personally identifiable information stored in computers. Modeled after the federal Privacy Act, the New York law was designed to restrict public access to those records that state agencies could retrieve from their computer systems with personal identifiers. While the law primarily focuses on the restriction of public access to computerized personal data about others, it may have benefitted individuals by enhancing their right to acquire computerized data about themselves.³³ Access to local government information is not covered by the PPPL unless that information has been transferred to the local government from a state agency that is subject to the provisions.³⁴

SAFEGUARDING THE SYSTEM

In spite of freedom of information exemptions and privacy laws, questions and concerns arise regarding the utilization of personal information that is obtained from government by the private sector. The Department of Motor Vehicles (DMV) is a well-known government agency that collects personally identifiable information about millions of people and is exempt from coverage under the PPPL.³⁵ The DMV serves as a representative example of potential unwarranted invasion of personal privacy by government because applicants for drivers licenses are required to provide personal information to the state that is subsequently made available to individuals as an open public record.

Although statutes such as the New York Vehicle and Traffic Law clearly reflect an intent that certain records be disclosed,³⁶ nevertheless it probably was not envisioned that these records could be obtained by the touch of finger on a home computer at the cost of \$4.00 per search³⁷. The applicant merely has to write a letter to the Department of Motor Vehicles stating an intention to become a member of the computer network and enclose a minimum of \$200.00 to setup an account to access information contained on vehicle registration forms and operator licenses.³⁸

Concerns over the improper use of the data collected by Motor Vehicle Bureaus have caused legislators in some states to adopt legislation restricting access to some of the data collected by the DMV.

California enacted a more restrictive disclosure law in light of the tragic death of the actress Rebecca Schaeffer whose aggressor stalked her after obtaining her home address from the California motor vehicle records.³⁹ California amended its Civil Code to require its Department of Motor Vehicles (DMV) to establish procedures that require the person requesting information to identify himself or herself and "state the reason for the request". In addition the statute requires the DMV to establish the following

procedures regarding requested information: (1) to verify the name and address of the requester; (2) to notify the person to whom the information primarily relates; and (3) to provide the name and address of the requester.⁴⁰ Moreover, legislation was enacted by California making a person's residential address confidential in DMV records "and shall not be disclosed to any person, except a court, law enforcement agency or other government agency, or as authorized in Section 1808.22."⁴¹

The death of Rebecca Schaeffer caused other states to enact legislation to curtail the misuse of personally identifiable information. The Virginia legislature addressed the problem by enacting a statute that requires the Commissioner of Motor Vehicles to "consider all driving records in the Department as privileged public records".⁴² The Commissioner is authorized to release such records upon request only under specific conditions to specific classes of requesters such as: (1) any adult, parent or legal guardian of a minor or their authorized agent requesting any records pertaining to such persons except medical records;⁴³ (2) any insurance carrier or surety or representative of either, requesting an abstract of the operating record of any person subject to the provisions of this title;⁴⁴ and (3) any business official who upon written request provides an individual's driver's license number, may be provided with the name and address of the individual as shown on that driver's license record.⁴⁵ If a violation occurs, the requestor can be found guilty of a class 4 misdemeanor carrying a penalty of not more than \$250.00.⁴⁶

Delaware amended its statute by restricting access to DMV data by requiring individuals who want to use DMV information for purposes other than those stated in the statute to "... personally appear and present evidence of identification satisfactory to the Division and shall state the purpose for which the information is being sought⁴⁷". The statute sets no criteria as to the sufficiency of the purpose by the requester. The statute clearly indicates that telephone requests will not be honored unless approved by the Director or his designee. Furthermore, a request by an individual to identify a vehicle owner from their registration plate shall be specifically noted by keeping a record of the request for a period not to exceed six months.⁴⁸ In addition, a vehicle owner or driver may submit a request to the Division of Motor Vehicles to have his or her name and address "excluded from any list compiled and sold or otherwise supplied by the Division for direct mail advertising purposes"⁴⁹.

Following the lead of California, Virginia and Delaware, some New York legislators have proposed bills to amend the vehicle and traffic law by requiring that personally identifiable information contained on motor vehicle registrations and licenses be made confidential.

New York State Senator Norman Levy introduced a bill that passed the Senate requiring the DMV to carry out the following provisions: (1) to keep the residence address confidential if requested by the registrant unless the address is needed for a legitimate business purpose; and (2) to educate the public that the residence address may be kept confidential through the media and DMV notices. Those who violate the provisions of confidentiality shall be guilty of a Class A misdemeanor.⁵⁰ Senator Levy

believes that the criminal penalty is an important provision that should be included in the legislation to give it some "clout".⁵¹

Similar concerns regarding the use of personally identifiable information contained in motor vehicle records prompted action in the New York State Assembly as well. Assemblyman Thomas Di Napoli has been concerned about this issue for a number of years. He introduced Assembly Bill A.896, modeled after the Delaware statute, that required the driver's license holder to be notified whenever a request for personally identifiable information was made.⁵² This bill did not have the support of the Commissioner of Motor Vehicles because the application of the notification provision was seen as administratively cumbersome.⁵³ In response to the DiNapoli bill, the DMV proposed its own bill that gave discretion to the Commissioner to establish guidelines for accessing personally identifiable information. The DMV bill was later introduced by Assemblyman DiNapoli as A.7177.⁵⁴

Thereafter, Assemblyman DiNapoli modified A.7177 (designated as A.7177A) making it mandatory rather than discretionary for the Commissioner of Motor Vehicles to establish guidelines relating to the use of personal information contained in motor vehicle records disclosed to the public. In addition, A.7177A permits the Commissioner to deny disclosure of information which if made public would result in an unwarranted invasion of privacy. Furthermore, A.7177A makes it "...a misdemeanor to knowingly use any information obtained pursuant to section 202 of this article for any purpose other than a motor vehicle related purpose, or to violate any regulations established for the receipt and subsequent use of such information or to knowingly provide any information to any person in violation of the regulations for disclosure of such information."⁵⁵

The legislation proposed by Senator Levy and Assemblyman DiNapoli has raised concerns because of the potential loss of revenue that such legislation has for the New York State treasury. Currently the Department of Motor Vehicles generates 40 million dollars in revenue from fees collected from those who access the data. In spite of these monetary concerns, legislative aides believe that passage of some compromise legislation is forthcoming due to the concerns of citizens that have been raised regarding an unwarranted invasion of their personal privacy.⁵⁶

Some other states have proposed legislation to restrict access to some Motor Vehicle information. For example, the State of Washington proposed an amendment to allow the secretary of state to permit those in danger of domestic violence to provide a substitute mailing address in place of one's residence address to fulfill all state and local agencies' filing requirements. This amendment would allow any person the right, upon request, to keep their address relating to motor vehicle registration confidential to avoid harassment or domestic violence.⁵⁷ Similar legislation is also pending in Colorado.⁵⁸

CONCLUSION

During the 1990's, government will continue to utilize technological advances for the accumulation, use and dissemination of personal information. One notable example of government usage of new technology is the implementation of Geographic Information Systems (GIS). GIS are computer systems that are able to store an infinite amount of information that can be retrieved in significantly less time than the standard systems that are currently in use.

While GIS are being used predominantly at the local government level, over 20 agencies within the Department of the Interior use information stored in GIS.⁵⁹ Presently, GIS primarily utilizes land information data; however, it has the potential to incorporate all types of data that can be related to a vast number of uses by government and the private sector. Future plans call for the expansion of GIS to integrate data from all government departments. Some experts feel that as more government departments become integrated into a GIS system and more information is contained within the data base, that protection of an individual's personal privacy will become most important.⁶⁰

The FOIA and state freedom of information laws create a clear right of public access to government stored information with very few statutory exemptions. However, the current privacy laws do not provide sufficient protection for the personal data contained within the vastly expanding body of computerized government records. Consequently, several suggestions are being offered as possible solutions to the growing concern over the immediate access to personal information that has been made available through the advances of technology that invade our privacy. Some privacy rights' experts have indicated that federal and state legislators should amend freedom of information laws and personal privacy protection laws so that they can be "in step" with the new technology.

Robert Freeman, New York State's Executive Director of the Committee on Open Government, has a different approach to protect personal information. He believes that it is more important to provide better security over the computerized data that is collected and to provide appropriate penalties for violations, than to pass more stringent privacy laws that further restrict access to government records.⁶¹

Another suggestion is to create a federal data protection board⁶² that will develop guidelines and issue opinions about new government and private sector data banks. Furthermore, the data protection board will have the authority to investigate privacy act complaints and to champion research into the social implications of new computer technologies⁶³.

To cover issues arising in the computer era, various privacy experts have recommended that state governments develop a concept of fair information practices to provide guidance to government agencies gathering personal information.⁶⁴ For example, the State of Wisconsin has recently adopted a Code of Fair Use of Information Practices that: prohibits secret personal data record-keeping systems; establishes an

individual's right to know the type of information stored about such individual and how it is utilized; assures that the data created, maintained, used or disseminated must be reliable for the intended use; permits an individual with the opportunity to correct or amend personally identifiable information in a stored record; and takes precautions to prevent misuse of the data.⁶⁵

The technology of the 1990's requires that the federal and state governments reexamine the purpose of the freedom of information laws in the light of the privacy rights of those individuals whose records are maintained by governmental agencies. For those states that have not addressed the complexities of this issue, their legislators must enact legislation to address the growing concern over the access to personal information that has been made available through the advances of technology that invade our privacy.

ENDNOTES

¹ Robert Ellis Smith & Eric Siegal, War Stories: Accounts of Persons Victimized by Invasions of Privacy 69 (1990).

² Klein Ind. School District v. Mattox, 830 F.2d 576 (5th Cir. 1987).

³ See Smith & Siegal, supra note 1, at 16.

⁴ Id. at 37.

⁵ 5 USC Sec. 552 (1993).

⁶ 5 USC Sec. 552a (1993).

⁷ Jeffrey Rothfeder, Privacy For Sale 25 (1992).

⁸ Id. at 92. Some companies such as American Express have addressed this concern by giving their customers the opportunity to choose whether or not they wish to have their names and addresses included on mailing lists that will be sold to other vendors.

⁹ Id. at 17.

¹⁰ See supra note 5.

¹¹ 60 Stat. 237, repealed September 6, 1966; replaced with Pub.L. 89-554 (5 USC Sec. 551 (1993)).

¹² 5 USC Secs. 552(a)(1-4) (1993).

¹³ 5 USC Sec. 552(b)(7)(1993). The criteria subject to privacy protections are as follows: a) deprive an individual of a fair trial, b) constitute an unwarranted invasion of personal privacy, c) disclose the identity of a confidential source d) disclose techniques and procedures for law enforcement investigations e) disclose guidelines for such investigations or prosecutions if such disclosures could reasonably be expected to circumvent the law; and f) endanger the life or physical safety of any person.

¹⁴ 5 USC Secs. 552(b)(1-9)(1993).

¹⁵ 5 USC Sec. 552a(b)(7)(1993).

¹⁶ Some notable exceptions are to make information available: to a recipient who has provided an agency with written assurance that the record will be used solely for statistical purposes and will not be used in any identifiable form; to a person who shows compelling circumstances that affect the health and safety of any individual; to Congress and its committees; and to requesters who satisfy the disclosure requirements set forth under FOIA. See 5 USC Secs. 552a(b)(1-12)(1993) for the complete list of exceptions.

¹⁷ 5 USC Sec. 552a(d)(1993).

¹⁸ 5 USC Sec. 552a(e)(1993).

¹⁹ 5 USC Sec. 552a(f)(1993).

²⁰ 5 USC Sec. 552a(g)(1993).

²¹ 5 USC Sec. 552a(i)(1993). See 5 USC Sec. 552a(e)(4) (1993) for a full description of the notice requirement.

²² Ralph Marino, "The New Freedom of Information Law", 43 FORDHAM L. REV. 83 (1974). It should be noted that Sen. Ralph Marino was the author of the Freedom of Information Law.

²³ N. Y. Pub. Off. Law Sections 84 et seq. (McKinney 1993).

²⁴ See Marino, supra note 22, at 83,84.

²⁵ "New York's Freedom of Information Law, disclosure under the CPLR, and the common-law privilege for official information: conflict and confusion over 'the people's right to know'". 33 SYRACUSE LAW REVIEW 615, 615-617 (1982).

²⁶ N. Y. Pub. Off. Law Section 89 (McKinney 1993).

²⁷ Id., at Section 89(1)(b).

²⁸ Miracle Mile Assocs. v. Yudelson, 68 AD2d 176,181, 417 N.Y.S.2d 142 (1979); Sheehan v. City of Binghamton, 59 AD2d 808,809, 398 N.Y.S.2d 905(1977).

²⁹ N. Y. Pub. Off. Law Section 87(2)(a-j) (McKinney 1993). It should be noted that there are now ten exemptions to the FOIL. The exemptions permit a government agency to deny access: a) to records that are specifically exempted from disclosure by state and federal statute; b) to records the disclosure of which would constitute an unwarranted invasion of personal privacy; c) to records if disclosed would impair present or imminent contract awards or collective bargaining negotiations; d) to trade secrets or records maintained for the regulation of commercial enterprise the disclosure of which would substantially injure the competitive position of the said enterprise; e) to records compiled for law enforcement purposes; f) to records the disclosure of which would endanger the life and safety of any person; g) to certain types of inter or intra-agency records; h) to certain types of examination questions or answers which are requested prior to the final administration of such questions; i) to any computer access codes; and j) to certain photographs, videotapes or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.

³⁰ N. Y. Pub. Off. Law Section 84 (McKinney 1993).

³¹ MacHacek v. Harris, 106 Misc.2d 388,431 N.Y.S.2d 927 (1980); HMG Marketing Associates v. Freeman, 523 F. Supp. 11, S.D.N.Y.(1980); Wine Hobby USA, Inc. v. United States Internal Revenue Service Appeal of United States Bureau of Alcohol, Tobacco and Firearms, 502 F.2d 133, 3rd Cir. (1974).

³² N. Y. Pub. Off. Law Section 91 (McKinney 1993).

³³ FOIL AO-4602 para. 5 (6/2/87).

³⁴ N. Y. Pub. Off. Law Section 92(1) (McKinney 1993).

³⁵ Id.

³⁶ N. Y. Veh. & Traf. Law Section 508(3) (McKinney 1993).

³⁷ Id. at Section 202(b).

³⁸ Id. at Section 202(d).

³⁹ See Rothfeder, supra note 7, at 13-15.

⁴⁰ Cal. Civ. Code Sec. 1798.26(Deering,1993).

⁴¹ Cal. Veh. Code Sec. 1808.21(a)(Deering,1993).

⁴² Va. Code Ann. Sec. 46.2-208(B)(Michie,1992).

⁴³ Va. Code Ann. Sec. 46.2-208(B)(1)(Michie,1992).

⁴⁴ Va. Code Ann. Sec. 46.2-208(B)(2)(Michie,1992).

⁴⁵ Va. Code Ann. Sec. 46.2-208(B)(3)(Michie,1992). For the remaining list of those classes of requesters, see Va. Code Ann. Sec. 46.2-208(B)(4-10)(Michie,1992).

⁴⁶ Va. Code Ann. Secs. 46.2-203,46.2-208 and 46.2-113(Michie,1992) to carry out the provisions of Va. Code Ann. Sec. 2.1-380 paragraphs 3 and 5 of the Privacy Protection Act of 1976 as it relates to maintaining and disseminating the personal data located within the Department of Motor Vehicles. See Va. Code Ann. Sec.18.2-11 (Michie,1992) for punishment for Class 4 misdemeanors.

⁴⁷ 21 Del. Code Ann. Sec. 305(b)(1992).

⁴⁸ Id.

⁴⁹ 21 Del. Code Ann. Sec.305(c)(1992).

⁵⁰ 1993-1994 Regular Session New York State Senate S.190. This bill passed the New York State Senate on March 2, 1993 and was sent to the Assembly Committee on Transportation. Currently, no action has been taken on this bill by the Assembly Committee.

⁵¹ Interview with Senator Levy's legislative aide, Rebecca DeGati on June 15, 1993.

⁵² 1993-1994 Regular Session New York State Assembly A.896. Assembly bill 896 introduced by Assemblyman DiNapoli in the 1993 session is the same bill introduced by him in the 1991- 1992 Session as A.9451-B. These bills have been superseded by A.7177B described in endnotes 54 and 55.

⁵³ Interview with Assemblyman DiNapoli's aide, Gary Henning, on June 15, 1993.

⁵⁴ 1993 Motor Vehicle bill No.8R. This bill was introduced in the Assembly by Assemblyman DiNapoli as A.7177.

⁵⁵ 1993-1994 Regular Sessions New York State Assembly A.7177A. This bill was approved by the Assembly Transportation Committee, the Committee on Codes, Ways and Means Committee and is currently in the Rules Committee. It was modified in Committee and as of November 1993 is now known as A.7177B.

⁵⁶ Interviews with legislative aides, Rebecca De Gati and Gary Henning in Albany on June 15, 1993.

⁵⁷ Wash. Rev. Code Ann. Secs. 26.04, 29.0155, 42.17.310, 42.17.311 (West 1991).

⁵⁸ Colo. Rev. Stat. Ann. Sec. 24-72-204 (West 1991).

⁵⁹ U.S. Department of the Interior, A Study of Land Information (1990).

⁶⁰ Ron J. Aschenbach, "Geographic Information Systems as a Decision Making Tool", 52 OHIO ST. L.J. 351 (Winter 1991).

⁶¹ State of New York Committee on Open Government, 1992 Report to the Governor and the Legislature 45 (1992).

⁶² 102nd Congress, 1st. Session 1991, H.R.685. Hearings were held before the Government Information, Justice and Agriculture Subcommittee of the Committee on Government Operations, but the bill died in Committee. This bill has not been reintroduced in the 1993 session and apparently there are no current plans to do so.

⁶³ See Rothfeder, supra note 7, at 25,26,148-152.

⁶⁴ Robert Ellis Smith, The Law of Privacy in a Nutshell 50 (1993).

⁶⁵ Wisconsin Legislative Council, Information Memorandum 92-13 6 (1992).

CURRENT LEGAL DEVELOPMENTS IN CHINA

by

ROY J. GIRASA*

PREFACE

In January, 1993, after decades of following the significant events in China, from the overthrow of Chiang Kai-shek to the present development of a market economy, I visited the People's Republic of China (PRC). During the three week stay, I met numerous officials, diplomats, consulate and trade personnel, company executives, officials of the American Embassy, professors and, also, students during the time of the Tiananmen Square massacre. I purchased all the translated books and materials available to me. This paper reflects some of the developments of US-PRC legal and trade relations to the present date.

HISTORICAL BACKGROUND

China, historically, has always been an enigmatic, far away place which has intrigued Europeans and others for the past millennium. Confined to the Asiatic region, it made few or no forays abroad beyond the region.¹ China was the focus of invasions, visits and other periodic attempts to open its ports to the outside world. It has the longest recorded history, predating the Roman Empire by two thousand years. All schoolchildren know of the 13th Century voyage of Marco Polo who found an incredibly advanced civilization in the East. In 1601, Matteo Ricci, a Jesuit priest, was permitted to establish his religion within Beijing and environs due mainly to his knowledge and teaching of Renaissance advances in science, technology and other intellectual pursuits to the Qing emperor. Prior to Ricci, Arab traders had developed a spice trade, particularly with Mongols along the Silk Road.

In the 1600s, the East India Company developed an extensive trade with China in tea, silk, porcelain (china is named after the country) and other imports. The city of Canton was the port through which trade took place. In the late 1700s, the British began exporting opium to China from India. When the Daoguang Emperor sought to cease its import, British gunboats, in the Opium War of 1839-1842, were sent to China to continue the trade. In the Peace Treaty of 1842, Hong Kong was given to the British by the reluctant Emperor.

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