



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

August 17, 2006

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Colonel W. Steven Flaherty
Superintendent, Department of State Police
P.O. Box 27472
Richmond, Virginia 23261-7472

Dear Colonel Flaherty:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether §§ 52-12 through 52-15, which govern the state and local police communication system, and various federal policies and regulations preclude transfer of two components of the Department of State Police Virginia Criminal Information Network, along with the associated personnel, to the Virginia Information Technologies Agency. The two components at issue are the Criminal Information Network equipment and the SUN system.¹ Resolution of this issue centers on whether these components are subject to the consolidation requirement of Chapters 981 and 1021 of the 2003 Acts of Assembly.

Response

It is my opinion that Chapters 981 and 1021 of the 2003 Acts of Assembly and the authority granted to the Superintendent of the Department of State Police under Chapter 2 of Title 52, §§ 52-12 through 52-15 may be read in harmony to a certain extent. Chapter 2, however, relating to the Superintendent's control over the system, dictates that ultimate control over the Virginia Criminal Information Network must remain with the Superintendent. Further, it is my opinion that federal regulations require the Superintendent to retain control over the Network.

Background

Chapter 2 of Title 52 governs the basic State Police Communication System. Specifically, § 52-12 establishes "a basic coordinating police communication system" within the Department of State Police ("VSP"). The Virginia Criminal Information Network² ("VCIN") currently is recognized as the

¹You provide information that the SUN system refers to the several servers, disk arrays, and tape systems that process and store sensitive files used for inquiry and updates by users of the Virginia Criminal Information Network. Additionally, you note that programs on the system generate Network messages allowing updates, including input of current data, and providing responses to inquiries.

²The SUN system is included in VCIN for purposes of this opinion. The SUN system stores the files used for inquiry and update by the VCIN.

communication system required by § 52-12.³ VCIN is used by Virginia and federal criminal justice agencies to exchange and retrieve criminal justice information. VCIN contains several components, including the SUN system and the network equipment installed at state police offices and local and federal law enforcement agencies throughout the state.

Applicable Law and Discussion

The 2003 Session of the General Assembly enacted Chapters 981 and 1021 (the “2003 Acts”).⁴ The 2003 Acts created the Virginia Information Technologies Agency (“VITA”) to “provide for the consolidation of the procurement and operational functions of information technology, including but not limited to servers and networks, for state agencies in a single agency.”⁵ The 2003 Acts define a “state agency” as “any administrative unit of state government in the executive branch.”⁶ Under the target dates set forth in the 2003 Acts, VSP is in the last wave of agencies targeted for consolidation:

That on or before January 1, 2005, the Chief Information Officer [VITA] shall (i) fully implement the systems development standards, policies, and methodologies required by this act and (ii) consolidate within [VITA] the server and other operational functions, along with appropriate staff, of state agencies with a position level in excess of 400 employees.⁷

Section 52-12 specifically creates “a basic coordinating police communication system of private line typewriter communication, operating through sending and receiving stations.”⁸ The system has been “established in the Department of State Police.”⁹ Section 52-15 unambiguously provides that the system “shall remain at all times under the control of the Superintendent of State Police.” Section 52-15 does not exclude the involvement of other agencies¹⁰ provided the Superintendent retains control.¹¹

Chapter 2 does not define the term “control.” In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.¹² “Control” means the “[p]ower or authority to manage,

³ See Virginia Criminal Information Network website at http://www.vsp.state.va.us/cjis_vcjin.htm (last visited June 9, 2006).

⁴ 2003 Va. Acts chs. 981, 1021, at 1536, 1538-45, 1654, 1656-63, respectively (adding Chapter 20 of Title 2.2, consisting of §§ 2.2-2000 through 2.2-2027, codified at Chapter 20.1 of Title 2.2, §§ 2.2-2005 through 2.2-2032). The 2005 Session of the General Assembly repealed § 2.2-2032. 2005 Va. Acts ch. 939, cl. 2, at 1819, 1820.

⁵ *Id.* at 1552, 1670, respectively (quoting clause 4).

⁶ *Id.* at 1552, 1671, respectively (defining “state agency” for purposes of clause 8).

⁷ *Id.* at 1552, 1670-71, respectively (quoting clause 8).

⁸ The General Assembly originally chose to place the system in the Division of Motor Vehicles. When the Division of Motor Vehicles was abolished in 1942 and reconstituted as a new Division of Motor Vehicles and a new Department of State Police, the system was placed within the newly created Department of State Police. See 1942 Va. Acts ch. 232, at 339, 340-41 (enacting §§ 2-3).

⁹ VA. CODE ANN. § 52-12 (2005).

¹⁰ See § 52-13 (2005) (authorizing Superintendent to use state employees to install, operate, and maintain communication system).

¹¹ Section 52-15 (2005) (authorizing Superintendent to exercise such control by designating other members of his Department).

¹² See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 514 S.E.2d 345 (1999); *Commonwealth v. Orange-Madison Coop.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1999 Op. Va. Att’y Gen. 10, 11.

direct, superintend, restrict, regulate, govern, administer or oversee.”¹³ The term “custody” means the “care and control of a thing or person,”¹⁴ and “possess” means “[t]o occupy in person; to have in one’s actual and physical control.”¹⁵ Therefore, it appears that in order for the Superintendent of VSP to retain “control” of the communication system, he must have “custody” and “possession” of it. Furthermore, § 52-12 requires the establishment of sending and receiving stations, which may be located “at the headquarters of the Superintendent of State Police and at such substations or detached posts as shall be designated by the Superintendent.”¹⁶

Conversely, however, § 52-15 permits limited involvement of agencies outside criminal justice agencies with VCIN. The Superintendent of VSP is authorized: (1) to use state employees for the “installation, operation, and maintenance” of the system;¹⁷ (2) to make the system available for use by any state, local, or federal agency;¹⁸ and (3) to issue “orders, rules, and regulations for the use of the system.”¹⁹

“[W]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails.”²⁰ The general provisions of the 2003 Acts indicate that the VITA is to “consolidate” certain functions relating to VCIN.²¹ Under the specific statutes, §§ 52-12 through 52-15, the ultimate control of these systems is directed to remain with the Superintendent.²²

You state that access to VCIN also provides a central gateway to national systems such as the Federal Bureau of Investigation’s National Crime Information Center (“NCIC”), the Integrated Automated Fingerprint Identification System, the National Law Enforcement Telecommunication System, the National Instant Check System, and the National Sex Offender Registry. VSP has entered into agreements with the agencies responsible for these systems. In addition, VSP’s use of these particular systems is governed by federal law and regulation²³ and by the policies and procedures of those agencies.

Under federal regulations, access to NCIC is permitted to Control Terminal Agencies, which are defined as criminal justice agencies responsible for providing statewide access to various federal

¹³BLACK’S LAW DICTIONARY 329 (6th ed. 1990).

¹⁴*Id.* at 384.

¹⁵*Id.* at 1162.

¹⁶The “detached posts” language of § 52-12 has in practice referred to *receiving* stations employed by state and local law enforcement to gain access to sensitive information contained on the Virginia Criminal Information Network. Consistent with the requirement of control by the Superintendent, these “detached post” stations do not allow the input or modification of certain sensitive information, including criminal history data. The “detached posts” are the exclusive province of criminal justice agencies.

¹⁷Section 52-13.

¹⁸Section 52-14 (2005).

¹⁹Section 52-15.

²⁰Thomas v. Commonwealth, 244 Va. 1, 22-23, 419 S.E.2d 606, 618 (1992) (quoting Va. Nat’l Bank v. Harris, 220 Va. 336, 340, 257 S.E.2d 867, 870 (1979)).

²¹See 2003 Va. Acts, *supra* note 4, cls. 4, 8, at 1552, 1670-71, respectively.

²²See § 52-15.

²³See 28 C.F.R. §§ 20.1 to 20.38 (2005).

databases.²⁴ A criminal justice agency may disseminate criminal history record information to certain noncriminal justice agencies or private contractors.²⁵ The federal regulations, however, unambiguously reserve access to the federal databases to criminal justice agencies.²⁶ VSP is the Control Terminal Agency for the Commonwealth and is responsible for overseeing that access. Therefore, under the federal regulations, VITA is not permitted to gain access to the federal databases. Violation of the federal regulations can result in fines, loss of funding, or cancellation of access to the federal databases.²⁷

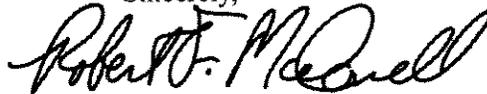
The "IT Infrastructure Partnership"²⁸ ("Partnership") between VITA and Northrop Grumman highlights the need for VSP to retain control and possession of VCIN. Under the Partnership, if equipment and personnel were transferred to VITA, Northrop Grumman would gain control and a proprietary interest in the hardware and software of VCIN, thereby eroding or eliminating the control the Superintendent of VSP is mandated to have.²⁹ Additionally, the access Northrop Grumman would need to have to comply with the Partnership potentially would violate the referenced federal regulations.

Conclusion

Accordingly, it is my opinion that Chapters 981 and 1021 of the 2003 Acts of Assembly and the authority granted to the Superintendent of the Department of State Police under Chapter 2 of Title 52, §§ 52-12 through 52-15 may be read in harmony to a certain extent. Chapter 2, however, relating to the Superintendent's control over the system, dictates that ultimate control over the Virginia Criminal Information Network must remain with the Superintendent. Further, it is my opinion that federal regulations require the Superintendent to retain control over the Network.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:1202; 3:762; 1:941/04-085

²⁴ See 28 C.F.R. § 20.3(c).

²⁵ See 28 C.F.R. § 20.33(a)(6), (7).

²⁶ See generally 28 C.F.R. §§ 20.1 to 20.38.

²⁷ See 28 C.F.R. §§ 20.25, 20.38.

²⁸ See IT Infrastructure Partnership website at <http://www.vita.virginia.gov/itpartnership/index.cfm> (last visited June 9, 2006) (containing information on Partnership).

²⁹ The *Interim Comprehensive Infrastructure Agreement* between VITA and Northrop Grumman provides that "[w]ith regard to the Commonwealth's IT environment, Vendor [Northrop Grumman] shall at all times ... have sole support, operational, administrative, and financial responsibilities for the refreshed assets." See "Interim Comprehensive Infrastructure Agreement by and between the Commonwealth of Virginia and Northrop Grumman Information Technology, Inc.," § 3.6, at *32, available at <http://www.vita.virginia.gov/itpartnership/moreInfo.cfm> (follow "Interim Comprehensive Infrastructure Agreement" hyperlink; then follow "Interim Comprehensive Infrastructure Agreement" PDF hyperlink).