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## **Press Conference: Summary of Correspondence**

Exactly two years ago, the Commonwealth of Pennsylvania entered into a \$45 million contract with Viisage Technology, self-described as “the industry leader in instant issue digital driver’s licenses.” Viisage, later renamed L-1 Identity Solutions, became responsible for issuing Pennsylvania driver’s licenses.

Under the authority of Governor Rendell, Viisage and PennDOT launched a new program in June 2006 known as FaceEXPLORER to be used in conjunction with the issuing of driver’s licenses. This program uses an upgraded, high-definition photograph taken at a driver’s license center to create a facial recognition template, or “faceprint,” similar in purpose and uniqueness to a fingerprint. This faceprint is a form of biometrics based on the measurements of a person’s unique, personal facial geometry. The faceprint goes beyond such easily recognizable physical features as haircut, glasses or facial hair and into an analysis of one’s unique facial structure. Once this personally unique faceprint has been created, it is stored in a database to be used to compare against the faceprints of others. By these means, PennDOT and Viisage hoped to reduce identity fraud and theft. In reality, FaceEXPLORER has been a “back-door” means to implement the REAL ID Act of 2005 without the consent or knowledge of either the legislature or the people.

The methodology Governor Rendell allowed to be employed is illegal on several accounts. Constitutional law provides the right for every citizens to be secure in their persons. Furthermore, statutory law would require a specific exemption to the prohibition against taking personal information like a faceprint. This exemption has been granted in specific criminal cases for the purpose of keeping a record of the physical characteristics (i.e. DNA or fingerprints) of criminals should they again run afoul of the law. However, neither PennDOT nor Viisage has inherent authority nor have they granted any exception to take biometric information from the citizens of the Commonwealth. This is particularly egregious since it is being done without informed consent. In fact, when asked how “constitutional issues related to privacy [have] been addressed,” Governor Rendell’s Secretary of Transportation responded by saying, “PennDOT has determined that the use of this tool is not a constitutional violation. Obtaining a driver’s license is a privilege. The state is entitled to condition the grant of that privilege on the individual’s consent to have [*sic*] their picture taken and used as necessary to protect security and for other legitimate government functions. It is PennDOT’s responsibility to take steps to ensure the integrity of the process, and facial recognition software is one tool we use to do that” (Feb. 15 letter from PennDOT).

The actions allowed by Governor Rendell further violate statutory law. PennDOT, as an agency created by the legislature of Pennsylvania, has only those powers given it by the legislature. In fact, the Commonwealth Court’s 1997 *Mazza* opinion declares that an “administrative agency is a creature of statute and cannot exercise powers that are not explicitly given to it by the legislature.” Contrary to this settled point of law, Governor Rendell’s Secretary of Transportation claims in justification that the

FaceEXPLORER program is a “reasonable” and “efficient” way “to effectuate its duty” of administering the Vehicle Code.

The violations resulting from the actions allowed by Governor Rendell bear significant consequences for each citizen of Pennsylvania. Significantly, this issue constitutes a major Constitutional violation. In effect, the executive branch has violated the “separation of powers” check and balance. By effectively writing a legal exemption for themselves in an area in which the legislative branch must grant authority, the Governor and the executive agencies under his authority have overstepped their Constitutional bounds. This overstepping has caused government originally created to protect the freedoms of the people to become an aggressor against those people.

Amazingly, as part of alleged Constitutional “justification,” the executive branch noted that faceprints are “physically non-intrusive” – essentially that government will not ever have to inform people of what is happening when their biometric faceprint is taken. Indeed, people have not been informed of this violation of their right to “security of person” at any point during the driver’s license issuing process.

A further concern relates to the security of the data that Governor Rendell has allowed to be collected. The biometric data along with other data collected during the driver’s license issuing process (home address, Social Security number, date of birth, gender, and signature) constitutes a veritable gold mine for an identity thief. The possibility to access the entirety of this crucial information makes the prize worth breaking into and stealing. Nor is this danger merely imagined; in November of 2006, just a few months after the beginning of the FaceEXPLORER program, the Wilkes-Barre

Driver's License Center was burglarized, resulting in the compromise of personal information for over eleven thousand people.

Another danger of the collection of this information is surveillance. In a twist that goes beyond Orwellian, a biometric faceprint can easily be hooked into surveillance cameras to track the whereabouts of any citizen. Under this scenario, which is currently happening in limited instances in our country and in other parts of the world, a government knows exactly who moves, and where and when that individual moves.

The final danger relating to the collection of this biometric data concerns who can access the database. PennDOT noted in the February 15, 2008 letter that access to this important information is provided to "any Federal, State, or local government agency for the sole purpose of exercising a legitimate governmental function or duty." Even more disconcerting, a PennDOT letter dated April 2, 2008 admitted, "To the extent that law enforcement and other governmental entities have electronic access, PennDOT does not screen requests on a case-by-case basis." Further, "if the [governmental] entity obtains information through a batch process, the request is not recorded on the driver's record." This scenario creates a virtual information highway for the Federal Government, agencies and their potential myriad of assignees, and for any hacker who could gain government access. Additionally, information is provided to the American Association of Motor Vehicle Administrators (AAMVA). This non-governmental body is also an international organization. Under the current contract with Viisage Technology, Governor Rendell has provided access to highly personal biometric information, not only to the Federal Government and beyond, but also to a non-governmental international organization.

The choice of Viisage (now L-1) as the contractor also raises some significant concerns. Besides of the security breach already mentioned, Viisage also failed security provisions involving staff background checks close to one year after the contract was signed (Feb. 15, 2008 letter from PennDOT). More disconcertingly, L-1 is currently involved in providing faceprint surveillance technology to government contractors in China (“China’s All-Seeing Eye”, May 15, 2008, *CommonDreams.org*). While this aspect was not discussed directly with PennDOT, it raises significant security concerns.

Finally, the costs of the project, as usual, have been left to the taxpayer. Each citizen has been left in the unfortunate position of paying for a \$45 million contract that allows processes which violate those citizens’ rights. If H.B. 1351 is not passed, the taxpayer will be left paying for any additional costs of implementation.

The contract between Viisage Technology (L-1) and the Commonwealth of Pennsylvania has resulted in several significant violations of Pennsylvania law. In essence, it is implementing the core objectives of the REAL ID Act of 2005, just in a “back-door” manner. The information presented herein has not been readily available and only was discovered recently through much research and correspondence. That correspondence has been ongoing between Rep. Rohrer and Governor Rendell/PennDOT, and Rep. Rohrer has demanded the cessation of the collection of personal biometric data. Furthermore, pending legislation now exists to protect that personal information and reject the REAL ID Act. To halt the violations to Pennsylvania law, H.B. 1351 must be passed.