



NATIONAL MOTORISTS ASSOCIATION

Empowering Drivers Since 1982

402 West 2nd Street
Waunakee, Wisconsin 53597-1342

Telephone: 608-849-6000

Fax: 888-787-0381

E-mail: nma@motorists.org

Website: www.motorists.org

September 28, 2016

The Honorable Aubrey L. Layne, Jr.
Office of the Secretary of Transportation
Patrick Henry Building
1111 E. Broad Street, Room 3054
Richmond, Virginia 23219

The Honorable Charles A. Kilpatrick
Virginia Department of Transportation
1401 E. Broad Street
Richmond, Virginia 23219

Subject: Unauthorized land use of Virginia DOT property

Dear Secretary Layne and Commissioner Kilpatrick,

The National Motorists Association (NMA) is an advocacy organization for the protection of drivers' rights with several thousand members located in all states including the Commonwealth of Virginia. It is on behalf of our members and the motoring public that I write to you in your capacity as leaders of the Commonwealth Transportation Board.

The NMA has uncovered what appears to be eight violations of **Virginia Administrative Code Title 24, Agency 30, Chapter 151, Section 20 – Authority**, which states in part:

These rules and regulations provide that no work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Real property includes, but is not limited to, the right-of-way of any highway in the state highways system. Written permission is granted either by permit or a state-authorized contract let by VDOT. By issuing a permit, VDOT is giving permission only for whatever rights it has in the right-of-way; the permittee is responsible for obtaining permission from others who may also have an interest in the property.

Title 24, Agency 30, Chapter 21, Section 20 establishes similar requirements for use of VDOT property.

In May 2016, the Insurance Institute for Highway Safety published a report titled *Effects of Vehicle Power on Passenger Vehicle Speeds* (copy enclosed). IIHS examined the relationship between engine horsepower and vehicle speed in the report. What drew our attention to their effort is the description of setting up Brekford Corporation speed cameras in multiple locations on roadways in Northern Virginia in spring 2013 to photograph “faces of drivers” in addition to measuring vehicle speeds and collecting license plate numbers. That information was then used by IIHS to gain access to individual driver records at the Virginia, Maryland, and District of Columbia departments of motor vehicles to compare facial images and to determine each driver’s age, gender and zip code.

In Table 1 (page 13) of the IIHS report, ten locations are listed where the Brekford cameras captured motorist information. Eight of these locations – described as “roadside” on page 3 of the

(continued)

report – were on state roads under the control of VDOT. On July 7, 2016, I submitted a Freedom of Information Act request to VDOT (copy enclosed) asking for evidence that IIHS or Brekford requested permission from the agency to operate speed cameras per the statutes noted previously. On August 4, 2016 Magaly V. Lay from VDOT responded by email (copy enclosed) with this statement: “You requested information related to photo radar cameras placed in several locations in the Northern Virginia roads. Please be advised that after a rigorous search we found no information related to your request.”

It appears that IIHS and Brekford violated the privacy of motorists from two states and the District of Columbia while conducting illegal surveillance on VDOT property using speed cameras which are prohibited for use by localities throughout Virginia.

The NMA requests an investigation of the Insurance Institute for Highway Safety and Brekford Corporation for their unlawful use of VDOT property along with the imposition of whatever sanctions are appropriate under the law.

What makes this especially egregious to advocates of motorists’ rights is that the information gathered in Northern Virginia by IIHS and Brekford was used as justification to examine sensitive records of individual motorists at driver licensing agencies in multiple states. This is not only a violation of privacy, but of trust in state institutions to protect DMV records from access through unsanctioned means.

Sincerely,



Gary Biller
President

Enclosures: [IIHS report, *Effects of Vehicle Power on Passenger Vehicle Speeds*, May 2016](#)
[NMA Freedom of Information Act request to VDOT, July 7, 2016](#)
[VDOT email response to NMA FOIA, August 4, 2016](#)