



Legislation Text

File #: Res 0449-2022, **Version:** *

Res. No. 449

Resolution calling on the New York State Legislature to pass, and the Governor to sign, A.84/S.296A, in relation to prohibiting the search, with or without a warrant, of geolocation and keyword data of people who are under no individual suspicion of having committed a crime.

By Council Members Williams, Louis, Joseph, Hanif, Hudson, Richardson Jordan, Marte and Barron

Whereas, A 2011 International Library of Ethics publication described a “pacing problem” phenomenon in which there is a “growing gap between the pace of science and technology and the lagging responsiveness of legal and ethical oversight [which] society relies on to govern emerging technologies”; and

Whereas, A geofence is a defined virtual geographic perimeter, or area, that is overlaid over a real-world area for a period of time, and can be used for the collection, or pushing, of data in that area; and

Whereas, The National Association of Criminal Defense Lawyers defines geofence warrants as a type of reverse warrant where the government seeks a court order to learn who was within a “geofence” during a specific period of time, and explains that geofence warrants can be used by a government to compel technology companies to produce geolocation data, or information about devices interacting with a company’s technology within a particular geographic region; and

Whereas, Similarly, a government might also seek a reverse warrant for search data, also referred to as keyword data, wherein it seeks a court order to learn the identities of persons who entered particular terms into a search engine; and

Whereas, According to Slate Magazine’s Future Tense and Forbes, the first publicly available example of the use of a keyword warrant was in 2017 when a Minnesota judge signed off on a warrant that required Google to provide information on anyone who searched for a fraud victim’s name from within the city of

Edina, the location where a crime being investigated had taken place; and

Whereas, In its semiannual transparency report, Google disclosed that it had received 49,001 search warrants in 2021, as compared with 10,383 search warrants a few years earlier, in 2017;

Whereas, Google also released a supplemental document pertaining to geofence warrants to share that the company has seen a dramatic rise in geofence information requests to the point that as of 2020 geofence warrants made up more than 25% of all warrants received by them in the U.S., increasing from 982 geofence warrants in 2018 to 11,554 such warrants in 2020; and

Whereas, A broad range of technological and civil liberty organizations including the Electronic Frontier Foundation (EFF), the New York Civil Liberties Union (NYCLU), and the Surveillance Technology Oversight Project (S.T.O.P.) have advocated to prohibit the issuance of these warrants due to their concerns regarding possible violations of constitutional protections against unlawful search and the consequences thereof; and

Whereas, The EFF published an article on May 13, 2022 in which it described the harms of geofence and keyword warrants, both for a possible invasion of privacy and for the potential to involve innocent bystanders that would become connected to criminal investigations due to otherwise innocuous search terms or coincidental geographic proximity; and

Whereas, On April 13, 2019, The New York Times reported on a case in which a geofence warrant issued in Phoenix, Arizona led to detectives falsely arresting and imprisoning a person in connection to an ongoing murder investigation; and

Whereas, On March 3, 2022, a federal judge in the U.S. District Court for the Eastern District of Virginia ruled that Virginia authorities' usage of a geofence warrant was an unconstitutional violation of Fourth Amendment rights,

Whereas, The use of these warrants is occurring New York, as Gothamist reported on August 12, 2019 that the Office of the District Attorney of Manhattan was able to obtain the geolocation data of persons through

a geofence warrant; and

Whereas, A.84A, sponsored by Assembly Member Dan Quart in the New York State Assembly and companion bill S.296A, sponsored by State Senator Zellnor Myrie in the New York State Senate, would prohibit the search, with or without a warrant, of geolocation and keyword data of people who are under no suspicion of having committed a crime; and

Whereas, Civil liberty and technology associations like the ACLU, EFF, S.T.O.P., and NYCLU have expressed support for this legislation, as has Reform Government Surveillance, a technology coalition which includes companies like Google, Microsoft, and Meta, which released a statement supporting the adoption of the legislation; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, A.84A/S.296A, in relation to prohibiting the search, with or without a warrant, of geolocation and keyword data of people who are under no individual suspicion of having committed a crime.

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