Twitter Thread by Tom (not from MySpace)



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@TomDoesMemes

I know that most VCU students--really most college students in general--do not pay attention to their local politics.

Well, I'd like to enlighten them on something that is happening in RVA City Council ... something all VCU students should be aware of (THREAD)

1/ We're talking about Ordinance # 2020-117 ... Which would continue and expand an agreement between RPD and VCU that allows the school's police force to use RPD's records management system.

It was first introduced on May 11, 2020, by Mayor @LevarStoney

2/ It has since bounced around council for several months. The last motion was made on Jan 11, 2021, where it was tabled for an upcoming subcommittee meeting on Feb 8.

You can read the whole bill by clicking the link below:
https://t.co/QfqTFRerRX

3/ Now, some important context:

-VCU has the largest campus police force in VA
-VCUPD has assisted RPD and VSPD with crowd control at protests
-VCU is seeking leads on the $100,000 of windows broken at protests

These are all facts that have been verified publicly.

I'd like to also state that, while the information presented below may seem authoritative, a lot of this is a guessing game because the bill is written so vaguely. There's only so much a person can actually understand about this ordinance.

So, do your own research.

4/ Now then, what does this ordinance do exactly?

In essence, RPD would be granting VCUPD continued access to its database that stores "criminal justice information and other records of information".

Here is some background:

BACKGROUND:

In calendar year 2019, the Richmond Police Department (RPD) completed a competitive bid to purchase a new Records Management System to replace the Department's existing system which is over a decade old. The new system utilizes modern technology to provide features which the current system either does not possess or would require extensive, and costly upgrades to achieve.

Since February of 2012 the Virginia Commonwealth University Police Department (VCUPD) has utilized the Richmond Police Department's Records Management System as its principle data repository. VCUPD is interested in continuing to utilize the RPD's new Records Management System. Although both departments are fully capable of owning and operating their own independent Records Management systems, the sharing of a single system has been mutually beneficial for both agencies allowing for increased collaboration, facilitating the sharing of information, and providing superior Police service to the citizens of Richmond as well as the students, faculty, and staff of VCU.

As such the Richmond Police Department (RPD) and the Virginia Commonwealth University Police Department (VCUPD) wish to enter into the agreement attached herein to allow VCUPD to utilize the RPD's new Records Management System.

5/ The scope of what that the "information" includes is somewhat unclear. Furthermore, there is a lot of grey area as to what kinds of information each party would have access to.

It's not unusual for police depts. to share data, but they often do not use the same exact system.

6/ One of the big issues with this ordinance is that RPD would be able to skirt around FOIA (Freedom of Information Act) by virtue of some interesting technicalities.

Take this, for example: Article 3 sec. B

To put it simply, RPD technically has the right to deny a FOIA request submitted to VCU and vice-versa. Not good.

Read this passage carefully, and think of all the ways this could be abused when both parties are intertwined.

B. The Parties acknowledge that both the City and VCU are public bodies subject to the Virginia Freedom of Information Act ("FOIA") (Va. Code 2.2-3700 *et seq.*) and that each Party is responsible for its own compliance with FOIA and other applicable law. However, in the event one Party receives a request for a record entered into the SYSTEM by the other Party, the Party initially receiving the request shall direct the requester to the other Party's applicable FOIA officer for that Party to respond to the requester. If both Parties have entered records into the SYSTEM that are responsive to the request, the Parties shall coordinate their respective FOIA responses. Ultimately, neither Party will disclose a record entered into the SYSTEM by the other Party unless authorized in writing by that other Party or unless required by law or valid court order to do so. In the event such disclosure is required, the disclosing Party shall notify the other Party in advance of disclosure whenever practicable, unless prohibited from such notification by law.

7/ But, here's the real kicker.

Through this system, RPD would be able to access information on VCU students that may otherwise be protected under HIPAA (Health Insurance Portability and Accountability Act) and FERPA (Family Educational Rights and Privacy Act).

Read this clause over and over again, doing so carefully.

It sounds like RPD is saying "we won't touch HIPAA or FERPA records, and if we accidentally do, we're really sorry".....right?

Wrong. There is tons of room for technicalities here.

C. The Parties acknowledge that VCUPD may have access to certain student information from "education records" protected by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g, 34 CFR Part 99) and Code of Virginia section 23.1-405(C) and certain patient information protected by the Health Insurance Portability and Accountability Act (HIPAA) (Public Law 104-

191). VCUPD intends to disclose to the City only information that VCUPD is permitted to disclose pursuant to applicable law. In the event that VCUPD notifies the City that VCUPD has inadvertently or mistakenly disclosed information to the City, or in the event the City otherwise becomes aware of such disclosure, the City agrees to use reasonable efforts to collaborate with VCUPD to promptly remedy any such disclosure, including destroying identified records or returning them to VCUPD.

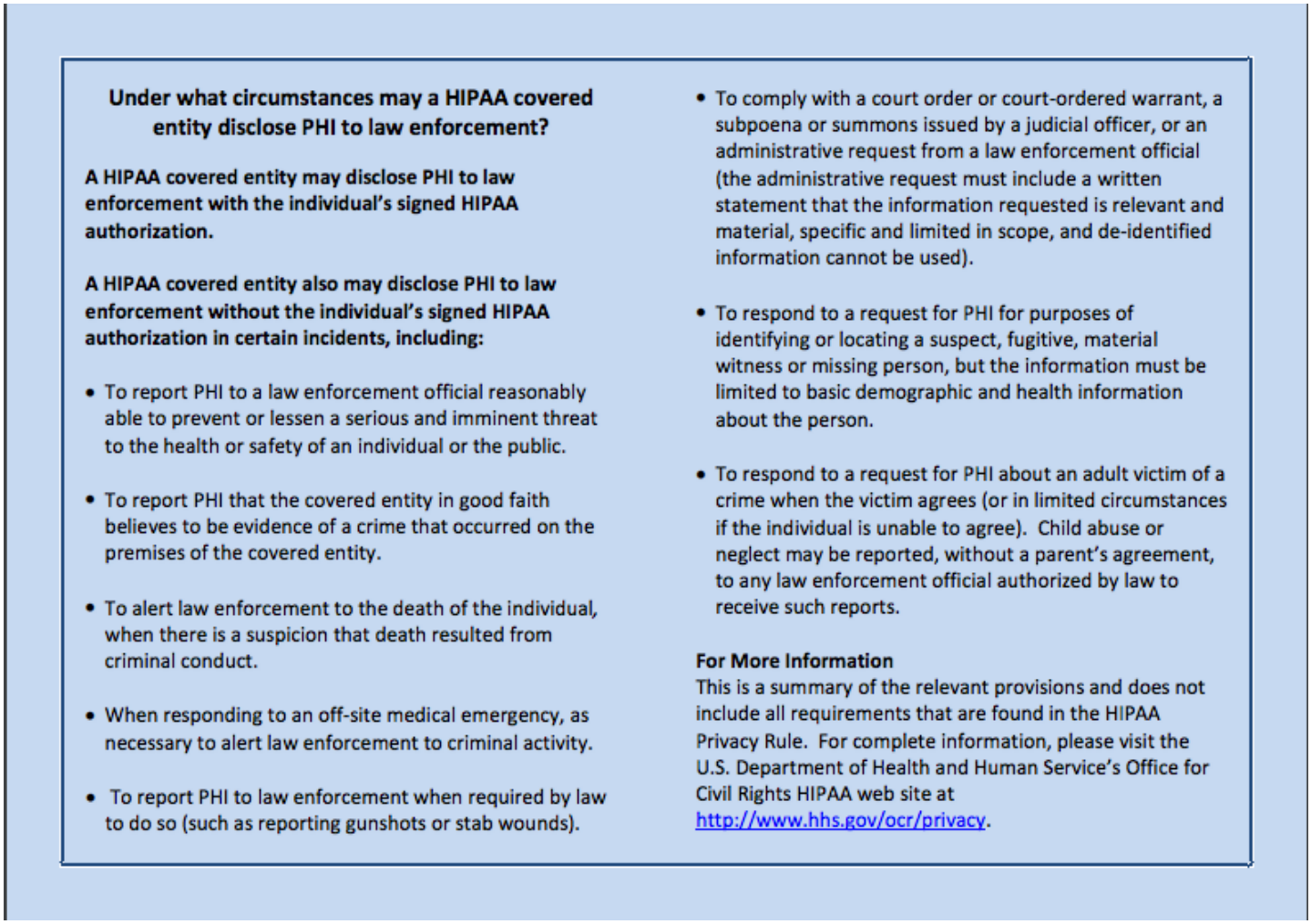
8/ To understand this, you have to understand the exemptions law enforcement already has when it comes to HIPAA and FERPA. In this particular case though, VCU is a public college and RPD is a government entity, so the agreement could allow for tons of gray areas.

In short:

Your school has certain exemptions to HIPAA/FERPA that law enforcement does not, and vice-versa. But, what happens when those parties enter into a contractual agreement pertaining to how they can share records in a more integrated way?

9/ Starting with HIPAA, law enforcement is basically exempt from the act's privacy rule altogether, albeit with some caveats.

Here is a link that explains the exemptions of law enforcement from HIPAA privacy rules: https://t.co/UsJigWquaz



Under what circumstances may a HIPAA covered entity disclose PHI to law enforcement?

A HIPAA covered entity may disclose PHI to law enforcement with the individual's signed HIPAA authorization.

A HIPAA covered entity also may disclose PHI to law enforcement without the individual's signed HIPAA authorization in certain incidents, including:

- To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
- To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
- To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
- When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity.
- To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).
- To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
- To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.
- To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree). Child abuse or neglect may be reported, without a parent's agreement, to any law enforcement official authorized by law to receive such reports.

For More Information
This is a summary of the relevant provisions and does not include all requirements that are found in the HIPAA Privacy Rule. For complete information, please visit the U.S. Department of Health and Human Service's Office for Civil Rights HIPAA web site at http://www.hhs.gov/ocr/privacy.

10/ As for FERPA, there are two avenues of concern.

One is any legal infractions a VCU student may have with VCUPD, which RPD would be able to see regardless of an agreement. This includes minor infractions, like drinking underage.



Are law enforcement records protected under FERPA?

"Law enforcement unit records" (i.e., records created by a law enforcement unit at the educational agency or institution, created for a law enforcement purpose, and maintained by the law enforcement unit) are not "education records" subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent or eligible student with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent's or eligible student's prior written consent.

The other concern is your actual education records, but that's pretty complicated stuff. I'll link to a PDF that goes over all FERPA privacy exemption rules, but below are some highlights.
(PDF: https://t.co/z5H8yEFYtT)

Q.10. Are there exceptions to FERPA's general written consent requirement that permit schools and districts to disclose PII from education records without consent?

Yes. While FERPA generally requires parents or eligible students to provide a school or district with written consent before the school or district discloses PII from a student's education records, there are a number of exceptions to this prior written consent requirement.[20] For example, assuming that certain conditions are satisfied, FERPA permits a school or district to disclose education records under the "health or safety emergency" exception without obtaining prior written consent.[21] Several of these exceptions to the consent requirement that are most relevant in the school safety context are discussed below. Additionally, as explained more fully in Q.19 below, because "law enforcement unit records" are not "education records," they, therefore, may be disclosed, without the parent or eligible student's consent, to outside parties under FERPA. Similarly, while IDEA generally also requires prior written consent from the parent (or from a student who has reached the age of majority under State law, if parental rights have transferred to the student) for disclosure of PII from education records, IDEA generally incorporates the FERPA exceptions to the prior consent requirement.[22]

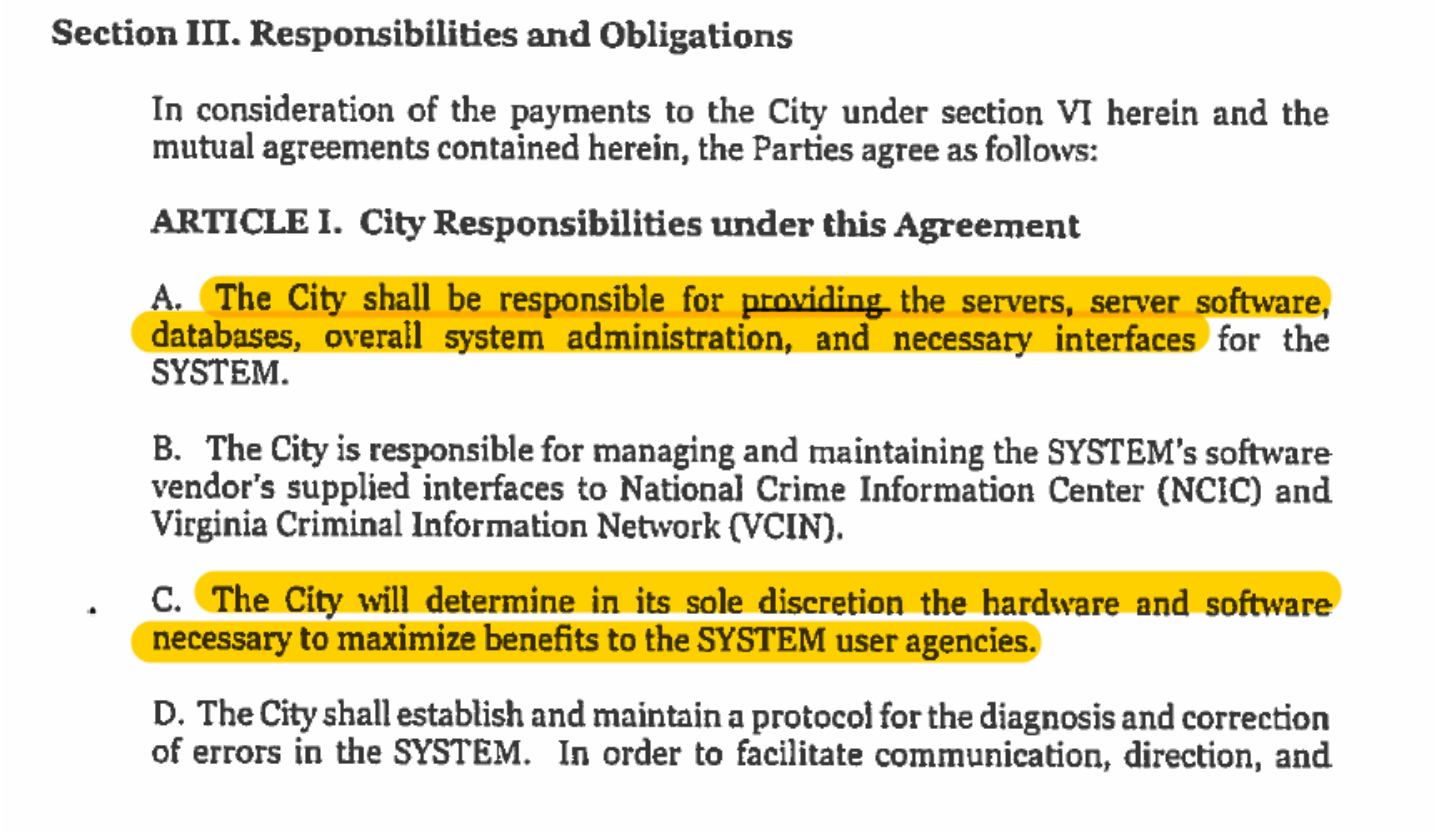
A quick aside to provide some food for thought and plug the work of two good friends.

While this article pertains to K-12, the concept of suspension is rather germane with that of academic probation at colleges. Think back to those minor infractions. https://t.co/GGOIieEh2P

> Suspension is used disproportionately against students of color and those with disabilities. Those punishments, along with arrests at school, often lead to students having a criminal record. @BrandonShilli14 & @anya_p_s dove into suspension rates in Va. https://t.co/Y5kCIfi2e3
>
> — Capital News Service (@vcucns) December 11, 2020

9/ And then, there's the question of how much this will cost.

That isn't an easy question to answer, because both VCU and RPD will feel the brunt of it, and those figures currently do not have an estimated cost.



Section III. Responsibilities and Obligations

In consideration of the payments to the City under section VI herein and the mutual agreements contained herein, the Parties agree as follows:

ARTICLE I. City Responsibilities under this Agreement

A. The City shall be responsible for providing the servers, server software, databases, overall system administration, and necessary interfaces for the SYSTEM.

B. The City is responsible for managing and maintaining the SYSTEM's software vendor's supplied interfaces to National Crime Information Center (NCIC) and Virginia Criminal Information Network (VCIN).

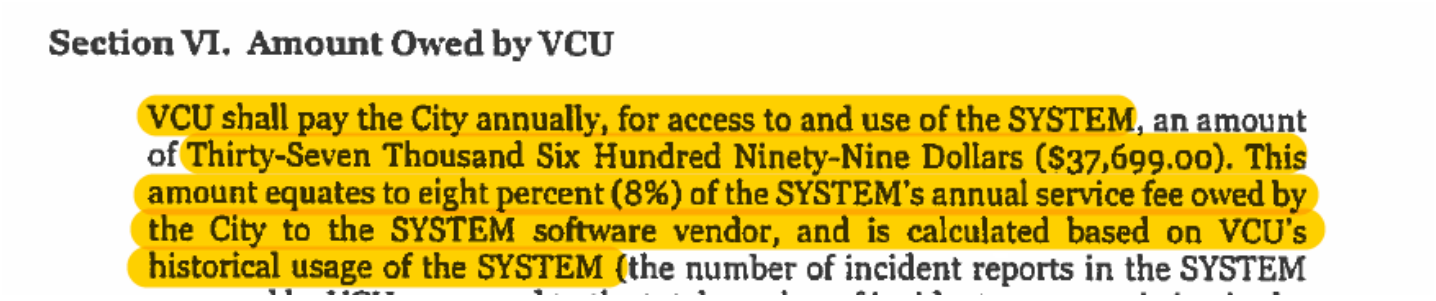
C. The City will determine in its sole discretion the hardware and software necessary to maximize benefits to the SYSTEM user agencies.

D. The City shall establish and maintain a protocol for the diagnosis and correction of errors in the SYSTEM. In order to facilitate communication, direction, and

10/ The only figure that does have a cost attached to it is the annual fee VCU will pay to continue using the system:

$37,699.00 or 8% of the system's annual cost.

That means the city pays over $470,000 every year to run a program that can apparently run on an i3 processor.



Section VI. Amount Owed by VCU

VCU shall pay the City annually, for access to and use of the SYSTEM, an amount of Thirty-Seven Thousand Six Hundred Ninety-Nine Dollars ($37,699.00). This amount equates to eight percent (8%) of the SYSTEM's annual service fee owed by the City to the SYSTEM software vendor, and is calculated based on VCU's historical usage of the SYSTEM (the number of incident reports in the SYSTEM

11/ All this is to say that VCU is likely going to continue this agreement, and the ones who will be both financially and personally affected by it are the students and faculty, many of whom have been harmed, harassed, or intimidated by RPD and VCUPD at protests for BLM.

12/ Look, if you agree with this bill, that's your opinion and I can't change it. But, I encourage you all to read this bill for yourself and form your own opinion.

After how I've seen the city and VCU spend their money over the past year, I simply cannot support this bill.

13/ And, if you don't like what you see, take action. There is still time to do something about it.

The number one thing you can do is call, email or DM your councilperson, and ask them to vote no on ORD 2020-117. If

they refuse your request, ask them why they want to vote yes.

Remember, they are not federal senators; they will probably write back, so hold a dialogue if you get the chance to.

If you are unsure what district you live in, you can use the RVA Real Estate Assessor's web portal to search your address and find out.
https://t.co/FrRsSIfuZd

Alright, now get outta here, ya rascals!