STATE OF NEW YORK

5251

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. KIM, SIMON, TAYLOR, JACKSON, MAMDANI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to imposing limitations on the use of drones for law enforcement purposes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "protect our privacy (POP) act".

§ 2. The civil rights law is amended by adding a new section 52-e to read as follows:

§ 52-e. Limitations on the use of drones; law enforcement purposes. 1. The use of drones by a law enforcement agency, or employee thereof, or for law enforcement purposes, is prohibited, and no warrant may be sought or issued authorizing such use of drones. It is also prohibited for law enforcement to enter into an agreement with a private entity or individual, whether paid or otherwise, to obtain information from drones.

2. Notwithstanding subdivision one of this section, law enforcement agencies may use drones for the following purposes:

a. Search and rescue.

b. Examining conditions of dangerous areas after natural disasters.

3. Notwithstanding subdivision two of this section, a law enforcement agency or employee thereof may not use a drone for documentation, recording, investigation, or collection of data at concerts, protests, demonstrations, or other actions protected by the first amendment to the United States constitution or sections eight and nine of article one of the New York state constitution, nor may a law enforcement agency or employee thereof possess or use an armed drone.

4. Any data obtained from drones pursuant to subdivision two of this section may not be used for any law enforcement purposes. Furthermore, any personally identifying information collected from such drones may

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD04385-02-3

not be shared with any federal, state, local, or private entity or individual unless such entity or individual agrees to keep such information confidential. Any individual whose personally identifying data is shared in violation of this subdivision or in violation of a confidentiality agreement pursuant to this subdivision shall have a private right of action against the entity or individual who shares such data.

5. This section shall apply retroactively with respect to law enforcement data collected from using drones equipped with facial recognition software or using facial recognition on video or images obtained or created by a drone, including videos or images obtained or created by drones owned, controlled, or maintained by a private company, a private individual, or other government agency, and any such data may not be used in any ongoing investigations or prosecutions and shall be promptly deleted.

6. Data or information obtained by drones and within the control of any government agency or in the possession of a private company or individual on behalf of any government agency shall be subject to release under the freedom of information law, provided that all personal identifying information, except for that of law enforcement personnel acting within their official responsibilities or performing an official function, shall be redacted prior to such release.

7. All existing data or information obtained by the use of drones for law enforcement purposes that are not part of an ongoing criminal investigation or proceeding shall be destroyed in one year or less, absent a subpoena or court order. Existing data or information not destroyed in one year or less pursuant to a subpoena or court order and that is within the control of any government agency or in the possession of a private company or individual on behalf of any government agency shall be destroyed once the proceedings or investigations that the subpoena or court order related to have ended.

8. a. Suppression. i. Upon motion from a defendant, a court shall order that evidence be suppressed or excluded if the court finds that such evidence was obtained in violation of this section.

ii. This paragraph shall apply regardless of the court which issued the order and regardless of whether the issuance of the order was permissible under the procedures of that court.

iii. This paragraph shall apply regardless of any claim that the information or evidence is attenuated from an unlawful order or request, would inevitably have been discovered, or was simultaneously or subsequently obtained or reobtained through other means.

b. Private right of action. i. Any individual whose records were obtained by any government entity in violation of this section may institute a civil action against such government entity for any or all of the following:

(1) one thousand dollars per violation or actual damages, whichever is greater;

(2) punitive damages;

(3) injunctive or declaratory relief;

(4) any other relief the court deems proper.

ii. In assessing the amount of punitive damages, the court shall consider:

(1) the number of people whose rights were violated;

(2) whether the violation directly or indirectly targeted persons engaged in the exercise of activities protected by the United States constitution or the New York state constitution; and

(3) the persistence of violations by the particular government entity.

iii. In any action brought under this section, the court shall award reasonable attorneys' fees, expenses and costs to a prevailing plaintiff.

9. As used in this section:

a. "Drone" means any remotely or autonomously piloted device, including devices that travel by air (such as quadcopters and fixed-wing aircraft), land, or water.

b. "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, the enforcement of local government codes and the enforcement of penal, traffic, regulatory, game or controlled substance laws and includes an agent of the law enforcement agency.

c. "Law enforcement purposes" includes activities regularly conducted by law enforcement agencies, including but not limited to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including but not limited to crowd control and safeguarding against and the prevention of threats to public security.

d. "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency, or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

e. "Armed drone" means a drone equipped with a firearm or dangerous weapon as defined in section 265.00 of the penal law or any other tool designed to cause death, serious bodily injury, or incapacitation.

10. If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ 3. This act shall take effect immediately.