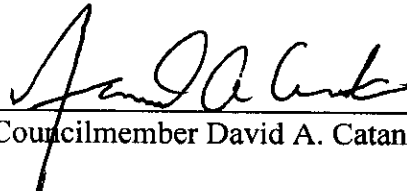


1 
2 Councilmember David A. Catania


Councilmember Marion Barry

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8 A BILL

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10 _____
11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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14 _____
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16 Councilmember David A. Catania introduced the following bill, which was referred to the
17 Committee on _____.

18
19 To require that District law enforcement officers obtain a warrant issued by a judge from the
20 Superior Court of the District of Columbia authorizing the disclosure of a resident's
21 personal electronic communications before requesting that an electronic communications
22 provider disclose the contents of a District resident's personal electronic communication.
23

24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 act may be cited as the "Electronic Communications Privacy Protection Act of 2013."

26 Sec. 2. Definitions.

27 For the purposes of this act the term:

28 (1) The term "agency" means the:

29 (A) Metropolitan Police Department of the District of Columbia;

30 (B) Department of Health; or,

31 (C) District of Columbia Fire and Emergency Medical Services Department.

32 (2) "Electronic communication" means the transfer of any signs, signals, writings,
33 images, sounds or data of any nature transmitted in whole or in part by a wire, radio,
34 electromagnetic, photoelectronic or photooptical system, but does not include:

35 (A) Any communication made through a tone-only paging device;

1 (B) Any communication made through a tracking device; or

2 (C) Electronic funds transfer information stored by a financial institution in a
3 communications system used for the electronic storage and transfer of funds.

4 (3) "Electronic communication service" means a service that provides the ability to send
5 or receive wire or electronic communications.

6 (4) "Judicial officer" means a judge of the:

7 (A) Superior Court of the District of Columbia; or

8 (B) District of Columbia Court of Appeals.

9 (5) "Officer" means:

10 (A) A law enforcement officer or member of the Metropolitan Police Department
11 of the District of Columbia;

12 (B) An animal control officer employed by the District of Columbia; or,

13 (C) Any member of the Fire and Arson Investigation Unit of the Fire Prevention
14 Bureau of the District of Columbia Fire and Emergency Medical Services Department, for the
15 purpose of enforcing arson and the fire safety laws of the District of Columbia, who is so
16 designated in writing by the Fire Chief.

17 (6) "Prosecutor" means:

18 (A) The Attorney General for the District of Columbia or his or her assistant; or,

19 (B) An attorney employed by, or who has entered an appearance on behalf of the
20 District of Columbia in a criminal case or in an investigation being conducted by a grand jury.

21 (7) "Provider" means a remote computing service or an electronic communications
22 service.

1 (8) “Remote computing service” means a service that provides computer storage
2 or processing services by means of an electronic communications service.

3 (9) “Subscriber” means an individual that uses the services of a provider.

4 Sec. 3. Confidentiality of electronic communications.

5 (a) An officer shall be prohibited from requesting that a provider divulge the contents of
6 any electronic communication unless a warrant is issued by a judicial officer authorizing the
7 disclosure except as provided under subsection (b) of this section.

8 (b) An officer may request that a provider divulge the contents of any electronic
9 communication without a warrant if the officer reasonably believes that an emergency situation
10 involving the danger of death or serious physical injury to any person requires the disclosure of
11 the contents of any electronic communication relating to the emergency.

12 Sec. 4. Search warrant requirement; required disclosure of subscriber records.

13 (a) Before an officer requests that a provider disclose the contents of an electronic
14 communication, the officer shall obtain a warrant issued according to the procedures described in
15 section 210(a) of the District of Columbia Court Reform and Criminal Procedure Amendment
16 Act of 1970, effective July 29, 1970 (84 Stat. 614; D.C. Official Code § 23-521) (“CRCP”) by a
17 judicial officer directing the disclosure.

18 (b) Except as provided in section 6, no later than 3 days after an officer receives the
19 contents of an electronic communication, the officer shall serve upon, or deliver by registered or
20 first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified
21 by the judicial officer issuing the warrant, the subscriber:

22 (1) A copy of the warrant; and

23 (2) A notice that includes the following information:

- 1 (A) The nature of the officer's inquiry with reasonable specificity;
- 2 (B) The information maintained by the provider that was supplied to or
- 3 requested by an officer;
- 4 (C) The date the warrant was served on the provider; and
- 5 (D) The date the provider gave the information identified in the warrant to
- 6 an officer or prosecutor.

7 Sec. 5. Records concerning electronic communications.

8 (a) An officer may require a provider to disclose a record or other information pertaining

9 to a subscriber of the provider, not including the contents of communications, if the officer

10 obtains a warrant issued using the procedures described in section 210(1) of the CRCP act issued

11 by a judicial officer directing the disclosure; or has the consent of the subscriber to the disclosure

12 except as provided under paragraph (b).

13 (b) An officer may request that a provider disclose a record or other information

14 pertaining to a subscriber of the provider, not including the contents of the communications,

15 without a warrant if the officer reasonably believes that an emergency situation involving the

16 danger of death or serious physical injury to any person requires the disclosure of a record or

17 other information.

18 (c) In response to an administrative subpoena issued pursuant to federal or state statute

19 or a federal or state grand jury or trial subpoena, a provider shall disclose to an officer or

20 prosecutor the:

21 (1) Name;

22 (2) Address;

1 (3) Local and long distance telephone connection records, or records of session
2 times and durations;

3 (4) Length of service, including start date, and type of service used;

4 (5) Telephone or instrument number or other subscriber number or identity,
5 including any temporarily assigned network address; and,

6 (6) Means and source of payment used for such service, including any credit card
7 or bank account number, of the subscriber the service.

8 (d) An officer or prosecutor that receives records or information under this subsection is
9 not required to provide notice to a subscriber.

10 Sec. 6. Delayed notice.

11 (a) An officer seeking a warrant under section 4 may include in the application for the
12 warrant a request to delay the notification required under section 4 for a period of no more than
13 90 days.

14 (b) A judicial officer may grant a request for delayed notification made in conjunction
15 with an application for a warrant if the judicial officer determines that there is reason to believe
16 that notification of the existence of the warrant may result in:

17 (1) Danger to the life or physical safety of an individual;

18 (2) Flight from prosecution;

19 (3) Destruction of, or tampering with, evidence;

20 (4) Intimidation of potential witnesses; or

21 (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

22 (c) Upon request by an officer or prosecutor, a court may grant 1 or more extensions of
23 the delay of notification granted under paragraph (a) for no more than an additional 90 days.

1 (d) Upon expiration of the period of delay notification, the officer or prosecutor shall
2 serve upon, or deliver to by registered or first-class mail, electronic mail or other means
3 reasonably calculated to be effective as specified by the judicial officer approving the search
4 warrant, the subscriber a copy of the warrant and notice that informs the subscriber:

- 5 (1) Of the nature of the officer's inquiry with reasonable specificity;
- 6 (2) That the information maintained for the subscriber by the provider was named
7 in the warrant that was supplied to, or requested by, an officer or a prosecutor;
- 8 (3) Of the date the warrant was served on the provider;
- 9 (4) The date the information described in the warrant was disclosed to the officer
10 or prosecutor by the provider;
- 11 (5) That notification of subscriber was delayed;
- 12 (6) The identity of the judicial officer authorizing the delay; and,
- 13 (7) Of the section of this act under which the delay was authorized.

14 Sec. 7. Preclusion of notice to individuals besides the subscriber.

15 (a) An officer that obtains the contents of an electronic communication or records under
16 this act shall apply to a judicial officer for an order directing a provider not to notify any other
17 person of the existence of the warrant, order, subpoena, or other directive for a period of not
18 more than 90 days, if the judicial officer issues a warrant, order, subpoena, or other directive
19 under section 4 directing nondisclosure.

20 (b) A judicial officer may grant a request for an order made under subsection (a) of this
21 section, if the judicial officer determines that there is a reason to believe that notification of the
22 existence of the warrant, order, subpoena, or other directive may result in:

- 23 (1) Danger to the life or physical safety of an individual;

- 1 (2) Flight from prosecution;
- 2 (3) Destruction of or tampering with evidence;
- 3 (4) Intimidation of potential witnesses; or
- 4 (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

5 (c) Upon request by an officer or prosecutor, a judicial officer may grant 1 or more
6 extensions of an order granted under this act for a total of no more than an additional 90 days.

7 Sec. 8. Remedies for violations of this act by a provider.

8 (a) If a provider engages in conduct that is a violation of this act with a knowing or
9 intentional state of mind, then a subscriber may recover from the provider that engaged in the
10 violation in a civil action.

11 (b) A judicial officer may provide a subscriber the following relief for a violation under
12 subsection (a) in this section:

13 (1) Preliminary and other equitable or declaratory relief as may be appropriate;

14 (2) Monetary damages may be assessed as follows as:

15 (A) A judicial officer may assess actual damages suffered by the
16 subscriber and any profits made by the provider as a result of the violation for a sum of no less
17 than \$1,000;

18 (B) A judicial officer may assess punitive damages if the violation is
19 willful or intentional; and,

20 (C) A judicial officer may assess costs and reasonable attorney fees as
21 determined by the court in the case of a successful action to enforce liability under this act.

1 (c) A subscriber may not bring a civil action against a provider for a violation of this act
2 later than two years after the date the subscriber first discovered or had a reasonable opportunity
3 to discover the violation.

4 (d) A good faith reliance on the following may serve as a defense against civil action
5 brought under this act:

6 (1) A warrant issued by a judicial officer;

7 (2) A grand jury subpoena; or

8 (3) An administrative subpoena.

9 Sec. 9. Remedies for violations of this act by an officer.

10 (a) A subscriber may bring a civil action against an officer that willfully or intentionally
11 violated this act.

12 (b) If a judicial officer determines that an officer has violated any provision of this act
13 with willful or intentional conduct the judicial officer shall report to the agency employing the
14 officer a certified copy of the findings; and the agency shall institute disciplinary proceedings
15 against the officer.

16 (c) If the agency determines that disciplinary actions are not warranted, then the judicial
17 officer who made the findings shall be notified in writing of the results of the disciplinary
18 proceedings with the reasons for such determination.

19 (d) A subscriber may not bring a civil action against an officer for a violation of this act
20 later than two years after the date the subscriber first discovered or had a reasonable opportunity
21 to discover the violation.

22 Sec. 10. Fiscal impact statement.

1 The Council adopts the fiscal impact statement in the committee report as the fiscal
2 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
3 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

4 Sec. 11. Effective date.

5 This act shall take effect following approval by the Mayor (or in the event of veto by the
6 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
7 90 days, as provided for emergency acts of the Council of the District of Columbia in section
8 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
9 D.C. Official Code § 1-204.12(a)).