## Mitigating the Legal Risk of Data Collected at Airports

#### November 8, 2022

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### **Today's Learning Objectives**

- Recognize developing practices in airport data collection and utilization
  - Define national and international trends related to data collection and use by airports
    - Identify established practices to mitigate legal risk
      associated with data use



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#### 1.25 Continuing Legal Education Credits (CLE) from the American Bar Association You must attend the entire webinar

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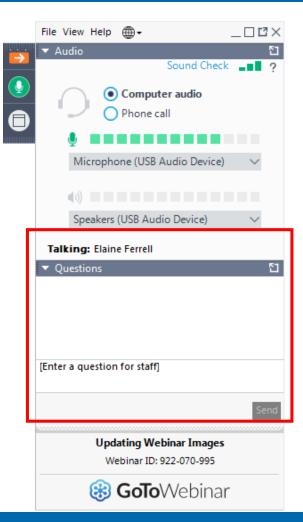


#### **Questions and Answers**

Please type your questions into your webinar control panel

We will read your questions out loud, and answer as many as time allows

**#TRBwebinar** 





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### Elizabeth Smithers, J.D., Panel Chairperson--Moderator

- Senior Assistant City Attorney advising Charlotte Douglas International Airport (focused on intellectual property, technology finance, procurement and public art and records
- Chair ACRP Legal Panel
- 2022 Young Professional for ACI Legal Committee Steering Group
- Steering Group Member ACI Young
  Professionals Committee.





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# Airport Cooperative Research Program (ACRP) Legal Digest Report (LDR)

# "Legal Issues of Data Collection at Airports" ACRP-LDR 42



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#### **ACRP-LDR 42 Research Team**

- Don Zoufal, CrowZ Nest Consulting, inc., Chicago, IL, Principal Investigator
- Sean Cusson, Del Rey Solutions, LLC, Alexandria, VA, Subject Matter Expert
- Honorable, Diane J. Larsen, (Ret.) Circuit Court of Cook County, State of Illinois, Chicago, IL, Subject Matter Expert
- Tobias Person, Von Oxon, LLC, Los Angeles, CA, Subject Matter Expert
- Daniel Hantman, Data Privacy Counsel, Publicis Groupe, Chicago, IL, Subject Matter Expert
- Austin Maliszewski, Austin, TX, Technical Assistance





#### **ACRP-LDR 42 Oversight Panel**

- Elizabeth Smithers, Charlotte Douglas International Airport, Charlotte, NC, **Panel Chairperson**
- Monica R. Hargrove, Metropolitan Washington Airport Authority, Washington D.C.
- Joseph Huber, Cincinnati/Northern Kentucky Airport, Cincinnati, KY
- D. Scott Knight, Tampa International Airport, Tampa, FL
- Sarah Meadows, University of Arizona, Tucson, AZ
- Clyde Otis, Post, Polak, Godsell, and Strauchler, PA., Roseland, NJ
- Daphne Fuller, Liaison to FAA
- Pablo Neusch, Liaison with Airports Council International
- Justin Barkowski, Liaison with American Association of Airport Executives
- Robert J. Shea, TRB Liaison
- Theresa Schatz, ACRP Staff





### **ACRP-LDR 42** Introduction

- Welcome/Introduction
- Developing Airport Practices in Collection of Data (Examples from LRD 42)
- Development of Legal Trends Concerning Data Collection
- Measures to Mitigate Risk
- Final thoughts/Q&A



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# Don Zoufal, J.D., C.P.P., ICAO AVSEC PM Principal Investigator--Panelist

- Independent Safety & Security Consultant CrowZ Nest Consulting, Inc.
- Former General Counsel, Chicago Police Department
- Former Chief Assistant Corporation Counsel, Chicago Law Department
- Former Deputy Commissioner for Safety & Security, Chicago Department of Aviation





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### Sean Cusson, J.D., Subject Matter Expert--Panelist

- → Del Ray Solutions, LLC
- Former Director of Public Safety and Security at Airports Council International North America
- Former Congressional Liaison at U.S.
  Customs and Border Protection



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# Daniel Hantman, J.D., CIPP/US, Subject Matter Expert--Panelist

- International Data Privacy Counsel with Publicis Groupe
- Supports businesses in multiple industry lines that operate within the US and internationally
- Certified Information Privacy Professional (United States)



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#### **ACRP-LDR 42** Introduction

#### WHAT'S IN LRD 42

- **Case Studies of Airport Data Use** •
- Federal, State, & Local Legal ٠ Concerns
- **International Implications** ۲
- **Privacy and Open Records**
- **Payment Card Industry, Data Security Standards**
- **Policy Considerations**
- **Contract Considerations**



#### Legal Implications of Data Collection at Airports

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This digest was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. Under Topic 12-01, this digest was prepared by Donald R. Zoufal, CrowZ Nest Consulting, Inc., Chicago, IL: Sean Cusson, Del Ray Solutions LLC, Alexandria, VA: Diane J, Lansen (Ret.), Circ. Ot. of Cook County, State of Illinois, Chicago, IL: Tobias Person, Von Oxon, LLC, Los Angeles, CA: Daniel Hantman, Chicago, IL; and E. Austin Maliszewski Austin, TX. The opinions and conclusions expressed or implied in this digest are those of the researchers who performed the research and are not necessarily those of the Transportation Research Board; the National Academies of Sciences, Engineering, and Medicine; or the program sponsors. The responsible program officer is Theresia Schatz.

Foreword

#### Background

vey conducted by Airports Council International-North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, in most cases, provided by municipal, county, and state attorneys.

Research reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal data breach, and Payment Card Industry Data Security problems encountered during airport development and Standard (PCI DSS) compliance. operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cuttingedge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRBs legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

There are over 4,000 airports in the country and most of As technology continues to evolve, airports and airthese airports are owned by governments. A 2003 sur- port users are collecting more and more data from passengers, airport users, tenants, concessionaires, air lines, and others. Airports and their tenants also are beginning to consider whether and how to monetize single county at 17 percent, and multi-jurisdictional at the data collected. A wide range of functions within 9 percent, Primary legal services to these airports are, the airport environment will utilize this data, including legal, management, operations, marketing, information technology, and planning and development. People who seek to gather and use this data may not consider or be aware of the legal requirements or implications, including those related to public records, data privacy,

This digest provides guidance to the collectors of data with respect to the applicable laws, including federal, state, and international, the compliance requirements, and the consequences of noncompliance. The digest includes a survey of applicable laws, recommendations for the collection and safekeeping of data, and a review of the issues that arise related to data collection among airports, their tenants, and other users and how to address them. This digest also includes information on new technology and its concerns as well as several airport data use cases and a section on how to use the digest.

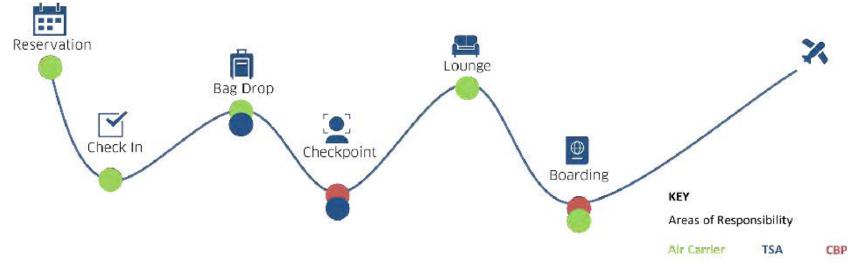
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#### ACRP-LDR 42 Case Study Examples

#### Combined Commercial/Security Use: "The Future Airport Experience"



Source: United States Department of Homeland Security, "Transportation Security Administration. TSA Biometrics Roadmap : For Aviation Security and the Passenger Experience" (September 2018) P 18. Cited at <a href="https://www.tsa.gov/sites/default/files/tsa\_biometrics\_roadmap.pdf">https://www.tsa.gov/sites/default/files/tsa\_biometrics\_roadmap.pdf</a>

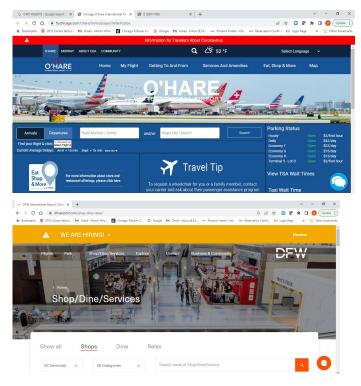
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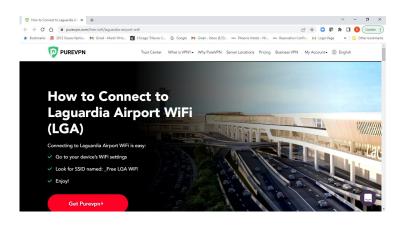
#### ACRP-LDR 42 Case Study Examples

#### **Digital Landscape**

#### Websites. Mobile Apps., E-Commerce, Wi-Fi, & CRM









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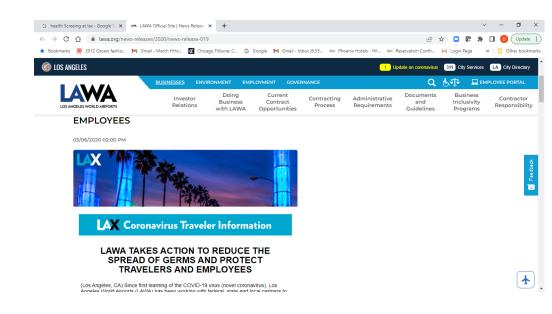
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#### **ACRP-LDR 42** Case Study Examples

#### **Health Checks/Medical Data**

#### **Temperature Screening/Vaccine Passports**



#### Airport COVID Vaccine and Testing Site Information

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#### **Overview of Legal Structures for Privacy Management**

#### **Statutory and Legal Protections for Privacy**

- Decentralized & Sectoral Approach in the U.S.
- Centralized & Comprehensive Approach in EU and Canada
- Growing Interest in Privacy Protections (Brussels & California Effect)





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#### **Overview of Legal Structures for Privacy Management**

#### **Common Legal Concerns**

- Technology is Outpacing the Legal Systems Ability to Respond
- Lack of Legislative Input
- Changing Understanding of Privacy & Privacy Threats
- Lack of Standards for Technology





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#### **Current State Law Landscape**

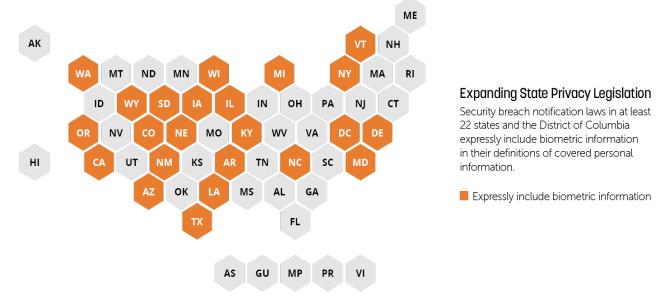
- California Consumer Privacy Act/California Privacy Rights Act (CCPA/CPRA), eff. 1-1-23
  - Draft Regulations by the CPPA (Enfoncement Agency)
- → Colorado Privacy Act (CPA), eff. 7-1-23
  - Draft Regulations by the State Attorney General
- → Connecticut Data Privacy Act (CTDPA), eff. 7-1-23
- → <u>Utah Consumer Privacy Act</u> (UCPA), eff. 12-31-23
- → <u>Virginia Consumer Data Privacy Act</u> (VCDPA), eff. 1-1-23

NOTE: All these statutes have become effective after the publication of LDR 42.





#### **Growing State Protections**



Source: NCSL, 2020

Source: Pam Greenberg. "Spotlight: Facial Recognition Gaining Measured Acceptance." *National Conference of State Legislatures (*September 2020) cited at <u>https://www.ncsl.org/research/telecommunications-and-information-technology/facial-recognition-gaining-measured-acceptance-magazine2020.aspx</u>



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#### **State Law Comparison of Sensitive PI**

	Gov't ID #	Financial Login w/Creds	Precise Geoloc	Race, Ethnic, Religion, Philosophy	Union	Genetic, Biometric, Health	Texts/ Emails+	Sex Life/ Orient	Citizen/ Immigr Status	Collected from Child
СА	х	х	x	х	х	х	x	x		
со				Race, Ethnic, Religion		х		х	х	x
ст			х	Race, Ethnic, Religion		х		х	х	x
UT			х	Race, Ethnic, Religion		x		Orient.	х	
VA			х	Race, Ethnic, Religion		x		Orient.	x	x

\* Definitionally, SPI is a category of personal information that excludes deidentified or aggregated information, or information that is "publicly available."

+ Texts/Emails aren't sensitive personal information if the intended recipient of the communication is the controller.

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#### **International Regimes**

#### Growing Influence Across National Borders

- Limits on video use
- Limits on Al use
- Safeguards for data collection and sharing







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#### FTC & the "Common Law of Privacy"

- **Common Law of Privacy**
- **FTC Enforcement** 
  - **Deceptive Practices**
  - **Unfair Practices**
  - **International Agreement Enforcement**
  - Joint Federal & State Actions
- **Rulemaking Authority**
- **Advocacy & Education**

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#### **PCI & Data Security**

#### **Six Objectives of PCI DSS**

- Build and Maintain a secure network
- Protect cardholder data
- Maintain a vulnerability management program
- Implement strong access control measures
- Regularly monitor and test networks
- Maintain an information security policy



Source: National Academies of Science Engineering and Medicine. 2010. *Helping Airports Understand the Payment Card Industry Data Security Standard (PCI DSS).* Washington D.C. The National Academies Press. cited at <u>https://nap.nationalacademies.org/download/14436</u>

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#### **FOIA & Open Records**

#### State by State Approaches

- National Association of Counties Report (2010Cited at https://www.governmentecmsolutions.com/files/124482256.pdf.
- **Reporters Committee for Freedom of the Press Open Government Guide** (2019) Cited at <u>https://www.rcfp.org/open-government-guide.</u>
- **Specified Retention Periods** 
  - **Record Retention Schedules by State. Cited at** https://brechner.org/records-retention-schedules-by-state/.
- **Concerns Over Protections for Commercial Information** 
  - Food Market Institute v. Argus Media Leader, \_\_\_\_U.S. \_\_\_\_, 139 S. Ct. • 2356 (2109)





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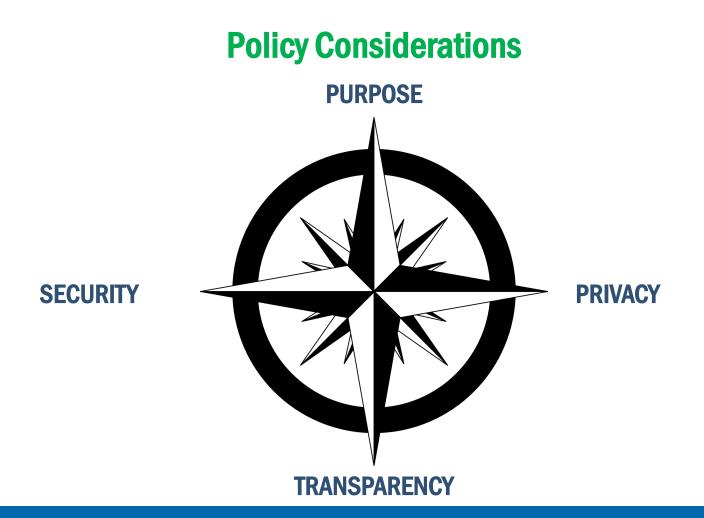
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#### **Recent Developments**

- FTC Rulemaking
- Proposed Legislation ADPPA
- Office of Science and Technology Policy RFI
- Executive Order to Implement the European Union-U.S. Data Privacy Framework



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#### **Contract Provisions**

- Data Ownership
- Limits on Access & Use
- Commercial Value
- Defining Collectible Data Elements
- Data Confidentiality
- Information Security
- Data Sanitization and Disposal
- Data Retention
- Data Breach





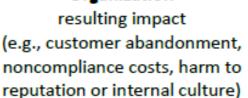


#### **NIST Privacy Framework**



arises from data processing

experiences direct impact (e.g., embarrassment, discrimination, economic loss)



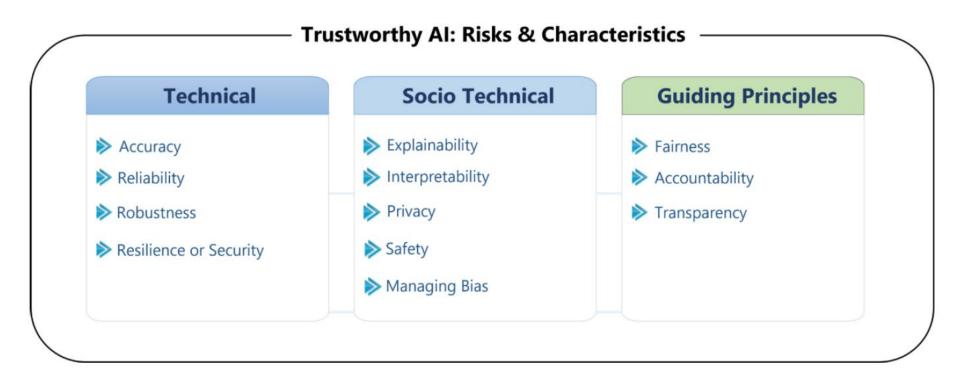
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Source: U.S. Department of Commerce, National Institute of Standards and Technology, NIST Privacy Framework, a Tool for Improving Privacy Through Enterprise Risk Management (January 15, 2020). Cited at https://www.nist.gov/system/files/documents/2020/01/16/NIST%20Privacy%20Framework\_V1.0.pdf.

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#### **NIST Draft AI Framework**



Source: U.S. Department of Commerce, National Institute of Standards and Technology, *Al Risk Management Framework: Initial Draft* March 17, 2022). Cited at <u>https://www.nist.gov/system/files/documents/2022/03/17/Al-RMF-1stdraft.pdf</u> (Public comment period closed on 29 APR 2022).





**Future Research** 

#### ACRP 01-50 Data Protection and Privacy Management Guidelines for Airports

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#### **ACRP-LDR 42** Conclusion

### **FINAL THOUGHTS**



### **QUESTIONS**

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#### FOR ADDITIONAL INFORMATION



#### Legal Implications of Data Collection at Airports

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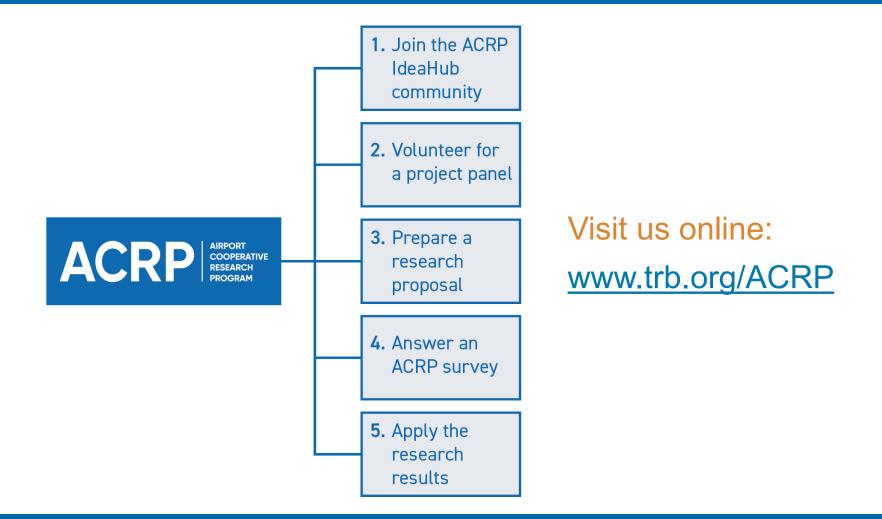
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