CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Catherine Crump
Staff Attorney
American Civil Liberties Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004

RE: Freedom of Information Act (“FOIA”) Appeal, #ES12-004269

Dear Ms. Crump:

This responds to your letter dated October 3, 2012 (received by the National Highway Traffic Safety Administration (NHTSA or Agency) for action on October 4, 2012), in which you appeal NHTSA’s August 31, 2012 response to your Freedom of Information Act (FOIA) request, dated July 30, 2012.

Your July 30, 2012 FOIA Request

Your FOIA request, dated July 30, 2012, requested several classes of records created from January 1, 2006 to the present that are related to automatic license plate readers (ALPRs). You requested all ALPR policies, practices and procedures and records regarding procurement of ALPR technology, the use of ALPR technology, the storage of the ALPR data, access to the data and sharing of data obtained through the ALPR technology. You requested ALPR records obtained from third parties, records regarding the development of a federal database, training materials, records regarding funding ALPR technology and the use of data, and records related to data mining.

Agency’s August 31, 2012 Response

By letter, dated August 31, 2012, the Agency responded to your request and provided one responsive document. The Agency indicated that it administered a number of grant programs, and makes information about these grant programs available publically on its web site. These materials include the Highway Safety Grant Management Manual, annual State Highway Safety Plans, annual state accomplishment reports, NHTSA’s management review, special management review guidelines, and legislative and legal resources.

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The Agency explained that each individual State determines how to allocate grant funds within certain parameters for each grant and is permitted to use these funds to purchase ALPR devices or make awards to sub-grantees who may purchase them. The Agency concluded that it had only one document responsive to your request and recommended that you contact each individual State directly for the records you seek.

**Your October 3, 2012 Appeal**

By letter, dated October 3, 2012, you appeal the Agency’s determination. Specifically, you contest the adequacy of NHTSA’s search for responsive documents.

In support of your appeal, you indicate that “the fact that the NHTSA has uncovered only one responsive record is itself sufficient to demonstrate the inadequacy of its search.” You cite to FY 2010 and 2011 Massachusetts State Performance Plans indicating that the State has sought authorization from the Agency to administer ALPRs programs and purchase ALPR equipment. You also provide a letter from a NHTSA Regional Administrator to the State of Massachusetts, approving its request for additional ALPR funds. You specify that this documentation is directly responsive to the ACLU’s initial request.

In addition, you indicate that NHTSA regulations suggest that other responsive records are likely to exist. You cite 23 C.F.R. 1200.23, which requires the submittal of official vouchers for total expenses incurred under the Section 402 Program, as evidence that records may exist.

**Agency Response**

I have reviewed the agency’s initial response and search for responsive records. The fact that the agency only uncovered one responsive document does not demonstrate that its search was inadequate. *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C.Cir.2004). (“[T]he agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.”). However, in light of the information you submitted, I directed a search for responsive records at NHTSA’s regional offices. The Agency has located several records responsive to your request and I am enclosing a CD-ROM containing those files.

As NHTSA is not assessing any fees in connection with this request, there no need for me to make a determination on appeal about whether the ACLU qualifies for a public interest fee waiver in the context of the pending FOIA request.
I am the person responsible for this decision. It is administratively final. If you wish to seek review of my decision, you may do so in the U.S. District Court for the District of Columbia or in the district where you reside, have your principal place of business, or where the records are located.

Sincerely yours,

O. Kevin Vincent
Chief Counsel