



July 30, 2012

U.S. Customs and Border Protection
FOIA Officer
799 9th Street, NW, Mint Annex, 10th Floor
Washington, D.C. 20229-1181
FOIA Officer/Public Liaison: Dale Martin (Acting)
Fax: 202-325-0230

Transportation Security Administration
Freedom of Information Act Office, TSA-20
601 S. 12th Street
11th Floor, East Tower
Arlington, Va. 20598-6020
Fax: 571-227-1406

U.S. Immigration & Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
Fax: 202-732-0660

Re: Freedom of Information Act Request / Automatic License Plate Readers

To Whom It May Concern:

This letter is a request under the Freedom of Information Act by the American Civil Liberties Union and ACLU of Massachusetts (collectively, ACLU). This request seeks records regarding automatic license plate readers (ALPRs).

ALPRs are cameras mounted on stationary objects (telephone poles, the underside of bridges, etc.) or on patrol cars. The cameras snap a photograph of every license plate that passes them by – capturing information on up to thousands of cars per minute. The devices convert each license plate number into machine-readable text and checks them against agency-selected databases or manually-entered license plate numbers, providing an alert whenever a match or “hit” appears.

While ALPRs have legitimate uses, when misused they can pose a serious threat to Americans’ privacy. As ALPRs increasingly blanket American roads and highways, they raise the prospect of pervasive and

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prolonged surveillance of Americans' movements, a problem exacerbated when law enforcement agencies keep data about people not suspected of wrongdoing, and when data from discrete ALPR systems is pooled together into state, regional and even national databases.

Records Requested

Please provide copies of the following records created from January 1, 2006 to the present:

1. All records regarding your policies, practices and procedures for procuring and using ALPR technology; for storing, accessing and sharing data obtained through ALPR technology; and for funding the acquisition and use of ALPR technology by other federal, state and local governmental agencies;
2. All records regarding the procurement of ALPR technology, including
 - a. sources of funds used to pay for ALPR technology;
 - b. invoices for the purchase of ALPR technology;
 - c. interactions with vendors, suppliers and potential suppliers of ALPR technology, including materials and fact sheets supplied by vendors describing their products;
3. All records regarding the use of ALPR technology, including
 - a. what types of data are obtained;
 - b. number of license plates scanned and/or read in a given time period (day, month, year, etc.);
 - c. the number of ALPR units or systems acquired;
 - d. the number of vehicles equipped with ALPR technology;
 - e. for stationary deployments, the number and physical location of ALPR units;
 - f. the technical capabilities of the ALPR units;
4. All records regarding the storage of data obtained using ALPR technology, including
 - a. what types of data are stored for any period longer than an hour;
 - b. how long data is stored;
 - c. when data must be discarded;
 - d. how many individual license plate scan records your agency currently stores;
5. All records regarding access to ALPR data, including

- a. the legal justification required before an individual accesses ALPR data;
 - b. purposes for which the data may be accessed;
 - c. purposes for which the data may *not* be accessed;
 - d. who may access the data, what procedures they must go through to obtain access, and who must authorize access;
 - e. the existence or non-existence of a system that records who accesses the data and when the data is accessed;
6. All records regarding the sharing of data obtained through ALPR technology, including
- a. what type of data is shared;
 - b. which databases your agency puts collected ALPR data into;
 - c. third parties, governmental or private, that may access your agency's ALPR data, including what procedures third parties must go through in order to access the data and any restrictions placed on third parties regarding further sharing of your ALPR data;
 - d. any agreements to share ALPR data with outside agencies, corporations or other entities;
 - e. auditing mechanisms in place to govern access to ALPR data;
7. All records regarding obtaining ALPR data from third parties, including
- a. which databases your agency can access;
 - b. memoranda of understanding or agreements regarding how data is to be shared;
 - c. transfer of ALPR data from state or local agencies to your or other federal agencies;
8. All records regarding the development or implementation of any federal ALPR database, or the inclusion of ALPR data in already existing ALPR databases, including information showing which federal, state and local agencies are pooling ALPR data
9. All training materials used to instruct members of your agency in ALPR deployment, data management, or operation of automated records systems that contain ALPR data to which any member of your agency has access, including regional, federal or other shared ALPR databases
10. All records regarding your funding of the acquisition and use of ALPR technology or data by other federal, state and local governmental entities, including

- a. funding or grants to state or local agencies to purchase ALPR units, or to purchase access to ALPR data;
- b. funding figures broken down by recipient;
- c. conditions recipients must fulfill in order to receive funding for ALPR technology from your agency;

11. All records describing how ALPR data are, can be or will be integrated into existing federal data-mining programs, including but not limited to N-Dex, and how the data will be or is included in the FBI's next Generation Identification database

III. Limitation of Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media”); *see also* 6 C.F.R. § 5.11(d)(1). As a representative of the news media, the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this request should, therefore, be limited accordingly.

The ACLU meets the definition of a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through its communications department and web site. The web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website specifically includes features on information obtained through the FOIA. For example, the ACLU’s “Accountability for Torture FOIA” webpage, <http://www.aclu.org/torturefoia>, contains commentary about the ACLU’s FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained

through the FOIA. See *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. Cf. *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements”).

The ACLU also regularly publishes books,¹ “know your rights” publications,² fact sheets,³ and educational brochures and pamphlets

¹ Some of the recent books published by the ACLU include: Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford Univ. Press 2011); Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women's Rights* (NYU Press 4th ed. 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA).

² Some of the more recent “know your rights” publications include: ACLU, *Know Your Rights: Demonstrations and Protests* (Nov. 2011), available at http://www.aclu.org/files/assets/kyr_protests.pdf; ACLU, *Gender-Based Violence & Harassment: Your School, Your Rights* (May 2011), available at http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf; ACLU, *Know Your Rights: What to Do If You're Stopped by Police, Immigration Agents or the FBI* (June 2010), available at http://www.aclu.org/files/assets/bustcard_eng_20100630.pdf.

³ See, e.g., ACLU, *Military Abortion Ban in Cases of Rape and Incest (Factsheet)* (2011), available at <http://www.aclu.org/reproductive-freedom/military-abortion-ban-cases-rape-and-incest-factsheet>; ACLU, *The Facts About “The No Taxpayer Funding For Abortion Act”* (2011),

designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

Depending on the results of this request, the ACLU plans to “disseminate the information” it receives “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore a news media entity.

Disclosure is not in the ACLU’s commercial interest. The ACLU is a “non-profit, non-partisan, public interest organization.” *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation and internal quotations omitted)). Any information disclosed by the ACLU as a result of this FOIA will be available to the public at no cost.

IV. Waiver of All Costs

The ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”); *see also* 6 C.F.R. § 5.11(k)(1)(i)-(ii).

The requested information will contribute significantly to public understanding. Disclosure of the requested information will help the American public better understand the tradeoffs between law enforcement needs and citizens’ privacy. The public needs more information about the use of ALPR so that it can play a meaningful role in determining how the balance should be struck. The public has already demonstrated a strong interest in learning more about ALPR, as is apparent by the escalating amount of press coverage devoted to this issue. *See, e.g.*, Allison Klein & Josh White, *License Plate Readers: A Useful Tool For Police Comes With*

available at http://www.aclu.org/files/assets/Chris_Smith_bill-ACLU_Fact_Sheet-UPDATED-4-30-11.pdf; ACLU, *Fact Sheet on H.R. 3, the No Taxpayer Funding for Abortion Act* (2011), *available at* <http://www.aclu.org/reproductive-freedom/fact-sheet-hr-3-no-taxpayer-funding-abortion-act>.

Privacy Concerns, Wash. Post, Nov. 19, 2011; Cimaron Neugebauer, *Utah Sheriffs Back Away From Plan To Scan License Plates*, Salt Lake Trib., June 13, 2012; Jon Campbell, *License Plate Recognition Logs Our Lives Long Before We Sin*, L.A. Wkly., June 21, 2012; Andreae Downs, *Police To Deploy Automatic License-Plate Reader*, Bos. Globe, July 8, 2012; G.W. Schulz, *DEA Installs License-Plate Recognition Devices Near Southwest Border*, Sacramento Bee, July 11, 2012.

As a nonprofit 501(c)(3) organization and “representative of the news media” as discussed in Section III, the ACLU is well-situated to disseminate information it gains from this request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.⁴

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⁴For example, in June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

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

Sincerely,



Catherine Crump
Staff Attorney
American Civil Liberties Union

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Kade Crockford
Director, Technology for Liberty Project
ACLU of Massachusetts

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