



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038

June 17, 2014

Mr. Nate Vogel
New York Civil Liberties Union
125 Broad Street
New York, New York 10004

RE: FREEDOM OF INFORMATION LAW
REQUEST: #14-PL-0175

Dear Mr. Vogel:

This letter is in further response to your letter dated May 7, 2014, which sought to appeal the determination of the Records Access Officer (RAO), dated April 17, 2014, which addressed the request that you made for records that pertain to automatic license plate readers ("ALPRs") and to readers that electronically detect E-ZPass tags ("E-ZPass readers"), by letter dated January 7, 2014, pursuant to the Freedom of Information Law, N.Y. Public Officers Law (POL) §§ 84 *et seq.* (FOIL).

The May 7, 2014, letter limited the appeal to denials of access to records that pertain to ALPRs and, accordingly, excluded the requests numbered 3, 7, and 10, which pertained exclusively to information about E-ZPass readers, from the scope of the May 7, 2014, administrative appeal, and also excluded from the scope of the instant appeal other numbered requests to the extent that they pertained to E-ZPass readers.

Responsive to request number 4 in the January 7, 2014, letter, for records "sufficient to show the sources of funds used to pay for ALPR technology," a copy of the statement made by Police Commissioner Raymond W. Kelly to the New York City Council's Public Safety Committee on March 19, 2008, was located pursuant to a further search. A copy will be mailed upon receipt of the copying fee in the amount \$ 2.50.

I note that the RAO's determination dated April 17, 2014 provided access to seven pages of records (consisting of the NYPD's "Public Security Privacy Guidelines") which are responsive to the portion of request number 9 (in the January 7, 2014, letter) that sought access to the NYPD's policies, practices, and procedures for storing, accessing, and sharing data obtained through ALPR technology. Access to other records that pertain to ALPRs that were included in request number 9 - *i.e.*, practices, procedures, and training materials for procuring and using ALPR technology and technical details about how ALPR-derived data is stored, accessed, or shared, and for pertinent training materials - is denied for reasons that are fully explained below.

The Court of Appeals case cited in the May 7, 2014, letter for the proposition that the RAO failed to sufficiently particularize the reasons for the partial denial of access is, in fact, a case that clarified that the particularization requirement it described only applied to the agency's burden of proof when its denial of disclosure to a FOIL applicant is challenged in an article 78 proceeding. See, Capital Newspapers v. Burns, 67 N.Y.2d 562, 566 note * (1986). FOIL requires the RAO to "grant or deny" a request (POL § 89(3)), and, if an administrative appeal is taken, POL § 89(4) requires that the appeal determination "fully explain" the reasons for any further denial of the request if that occurs. The RAO's letter dated April 17, 2014, as well as the instant determination comply with these statutory requirements.

The January 7, 2014, FOIL request sought detailed information about the implementation of ALPR technology by the NYPD, including full details of the NYPD units, databases, training materials and practices, computer systems, and communications procedures that are involved in the public safety and criminal investigational use of ALPR systems by the NYPD. The FOIL request asked for the number of ALPR units or systems in use at any time, and requested the specific locations where each of the ALPR systems is deployed at every moment in time, as well as for documentation of the specific cost of each ALPR unit. In addition, the request asked for the number of license plates that have been "scanned and/or read" by NYPD ALPR systems during particular time periods.

Disclosing the requested information would divulge the scope of protection that ALPRs afford New York City, and would permit an accurate assessment of the capabilities and limitations of each of the NYPD's ALPR units as well of the limitations that affect the NYPD's ability to use ALPR systems as part of its overall public safety and criminal law enforcement techniques. The disclosure of what these limitations are would permit circumvention of these systems and could result in the endangerment of the lives and safety of many persons in New York City. It is therefore exempt from disclosure by POL § 87(2)(f).

Disclosure of this information would also interfere with law enforcement investigations, which would be hampered if investigative subjects knew the details of the ALPR technology and techniques in use by the NYPD and thus had insight into its limitations. Such knowledge by suspects, subjects, and those intent on committing crimes or disrupting public safety would interfere with the ability of the NYPD to conduct investigations and are exempted from disclosure by POL § 87(2)(e)(i). The non-routine investigative techniques and procedures used by the NYPD in conjunction with ALPR technology are exempted from disclosure by POL § 87(2)(e)(iv). In addition, disclosure of details about the connectivity between ALPRs and computer systems and databases would also jeopardize the NYPD's ability to safeguard its other information technology assets, including electronic information systems and infrastructures, in addition to that of the ALPRs themselves. The disclosure of such information is therefore exempt pursuant to POL §§ 87(2)(i). Moreover, for reasons explained in the preceding paragraph, disclosure could lead to the endangerment of persons in New York City and is therefore also exempt under POL § 87(2)(f).

Moreover, records that reflect opinions, suggestions, and recommendations are exempt pursuant to POL § 87(2)(g) as non-final intra- and inter-agency materials. To the extent that the January 7, 2014, request seeks data about any particular individual, vehicle, and/or plate number,

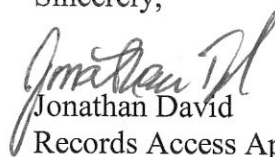
it is also denied because such disclosure would constitute an unwarranted invasion of privacy and is not required under POL §§ 87(2)(b) and 89(2).

The January 7, 2014, request and the administrative appeal must also be denied on the ground that it is duplicative of a prior request made by the NYCLU. The NYCLU's FOIL request dated October 5, 2007 (the "Prior Request") was processed under the NYPD's FOIL Unit's file number 07-PL-4521, and broadly defined a request for, *inter alia*, all records of the NYPD's implementation of public safety and law enforcement systems that collect information using video imaging technology - including ALPR technology - to record and analyze visual data. The Prior Request sought access to all records of communications with all other entities - private and governmental - that related to the implementation of these systems and to the goods and services that were used in the planning, funding, procurement, and implementation of these public safety and law enforcement systems and technologies as part of the NYPD's Lower Manhattan Security Initiative. In response, the NYPD provided access to many records, and denied access to records that, *inter alia*, related to the use of ALPR technology within the framework of public safety and law enforcement activities in the New York City metropolitan area. The NYCLU challenged the NYPD's denial of access by bringing a CPLR Article 78 proceeding in the Supreme Court, New York County, under index number 112145/08. The matter was fully litigated, and the Court held that information concerning operational details of NYPD detection and surveillance systems, including ALPR technology, and how and for how long information developed by such systems will be used, shared, and stored, would limit the effectiveness of such systems, and was exempt from disclosure under FOIL's exemptions.

The requests numbered 1, 2, 5, 6, 8, and 9 (in part) in the January 7, 2014, letter seek the same categories of information that were included in the Prior Request and that have already been adjudged to be exempt from disclosure in the above-described litigation between the NYCLU and the NYPD. Accordingly, the request is also denied based on the *res judicata* effect of the Judgment in the Matter of NYCLU v NYPD et al, NY County index number 112145/08.

Other exemptions under FOIL may also apply. You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,



Jonathan David

Records Access Appeals Officer

c: Committee on Open Government