



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

November 5, 2014

Ms. Mariko Hirose
 New York Civil Liberties Union
 125 Broad Street
 New York, New York 10004

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

Dear Ms. Hirose:

This letter is in further response to your letter dated June 30, 2014, which sought clarification of our letter dated June 17, 2014, which denied parts of the NYCLU's request dated January 7, 2014, for records that pertain to automatic license plate readers ("ALPRs"), pursuant to the Freedom of Information Law, N.Y. Public Officers Law ("POL") §§ 84 *et seq.* ("FOIL"). Pursuant to your request, the instant letter provides a further explanation of the reasons for the Records Access Officer's denial of access dated April 17, 2014.

The January 7, 2014, FOIL request (as limited by the May 7, 2014, letter) sought detailed information about the implementation of ALPR technology by the NYPD, including, *inter alia*, 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. By a letter dated April 17, 2014, the NYPD's Records Access Officer ("RAO") denied the January 7, 2014, FOIL request in part, upon several grounds, including that the request was duplicative of the NYCLU's FOIL requests to the NYPD dated October 5, 2007, and April 13, 2009, which were processed under file number 07-PL-4521 and 09-PL-2064, respectively.¹

The RAO's determination dated April 17, 2014, provided access to the NYPD's Public Security Privacy Guidelines ("Guidelines"), which define and describe the NYPD's Domain Awareness System, which is an important part of the NYPD's integrated approach to providing protection for those who visit, live, or work in New York City. It is a counterterrorism tool that uses ALPR technology as part of vigilant efforts to observe pre-operational activity by terrorist organizations or agents, and to deter terrorist attacks and detect any preparations for such attacks. The Guidelines define the policies, practices, and procedures that govern the NYPD's use of

¹ The RAO's April 17, 2014, letter also denied access to the requests that pertained to records of EZPass readers, which are not used by NYPD and as to which there were no responsive records. Such records were excluded from the scope of the instant FOIL request in the NYCLU's May 7, 2014 letter.

ALPR technology, including the storage, accession, and sharing of data obtained through the use of ALPR technology, and the privacy protections that are afforded to the data collected by the Domain Awareness System.

On the other hand, the RAO's determination denied access to information about the inner workings and the operational details of ALPR technology used by the NYPD based on FOIL's exemptions for records compiled for law enforcement purposes whose disclosure would interfere with investigations, reveal non-routine criminal investigative techniques and procedures, and based on the FOIL exemption for information that, if disclosed, would interfere with NYPD's ability to protect the security of its information technology assets and infrastructures. Access was also denied based on FOIL's public safety exemption and FOIL's exemption for intra- and inter-agency materials. As noted, the RAO also denied access to records that pertained to ALPRs because the request duplicated two prior requests that the NYCLU had made for substantially identical information.

In fact, prior FOIL requests were made by the NYCLU by letters dated October 5, 2007 (processed under file number 07-PL-4521, hereinafter the "2007 Request"), and April 13, 2009 (processed under file number 09-PL-2064, hereinafter the "2009 Request") seeking access to records and information pertaining to the NYPD's implementation of ALPR technologies.

The 2007 Request sought, in sum and substance, all records related to the implementation of the NYPD's Lower Manhattan Security Initiative ("LMSI") with a special focus on records that describe all kinds of video surveillance systems, including ALPRs, that were being put in place in the LMSI area as well as in places other than New York City. This Request incorporated a copy of an article published in the *New York Times* dated July 9, 2007, entitled "Police Plan Web of Surveillance for Downtown." The FOIL request sought to obtain detailed descriptions of how activities that take place "on public streets" would be monitored, recorded, and maintained.

The 2009 Request sought all records that pertained to "Operation Sentinel," described as the program that would track all vehicles in Manhattan (*i.e.*, not just in the lower Manhattan area), using ALPRs and other imaging systems, and to all NYPD records that pertained to, *inter alia*, ALPR systems, including all records that evaluate, assess, describe, authorize, or otherwise discuss ALPRs.

The administrative processing of the 2007 Request was completed and a final determination was issued on May 8, 2008: It provided access to numerous records but denied access to records that described the inner workings of the imaging and surveillance systems used by the LMSI, which systems included ALPRs. This determination was the subject of a CPLR Article 78 proceeding that was brought by the NYCLU in the Supreme Court, N.Y. County, under index number 112145/08. The processing of the 2009 Request terminated with the denial of the NYCLU's administrative appeal on June 29, 2010; that determination was not challenged in litigation.

The denial of access based on the duplicative nature of the categories of information requested in the January 7, 2014, request, as compared with the 2007 and 2009 Requests, was appropriate and based on the information sought in the requests. Item "1" of the January 7, 2014,

request sought a copy of a Memorandum issued by Phil T. Pulaski, the NYPD's former Chief of Detectives, which, although issued after the 2007 and the 2009 Requests had been made, contains specific operational details of ALPR use by NYPD personnel and is therefore covered by the same exemptions from FOIL disclosure that applied to the same categories of information sought in the 2007 and 2009 Requests. Similarly, Item "6" of the FOIL request, seeking the number of license plates that could be scanned and/or read during a given time period using the NYPD's ALPR technology (as deployed after January 1, 2012) is equivalent to a request for what the quantitative abilities (and thus, limitations) of the NYPD's ALPR technology are. In addition, Item 5 of the FOIL request sought copies of all invoices for the purchase of ALPR technology. Invoices contain the number of units purchased and the manufacturer's model number for all items purchased, and, if disclosed, would permit access to the technical specifications of the purchased items, and thus reveal the specific capabilities and limitations of the technology when collated with published information. Accordingly, disclosure of the information contained in the Memorandum, the invoices, and the quantitative data regarding the scanning capability of ALPRs would reveal elements of the inner workings and of the operational details of a counterterrorism system used to deter and detect terrorist activity, corresponding to the information access to which was denied in response to the 2007 and 2009 Requests.

Moreover, Items 2, 3, 4, and 8 of the January 7, 2014, request (each seeking documents containing categories of information) do not describe any particular type of NYPD record except in terms of the categories of information that would be contained therein. Inasmuch as POL § 86(4) contains within its definition of a record "any information kept, held, filed, produced or reproduced" by or for an agency, the relevant inquiry with respect to a request for a record that is only described in terms of the categories of information that it contains must focus on the nature of the information sought to be obtained pursuant to such a categorical request. The Supreme Court's adjudication of the 2007 Request sustained the NYPD's denial of access to information about the inner workings and operational details of NYPD's security systems designed to detect and monitor possible terrorist activity. The Court held that the disclosure of the capabilities, operational details, or assessments of such a system would limit its effectiveness and increase the risk of terrorist acts, by providing terrorists and other criminals with insight into how these systems work, what the limits of their capabilities are, and how detection and surveillance could be avoided.

The NYPD's deployment of surveillance and monitoring systems that use ALPRs began in lower Manhattan, but its expansion to other parts of the City does not alter or diminish the validity of the finding that the disclosure of information about the inner workings, operational details, and assessments of the NYPD's surveillance and monitoring systems would reveal non-routine criminal investigative techniques and procedures and could endanger the lives and safety of individuals within areas covered by the system. The passage of time, during which the NYPD's counterterrorism surveillance and monitoring systems expanded to other areas of the City within the framework of the Domain Awareness System, resulted in the preparation of additional records that postdate the 2007 and 2009 Requests, such as the Chief of Detectives Memorandum requested herein, that contain substantially identical - and equally exempt - information about the inner workings and operational details of the NYPD's counterterrorism systems.

Disclosing the information requested in the January 7, 2014, letter would divulge the limitations of the 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 as 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. This information 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, some of which are described in the Chief of Detectives' Memorandum that was requested herein, 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 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 are also denied, as explained above, on the ground that the items numbered 1, 2, 5, 6, 8, and 9 (in part) of the January 7, 2014, letter seek the same categories of information that were included in the 2007 and 2009 Requests, notwithstanding that certain records that contain this information were prepared after the 2007 and 2009 Requests had been made.

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