Maryland's New License Plate Readers and Captured Plate Data Law

"Historically, privacy was almost implicit, because it was hard to find and gather information. But in the digital world, whether it's digital cameras or satellites or just what you click on, we need to have more explicit rules ---not just for governments but for private companies." - Bill Gates

I.   License Plate Reader Networks:

License Plate Reader ("LPR") Networks use cameras mounted to traffic signals, road signs, and police cruisers to capture the movements of millions of vehicles in the United States. They do so by focusing on license plates, in which you have no expectation of privacy when they are publicly visible. The systems utilize LPRs, many of which are book-sized, to capture photo images that are translated into computer-readable text and compiled into an electronic list of plate numbers. The images capture the date, time, and location of the car. Police can then compare the license plate numbers against the license plates of stolen cars, of drivers wanted on bench warrants, or even of persons involved in missing persons cases. Next time you pass a police car, know that the officer may be far more interested in you than it appears.

The last ten years have seen nothing short of explosive growth in the use of LPR Systems. Why? Cost aside (and the systems are far from cost prohibitive), the ever present threat of terrorism since 9/11 has resulted in technological advances undreamed of a generation ago. From the federal government on down, law enforcement agencies are arming themselves, in many cases literally, with the tools and weapons to combat acts of terror, and not just to fight crime. In fact, the federal government, through the Department of Homeland Security ("DHS"), has fueled much of this growth. Many of LPR Systems in use by state and local governments today were funded by the DHS. Grants from the DHS are the primary funding arm for these networks. Beyond assistance to local governments, *The Washington Post* reported in February of this year that the DHS was seeking to have a private company provide a *national* license-plate tracking system – a system that would give the DHS access to vast amounts of information from commercial and law enforcement LPRs. The proposed "National License-Plate Recognition Database" would draw from license plate readers that scan the tags of every vehicle crossing their paths. According to the DHS solicitation, the system would help catch fugitive illegal immigrants. The proposal, however, failed to specify what – if any – privacy safeguards were to be put in place. And it is the lack of safeguards on such data that has fueled the debate. In this regard, the *Washington Post* article continued: "The [DHS] database could easily contain more than 1 billion records and could be shared with other law enforcement agencies, raising concerns that the movements or ordinary citizens who are under no criminal suspicion could be scrutinized."

II.   License Plate Reader Networks in Maryland:

Sixty-four law enforcement agencies in Maryland use LPR systems. The data collected by these agencies is networked to the Maryland Coordination and Analysis Center ("MCAC"), where it is retained on a central server for one year. Created in the wake of 9/11, MCAC was Maryland's response

to the call by the U.S. Attorney General that the U.S. Attorney's Office in every State create an Anti-Terrorism Advisory Council ("ATAC"). The Maryland ATAC formed one of the first Fusion Centers in the United States to combine information sharing and analysis. That center became MCAC. Today, the MCAC coordinates the efforts of federal, state and local agencies to gather, analyze, and share intelligence information with law enforcement, public health, and emergency responder personnel. Until this year, however, the operation of local LPR systems has not been regulated by State law. That changed on May 2, 2014, when Governor O'Malley signed Senate Bill 699 into law.

III. Maryland's New License Plate Readers and Captured Plate Data Law (Takes Effect on October 1, 2014)

This law, which goes into effect on October 1, 2014, specifies the procedures and protocols that a law enforcement agency must follow in connection with the operation of an "automatic license plate reader system" and use of "captured plate data." MCAC, in cooperation with the Maryland Chiefs of Police Association and the Maryland Sheriffs Association, must develop a model audit policy for access to and use of LPR data by October 1, 2015.

The procedures to be adopted under the law must include: (1) an identification of MCAC or law enforcement agency personnel who are authorized to query captured plate data gathered by an LPR System; (2) an audit process to ensure that information obtained through the use of an LPR System is used only for legitimate law enforcement purposes including audits of requests made by individual law enforcement agencies or an individual law enforcement officer; and (3) procedures and safeguards to ensure that MCAC staff with access to the LPR database are adequately screened and trained.

As to the law enforcement agencies themselves, they may not use captured plate data unless the agency has a "legitimate law enforcement purpose," which is defined as the investigation, detection or analysis of a crime or a violation of the Maryland vehicle laws or the operation of terrorist or missing or endangered person searches or alerts. An employee of a law enforcement agency who violates the law's provisions is subject to maximum penalties of imprisonment for one year and/or a fine of $10,000.

And, critically, the new law specifically precludes information gathered by automatic license plate readers systems from disclosure under the Maryland Public Information Act.

IV. What We Must Do Now and in the Future

That LPR technology is a tremendous aid in law enforcement and prevention of terrorism cannot rationally be disputed. Arguments to the contrary simply ignore the benefits of the technology. Rather, it is the protection and use of the scanned information that is at the forefront of the battles ongoing and to come. In fact, Maryland's new License Plate Readers and Captured Plate Data law makes proper access controls and security of the data paramount.

With our new law, Maryland local governments and police agencies are at the forefront of the issues and concerns raised in this publication. They must not delay in addressing them. If not dealt with proactively now, they will be forced to do so later by judicial intervention and decree. If your police agency is using LPRs to any degree (even one), the department must adhere to Maryland's new law that goes into effect on October 1, 2014. Policies and procedures must establish that data acquired through LPRs can only be accessed for legitimate law enforcement purposes. Further, proper auditing controls must be established so that the agency can report annually on their usage of data acquired through LPRs to ensure proper management and oversight of their systems.

You do not need to work in a vacuum. **Attached is a Model Audit Policy for Access to and Use of Automatic License Plate Reader Data (Attachment A).** This model was developed in conjunction with Maryland's new law and should be utilized by every agency using LPR technology.

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Attachment A

MODEL AUDIT POLICY FOR ACCESS TO AND USE OF AUTOMATIC LICENSE PLATE READER DATA

Introduction

Automatic License Plate Recognition (ALPR) systems, also known as License Plate Reader (LPR) systems, provide automated detection and image capture of license plate information.   The LPR system consists of high-speed cameras, mounted either at a fixed location or on a mobile patrol vehicle, and a computer to convert data from electronic images of vehicle license plates into an electronically readable format, which then compares the information against specified databases of license plates. If there is a match is detected, an audible sound occurs and a visual alarm shows the license plate image with the linked information. The system attaches camera identification, date, time, and location information, to include GPS coordinates to the digital image. The image is then maintained electronically in a central location.

The Maryland Coordination and Analysis Center (MCAC) operate a central server to upload and store, read and alarm LPR data from law enforcement agencies across the state of Maryland.

In 2014 Maryland Legislators replaced language in Maryland Annotated Code, Sections 3-509 and 4-326 to address authorized uses of Automatic License Plate Readers and captured plate data. As a result, Maryland law enforcement agencies and the MCAC must implement certain procedures and regulations. This law goes into effect October 1, 2014.

According to Maryland Annotated Code, Section 4-326 the Maryland Coordination and Analysis Center (MCAC) with the cooperation with the Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriff's Association (MSA) have developed this audit policy for access to and use of automatic license plate reader data.

The audit procedures in this policy have been developed to assess the performance of agencies responsible for the operation of LPR systems within their jurisdiction. To assess agency performance, auditors will review policy and procedures regarding the proper use of LPR technology/systems.

Reporting requirements and audit results are due to the State Judicial Proceeding Committee, the House Judiciary Committee, and the Legislative Policy Committee, based on data from the previous year on or before March 1 of each year beginning in 2016.

Purpose

The purpose of this policy is to establish the *[name of agency]* with audit guidelines for assessment of access to and use of Automatic License Plate Reader data.

Policy

This policy applies to all personnel assigned to the *[name of agency].*

Responsibilities

The *[Head of agency]* has overall responsibility for implementation of procedures as it relates to access to and use of Automatic License Plate Reader systems and data. This includes ensuring appropriate personnel are screened and trained in the use of LPR systems.

The *[Head of agency]* will have overall responsibility for LPR data collected or storage by their agency.

The *[Head of agency]* will designate an *[LPR Program Manager/Coordinator]* for the day to day operations of the LPR Program.

The *[Head of agency]* will implement audit procedures to include appointment of auditor and identification of certifying official.

The *[Head of agency]* will have responsibility for submission of audit results to certifying official and will have responsibility to present results of certified audit to appropriate legislative entities.

The [LPR Program Manager/Coordinator] will oversee daily operations of *[name of agency]* LPR Program. The *[LPR Program Manager/Coordinator]* will ensure records relating to access to and use of information within an LPR database are available for audit.

An Auditor(s) will have responsibility for implementing audit procedures, conducting reviews of appropriate documents and records, interviewing appropriate personnel, and reporting results of audit to [Head of agency].

The Certifying official is responsible for validating results of audit. This includes ensuring audit procedures are followed, appropriate reviews were conducted, and audit documents conform with generally accepted audit practices. The Certifying official shall not be associated with the operation of the LPR Program; this official should not be assigned to [name of agency].

Authorized LPR database users are responsible for full cooperation with auditors.

General Procedures

Access to data captured, stored, generated, or otherwise produced by LPR technology shall incorporate safeguards that provide system security and ensure only authorized users are accessing the data for legitimate law enforcement purposes. Each agency must adopt an audit process to ensure that only authorized users are accessing and sharing captured plate data for legitimate law enforcement purposes.

Agencies shall ensure that an audit trail is maintained with respect to compliance to all laws and regulations. Such audit trail shall include an electronic or written record to be maintained as verification that captured plate data is being accessed and used for legitimate law enforcement purposes. These records will be made available to auditors upon request for purposes of conducting inspections and to evaluate compliance with policy, procedures and law. The records to be maintained for the audit are:

- Which personnel in the MCAC or a Law Enforcement Agency are authorized to query captured plate data gathered by an Automatic License Plate Reader system (Maintain record of users who have the "right to know" and the "need to know").
- Procedures and safeguards to ensure that agencies with access to the Automatic License Plate Reader Database are adequately screened and trained (Maintain records of all training curricula for relevancy and proficiency affirmation)
- Individual requests made by any Law Enforcement Officer or Agency for historical data collected by an LPR system or stored in an LPR database operated by the MCAC or any Law Enforcement Agency.

An example of recommended language for use in <u>*LPR Policy*</u> *development addressing the training and audit trail requirements for use in auditing may be found in Appendix B.*

Compliance Auditing

Each agency shall submit to an annual audit and shall include the elements of compliance. The audit will provide the following basic objectives:

- Reasonable assurance appropriate control systems have been established by the agency administrator to ensure compliance with laws and rules.
- Reasonable assurance that those with access to and use of LPR data have been properly screened and trained.
- Reasonable assurance the agency has instituted sufficient controls to guarantee queries are for legitimate law enforcement purposes.

- Reasonable assurance that the MCAC or any law enforcement agency using LPR systems have adopted procedures relating the operation and use of the system.
- Reasonable assurance that requests to query captured plate data, made to the MCAC and each law enforcement agency that maintains an LPR database, were conducted for a legitimate law enforcement purpose.
- Reasonable assurance that the information obtained through the use of an LPR system is shared and/or used for legitimate law enforcement purposes.
- To identify any breaches or unauthorized uses of the LPR database.

Sample audit checklists/worksheets may be found in Appendix C.

Audit Procedure

The *[name of agency]* shall submit to an audit *[quarterly, periodically, or annually]*.

The audit shall consist of a predetermined sample size of all relevant requests of data stored in any LPR database. The sampling shall be a random selection of at least 10 percent of relevant requests from that audit period, but no fewer than 50. In the event the total of requests is less than 50, all requests will be audited.

The following two steps shall be used to assess compliance:

1. Administrative Interview: An interview is conducted with *[identify of staff position]* to review agency procedures relating to the operation and use of LPR systems. To include completion of sample questionnaire in Appendix C.
2. Data Quality Review: In conjunction with the interview, a data quality review is conducted with *[identify of staff position]*. This entails comparison of requests to query the LPR database against agency case files and consultation with agency representatives. The accuracy, completeness, and validity are verified during the data quality review.

Audit results will be captured utilizing various checklists/worksheets. Auditors will compile a report of audit results.

The Auditors report, with appropriate additional documentation (worksheets, etc.), shall be provided to certifying official for validation.

Records containing inaccurate or incomplete data shall be documented by Auditor and provided to *[Head of agency or designee]* for appropriate action.

A record that requires corrective action is categorized as inaccurate, unable to location, or incomplete. Below is a description of each discrepancy:

- *Inaccurate:* Key fields in the LPR query record did not match the report, warrant, investigation or supporting document.
- *Unable to locate:* The report, warrant, investigation and/or supporting documentation that substantiates the LPR query could not be located.
- *Incomplete:* the report, warrant, investigation, or supporting documentation contains additional data that should be included in the LPR request record.

Beginning on or before March 1 of each year [beginning in 2016], the *[name of agency]* shall report to the Senate Judicial Proceeding Committee, the House Judiciary Committee, and the Legislative Policy Committee, and the Legislative Policy Committee, in accordance with 2-1246 of the State Government Article, on the lists of audits that were completed.

Appendix A

Definitions

Captured Plate Data: The dates, times, and characters appearing on a license plate, photographs, global positioning system coordinates, and any other data collected by or derived from an Automatic License Plate Recognition System. Captured plate data includes both active and historical data.

Historical Data: Any data collected by an LPR system and stored for future investigative or analytical use. The database which houses historical data may contain, but is not limited to dates, times, and characters appearing on a license plate, location of the read and an image of the individual motor vehicle license plate. Any data collected by an LPR system in accordance with this policy shall be considered collected for a legitimate law enforcement purpose.

Law enforcement Agency: A governmental police force, sheriff's office, security force or law enforcement organization in the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal and traffic laws of the State.

Legitimate Law Enforcement Purpose: Applies to the access of Active or Historical Data and means the investigation, detection, analysis or enforcement of a crime, violations of the Maryland Motor Vehicle Administration (MVA) laws, for the operation of AMBER, SILVER or BLUE alerts for missing, endangered, or wanted person searches, terrorist watch list alerts, and for public safety. NOTE: "Legitimate law enforcement purpose" does not include video tolling, a technique using video or still images of a vehicle's license plate to identify the vehicle for payment.

Maryland Coordination and Analysis Center (MCAC): Is Maryland's Fusion Center which coordinates the efforts of federal, state, and local agencies to gather, analyze, and share information with law enforcement, public health, and emergency management personnel.

Appendix B

Sample Language for Establishing Training requirements and an Audit Trail within agency LPR Policy

The *[name of agency]* uses and has access to data captured, stored, generated, or otherwise produced by LPR technology. Safeguards are in place to provide system security and ensure only authorized users are able to access the data for legitimate law enforcement purposes.

It is the responsibility of *[identify a staff position(s)]* to ensure only appropriate staff have access to necessary systems and portals for LPR systems and captured plate data.

The *[name of agency]* will ensure that *[identify of position/unit]* is properly trained on the use of LPR systems and captured plate data.   Staff is required to complete the following training prior to accessing any LPR systems: *[List all training requirements]*

> *Training #1:   Proper use of Car System*

> *Training #2:   Proper use of Operations Center*

The only authorized users are *[identify the position/unit]*

An audit trail shall be kept for all Individual requests for historical data stored in an LPR database operated by *[name of agency]*. The following information shall be maintained.

1. Date and time of the request; and
2. Purpose of the request; and
3. Incident or report number (physical record number) related to the query; and
4. The identity of the agency requesting the query (including if the requester is from a local, state, federal or out-of-state agency); and
5. The requester's name and contact information; and
6. The license plate number or other data elements used to query the LPR system.

The audit trail of requests shall by maintain for *[period of time]*.

Appendix C

SAMPLE AUDIT QUESTIONS (Step 1)

Goal	Question	Answer	Comments
1	Have procedures been adopted relating to the operation and use of the LPR system? [Cite policy number]	YES NO	
2	Are staff with access to the Automatic License Plate Reader database adequately screened and trained?	YES NO	
3	Does the agency maintain training records for each user?	YES NO	
4	Is the training curricula maintained?	YES NO	
5	Are training records annually reviewed for relevancy and effectiveness?	YES NO	
6	Does the agency accept law enforcement requests for historical plate data, collected by an LPR system?	YES NO	
7	If historical data is accessed, does the agency have an audit trail?	YES NO	
8	Is the audit trail maintained for 2 years?	YES NO	
9	Have audit procedures been adopted to ensure that information obtain through the use of an LPR system is used for legitimate law enforcement purposes?	YES NO	
AGENCY:		SCOPE OF AUDIT:	
COMPLETED BY:		DATE COMPLETED:	
REVIEWED BY:		DATE REVIEWED:	

SAMPLE AUDIT QUESTIONS (Step 2)

Record #	Question # 1	Question #2	Question # 3	Question # 4	Question #5	Results
	Report/Incident Number	Is the date and time of request documented?	Is the purpose of the request documented?	Does the request include the identity of the agency requesting the query?	Has the request been validated through the requesters agency?	Findings shall be listed as: Accurate, Inaccurate, Unable to locate or Incompletd
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