



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: Representative Maxine Grad, Chair of the House Committee on Judiciary
Senator Dick Sears Jr., Chair of the Senate Committee on Judiciary
Representative Patrick Brennan, Chair of the House Committee on Transportation
Senator Dick Mazza, Chair of the Senate Committee on Transportation

Date: September 27, 2018

Re: Statutory Compliance of Automated License Plate Recognition Systems in Vermont

Cc: Thomas Anderson, Commissioner of the Department of Public Safety

Introduction

Automated License Plate Recognition system (ALPR) units are mounted on police vehicles, traffic lights, and street signs. The units automatically record images of license plates and enter the license plate numbers as well as GPS coordinates and other information into a database. The database can later be searched, and the information retrieved can help law enforcement locate where vehicles were at a specific time and place. Many states regulate the use of ALPR systems, mostly through access and data retention policies.¹ Such policies are generally driven by privacy concerns and vary widely. For example, New Hampshire law requires that ALPR records be deleted within three minutes of their capture, while Colorado allows records to be retained for three years.²

Act No. 175 of 2018 requires the State Auditor's Office (SAO) to examine requests for ALPR historical data that resulted in a release of information by the Vermont Intelligence Center (VIC) to the requester from July 1, 2016 through June 30, 2018. The objective of the examination is to determine whether requests and releases of historical ALPR data complied with the requirements of 23 V.S.A. § 1607.³

Highlights

- SAO reviewed all sixty-four requests for historical ALPR data that resulted in the release of information reviewed during the period specified in Act 175. Fifty-seven appeared to comply with 23 V.S.A. § 1607, while seven did not.
- Six of seven releases of information that did not comply with statute provided historical data older than six months, which requires the requester to obtain a warrant or there must be pending criminal charges.
- One request did not provide specific and articulable facts, as required by law.

1 "Automated License Plate Readers: State Statutes Regulating Their Use," National Conference of State Legislatures, available [here](#).

2 "Automated License Plate Readers: State Statutes Regulating Their Use," National Conference of State Legislatures, available [here](#).

3 [Act 175 of 2018](#)

Statute and VIC

Law enforcement agencies can request ALPR historical data to aid their investigations. Historical data “means any data collected by an ALPR system and stored on the statewide ALPR server...” operated by the VIC.⁴ 23 V.S.A. § 1607 states that to be approved, “the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action.” The request must include the name of the requester, the requester’s law enforcement agency, and the law enforcement agency’s Originating Agency Identification (ORI) number. Furthermore, as noted above, statute specifies that historical data older than six months may only be released if it is related to pending criminal charges or a warrant has been issued.⁵

According to the VIC, analysts rely on the information on the ALPR Request Form when determining whether to approve a request for historical data. Specifically, they ensure that there is a case number, the approval of the supervisor of the requesting law enforcement officer, and that the written request does not appear to be “fishing” for information. The VIC notes that “specific and articulable facts” and “reasonable grounds” are subjective standards, and each request is examined with the context provided on the form. Furthermore, VIC specified that it does not determine whether information is necessary for an investigation and does not verify the information provided by the requester.^{6 7}

Compliance with Statute

From July 1, 2016 to June 30, 2018, VIC approved 339 requests for a search of historical data made by local, state and federal law enforcement agencies, 64 of which resulted in the release of information to the requester.⁸ As specified by Act 175, SAO examined the 64 that resulted in the release of historical data. SAO did not assess the accuracy of the information on the ALPR Request Forms provided by the VIC. For example, we did not verify statements made by law enforcement officers; our analysis assumes that professional law enforcement provided accurate information on the ALPR Request Forms. Further, we did not examine requests that were approved but did not result in the release of historical information.⁹

4 [23 V.S.A. § 1607](#)

5 [23 V.S.A. § 1607](#)

6 Statute does not require that VIC determine whether information provided on the form is relevant to an investigation and does not require that the VIC verify information provided by the requester. SAO includes this information to provide relevant context about how VIC carries out its duties.

7 August 2018 discussion with VIC.

8 Specifically, the VIC approved the request for information based on information provided by a law enforcement agency with an ALPR Request Form, and found information in the ALPR database relevant to the ALPR request. In many cases, requests are approved but no relevant information is found in the database, and as a result no information is released to the requesting law enforcement agency.

9 VIC only releases historical data after approving the request and if relevant data is found in the database.

We examined ALPR Request Forms for each element that is required by statute. Most met the requirements in 23 V.S.A. § 1607. However, requests for historical data varied widely in the level of detail provided. Some offered a narrative explaining why historical data would be useful to an investigation, while others provided very little information. For example, one case provided details about a crime that occurred at a certain location, a witness to that crime, the type of vehicle the witness described, and how the ALPR historical data might be useful to the active investigation. In contrast, another request merely stated that the information was to track a certain vehicle of “drug traffickers from [city name].” Appendix A includes further examples of the variation in level of detail provided by law enforcement on ALPR Request Forms.

Seven requests and subsequent information releases did not comply with statute. Six requests resulted in the release of historical data older than six months, which statute specifies requires a warrant or pending criminal charges.¹⁰ The releases of historical data older than six months occurred in 2016 and 2017, and data released were up to eighteen months old. The ALPR Request Forms did not include or reference a warrant or pending criminal charges.

VIC agreed that they were not in compliance with the statute, which went into effect on July 1, 2016, and they stated that they were not in compliance until “mid-2017.” Subsequently, the VIC retrained their analysts and changed their request review procedures to include a review of each ALPR by a second analyst.¹¹

Of the seven requests that resulted in the release of historical data but did not comply with statute, one lacked specific and articulable facts. The request, made by a local police department, stated that the request was for a “Drug investigation,” and identified a vehicle but provided no other details. This does not meet a standard of “specific and articulable facts” that would provide reasonable grounds to believe that the data are relevant to an ongoing investigation because the request simply states that there is a drug investigation but does not explain why the data would be relevant to the investigation itself.

Conclusion

Of 64 releases of historical data reviewed by SAO, 57 appeared to comply with 23 V.S.A. § 1607, while seven did not. Six of seven provided information older than six months without a warrant or a pending criminal charge, while one request provided no “specific and articulable” facts. While 11 percent of reviewed cases did not comply with statute, 89 percent met the statutory requirements.

The legislature could take a variety of actions to safeguard ALPR historical data. As mentioned, statute requires that the requester “provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material” to ongoing investigations. The legislature

¹⁰ [Act 169 of 2015](#) amended 23 V.S.A. § 1607 to specify that no historical data older than 6 months be released without a search warrant or pending criminal charges. The relevant section of Act 169 went into effect on July 1, 2016. All reviewed requests came at least three months after the provisions in Act 169 went into effect.

¹¹ September 5, 2018 email with VIC.

could further specify how “specific and articulable facts” and “reasonable grounds” are defined. Such a definition might be developed in consultation with local and state law enforcement agencies to create a workable definition for law enforcement balanced against privacy concerns.

Furthermore, the legislature could require historical data requesters to attest that the information they have provided on an ALPR Request Form is accurate and truthful to the best of their knowledge. Finally, the legislature could require the VIC to annually conduct an internal audit of their ALPR system process to ensure statutory compliance and improve the procedure.

We appreciate the assistance of VIC and DPS staff during this review.

Appendix A: ALPR Request Form Details Examples

Requests for historical data varied widely in the level of detail provided. Some offered a narrative explaining why historical data would be useful to an investigation, while others provided very little information. Here we have provided six redacted examples of the information provided by law enforcement agencies on ALPR Request Forms. In addition to the information provided below, ALPR Request Forms often include specific vehicle information.

1. “Investigation into multiple ATM robberies spanning multiple counties in the State of Vermont. The suspect has been associated with VT registration: [license plate, make of vehicle] The first ATM robbery occurred [date] and the latest was on [date].”
2. “Vehicle reported to be a stolen rental car. Possibly involved in frequent trips between [City] and VT.”
3. “Suspects vehicle in car theft.”
4. “The following vehicle may be involved in drug trafficking from [state] to the Vermont. The intended suspect to the investigation is [name, date of birth] and the vehicle was rented from [car rental company]. The projected search of the system of VT and [state] is to verify information given from a cooperating subject that he is traveling to and from [state] frequently to traffic heroin and cocaine back to VT in this vehicle.”
5. “Historical Query on individual’s vehicle to see if it has been seen in Vermont over the last year or so. Individual is associated with known marijuana smugglers and may be participating in the movement of illicit drugs.”
6. “[Name] is suspected of selling heroin in the [town 1] and [town 2] area. He is also possibly linked to a fatal overdose in [town 2].”