

July 3, 2019

Dean Lynch
Executive Director
Virginia Association of Counties
1207 East Main Street
Richmond, VA 23219

RE: Use of Automatic License Plate Readers

Dear Director Lynch:



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We write to inform you of a recent decision by the Fairfax County Circuit Court concerning the use of automated license plate readers (ALPRs) by police, and to encourage you to bring the information to the attention of your members so that they can take appropriate action to guard the privacy rights of people living, working and traveling through their jurisdictions. Last month, the court in *Neal v. Fairfax County Police Department* unambiguously ruled that the police department's use of ALPRs for passive surveillance, not related to an authorized criminal investigation, is illegal under Virginia's Government Data Collection and Dissemination Practices Act (Data Act). This decision should put law enforcement agencies, and the local governing bodies across Virginia to which they are accountable, on notice that they cannot collect and store personal information that is not directly related to a criminal investigation without violating state law.

This case was initiated by the ACLU of Virginia on behalf of Mr. Harrison Neal, in cooperation with the Northern Virginia law firm, RichRosenthal. Mr. Neal challenged the Fairfax County Police Department's (FCPD) collection of ALPR data where there was no suspicion of criminal activity. FCPD mounted ALPRs on the back of patrol cars and used them to create a database of timestamped license plate photos. This allowed FCPD to determine individual vehicle locations at specific dates and times. FCPD persisted in retaining ALPR data for one year regarding vehicles owned by people that FCPD had no reason to suspect of criminal activity. The continuing storage of such ALPR data, even after ruling out a match between a captured tag and a "hotlist" of vehicles/tags of specific interest to law enforcement ("active use") is referred to as "passive use".

Last year, the Supreme Court of Virginia determined that "[t]he images of the vehicle, its license plate, and the vehicle's immediate surroundings, along with the GPS location, time, and date when the image was captured" constitute "personal information" under



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the Data Act. *Neal v. Fairfax County Police Dep't*, 295 Va. 334, 346 (2018). The Court recognized that this data “afford[ed] a basis for inferring personal characteristics’ [... about] the individual who owns the vehicle[.]” *Id.* at 346-47. The Supreme Court also held that the ALPR system was not exempt from the Data Act because the “Police Department’s sweeping randomized surveillance and collection of personal information d[id] not ‘deal [] with investigations and intelligence gathering related to criminal activity.” *Id.* at 349.

On remand, the Fairfax County Circuit Court determined that “access to the license plate number stored in the ALPR system ‘permit[s] connection’ to the identity of the vehicle’s owner with a few clicks on the screen[.]” *Neal v. Fairfax County Police Dep’t.*, No. CL-2015-5902, 2019 WL 1438078, at *4 (Va. Cir. Ct. Apr. 01, 2019). Thus, because the “ALPR system does *enable police officers* to cross-reference ALPR data with the identity of an individual,” it is an information system under the Data Act. *Id.* (emphasis in original). Accordingly, the Fairfax court granted Mr. Neal’s petition for an injunction prohibiting the FCPD from collecting and storing ALPR data outside of intelligence gathering related to a criminal investigation.

The Fairfax County Police Department’s use of ALPRs to collect and store massive stockpiles of location data violated the privacy of people in Fairfax County by gathering and storing location data on innocent Virginians going about their daily lives, whether they were shopping, going to church, attending a political event or visiting a doctor. The Court determined this was violative of the Data Act’s requirement that personal information only be gathered or stored on the basis of a particularized need. The Court held that this kind of general passive surveillance is an invasive governmental overreach prohibited by the Data Act. Privacy is fundamental to a free society, and, by passing the Data Act, the Virginia General Assembly specifically prohibited Virginia government officials, including law enforcement, from intruding on our privacy with warrantless dragnet surveillance using ALPRs or any other technologies.

For more information about the case, to read the Virginia Supreme Court or Fairfax County Circuit Court opinions, or view the final injunction, please visit: <https://acluva.org/en/cases/Neal-v-fairfax-county-police-department>.

Given the clear violation of state law represented by passive surveillance using ALPRs and the legislative policy established by the Data Act that enhances protection of the privacy of all

Virginians by requiring government to have a reason in advance before collecting personal information and prohibiting law enforcement from collecting data unrelated to ongoing criminal investigations, we encourage you to advise your members to review and update their jurisdiction's current ALPR policy to ensure it is consistent with the precedent established by the Fairfax County Circuit Court and the Supreme Court of Virginia.

We are closely monitoring this situation because of the serious threat that ALPRs pose to the privacy of people in communities across our Commonwealth. Please feel free to contact me with any questions or if you wish to discuss this matter further.

Very truly yours,



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ACLU

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