

January 19, 2017

To Members of the Judiciary Committee

Re: Support for LB 93  
Automatic License Plate Reader Act

The ACLU of Nebraska is a non-profit, non-partisan organization that has worked tirelessly for over 50 years to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation, and community empowerment.

Today, we proudly represent over 2,250 card carrying members and 13,000 supporters all throughout our great state and represent more than 500,000 members nationwide.

Last biennium our organization took a position on over a hundred unique pieces of legislation and our position prevailed an impressive 76% of the time.

We write to support LB 93's limitations on use of automatic license plate reader (ALPR) technology. While we recognize the legitimate law enforcement need to embrace new technologies to improve their success and efficiency, this legislation provides an appropriate balance of permitting ALPR technology in limited instances while also providing clear and uniform guidance to law enforcement to protect individual personal privacy and liberty from unjustified government surveillance.

#### **How the Technology Works:**

ALPRs are cameras fixed at stationary locations or on police vehicles that can scan and record every car that passes in front of its lens. **These cameras are capable of collecting 1,800 license plate numbers in a minute, and up to 3.2 million plates in three months.**

The devices can be programmed to do everything from collecting tolls to automatically checking plates against various watchlists and alerting law enforcement whenever a match or "hit" appears. When the ALPR system captures an image of a license plate, it also tags each file with the time, date, and GPS location of the photograph.

#### **ALPR Technology in Nebraska:**

According to ACLU's investigation, at least three law enforcement agencies in Nebraska have purchased ALPR technology.

In 2012, we joined 38 states in filing open records requests to determine whether local law enforcement was using ALPR technology and—if so—what policies were in place to prevent abuse. The national survey was compiled into a report issued in 2013 by the national ACLU

called “You Are Being Tracked: How License Plate Readers Are Being Used to Record American’s Movements.”<sup>1</sup>

We discovered three agencies were using ALPRs: the Nebraska State Patrol, the Lincoln Police Department, and the Omaha Police Department. Our investigation revealed that ALPR technology offers very little help to police. **State patrol data revealed that out of 7,000 scans in one month’s time, they had 14 hits (.002%)—and ultimately even those 14 were proven to be false alarms where the driver had committed no wrongdoing. The low number of hits is not unique to Nebraska; an investigation by the Electronic Frontier Foundation into ALPR use in California discovered that 99.09% of the plates captured were linked to no crime.**<sup>2</sup>

Nor is the technology particularly reliable—the State Patrol documents demonstrated of their two devices, one was systemically malfunctioning from the first day they took it out of the box and it was retired from use.

Omaha Police Department’s records were also concerning. Upon the original purchase of the technology, the department had no written policies regarding how long the records would be retained. OPD experienced technical difficulties just as the State Patrol did, and ended up using one ALPR in lieu of a handheld videocam to conduct surveillance of grieving mourners at a funeral of a suspected gang member.

In the summer of 2015, we renewed our open records requests to see whether any agency had developed policies since our initial investigation. We have now learned how ALPRs are handled in the present day:

- Lincoln Police have developed written policies governing how long they will retain images.
- Omaha Police have entirely abandoned ALPR use—they assert the cameras stopped working entirely shortly after purchase. They have not purchased new ones and have wiped the database of all images.
- Nebraska State Patrol does not retain images captured—there is just an alert issued to troopers to follow up on. While their policies are not explicit, they assert their practice is to not download or retain images.

It is possible other law enforcement agencies are using ALPR technology—we limited our survey to the three largest entities in the state—which is why the statewide reach of LB 93 is necessary rather than relying on individual agencies’ decision to pass policy.

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<sup>1</sup> Available online: <https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf>

<sup>2</sup> Jackman, Tom, “Are the Police Tracking You?” Washington Post (December 23, 2016). Available online: [https://www.washingtonpost.com/news/true-crime/wp/2016/12/23/are-the-police-tracking-you-push-to-restrict-license-plate-readers-heads-to-va-supreme-court/?utm\\_term=.a8b8156841c7](https://www.washingtonpost.com/news/true-crime/wp/2016/12/23/are-the-police-tracking-you-push-to-restrict-license-plate-readers-heads-to-va-supreme-court/?utm_term=.a8b8156841c7)

## **Privacy Concerns:**

The tracking of people's location constitutes a significant invasion of privacy, which can reveal many things about their lives, such as what friends, doctors, protests, meetings, political activities, or religious institutions a person visits. It is a core principle that the American government does not invade people's privacy and collect information about citizens' innocent activities *just in case* they do something wrong.

Given the fact that the vast majority—99.09% of drivers captured—are not guilty of any crime, their privacy interests are all the more keen.

Photographing a single license plate on a public street may not seem problematic—but when data is compiled in a database, showing where that car appeared all over the city in the course of weeks or months, the government will have significant information about intensely personal aspects of our lives. The location of our car can reveal whether a person sees a psychiatrist, attends AA meetings, is having an affair, goes to a particular political party's meetings, or goes to a specific church, temple or mosque.

Limits on the use of ALPR are vitally necessary to prevent abuse. Consider the incident where a California state legislator hired a private detective to track his wife. The state's ALPR records were available for purchase and the private detective was able to get data showing every place where the wife drove and parked.<sup>3</sup>

The material collected by police can be used by stalkers, thieves wanting to find out where your nice new car would be parked at night, or by private companies wanting to market to new customers with direct information about their habits. Investigative reporters in Boston discovered that their city was storing million of license plate images on an open online server.<sup>4</sup>

## **Conclusion:**

Automatic license plate readers permit the collection of massive amount of data on where every vehicle in Nebraska has been driven over the course of months or years. This technology is constitutionally suspect and we applaud Senator Hansen's effort to ensure the privacy rights of Nebraskans are safe by imposing reasonable limits on the use of ALPRs.

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<sup>3</sup> Abel, Jennifer, "Police Respond to ACLU Lawsuit Over License Plate Scanner Data Retention," Consumer Affairs (May 14, 2015). Available online: <http://www.consumeraffairs.com/news/police-respond-to-aclu-lawsuit-over-license-plate-scanner-data-retention-051415.html>

<sup>4</sup> Lipp, Kenneth, "License to Connive: Boston Still Tracks Vehicles, Lies About It, and Leaves Sensitive Resident Information Online," Dig Boston (September 8, 2015). Available online: <https://digboston.com/license-to-connive-boston-still-tracks-vehicles-lies-about-it-and-leaves-sensitive-resident-data-exposed-online/>

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