



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Ave., SE
Washington, D.C. 20590

AUG 9 - 2013

FOIA Control Number:
2013-0014A
In Reply Refer To:
HCC-40

Mr. Ben Wizner
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004-2400

Dear Mr. Wizner:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated September 27, 2012, in which you appealed the initial determination by the Federal Highway Administration (FHWA) Office of Operations in connection with FOIA Control Number 2012-0448. You requested records regarding automatic license plate readers (ALPRs).

BACKGROUND

In your initial FOIA request (2012-0448), dated July 30, 2012, you requested copies of the following records created from January 1, 2006 to the present: "(1) All records regarding your policies, practices and procedures for procuring and using ALPR technology; for storing, accessing and sharing data obtained through ALPR technology; and for funding the acquisition and use of ALPR technology by other federal, state and local governmental agencies; (2) All records regarding the procurement of ALPR technology; (3) All records regarding the use of ALPR technology; (4) All records regarding the storage of data obtained using ALPR technology; (5) All records regarding access to ALPR data; (6) All records regarding the sharing of data obtained through ALPR technology; (7) All records regarding obtaining ALPR data from third parties; (8) All records regarding the development or implementation of any federal ALPR database, or the inclusion of ALPR data in already existing ALPR databases, including information showing which federal, state and local agencies are pooling ALPR data; (9) All training materials used to instruct members of your agency in ALPR deployment, data management, or operation of automated records systems that contain ALPR data to which any member of your agency has access, including regional, federal or other shared ALPR databases; (10) All records regarding your funding of the acquisition and use of ALPR technology or data by other federal, state and local governmental entities; (11) All records describing how ALPR data are, can be or will be integrated into existing federal data-mining programs, including[,] but not limited to N-Dex, and how the data will be or is included in the FBI's next Generation Identification database."

The FHWA Office of Operations responded to your FOIA request on September 17, 2012, by indicating that "[t]he Federal Highway Administration (FHWA) does not procure or acquire

Automatic License Plate Readers (ALPR) or data provided by ALPR technology. Also, FHWA does not develop, issue, or promote specifications for ALPR technologies or data. The State and local operating and enforcement agencies are responsible for all specifications, procurement, and operation of technologies such as ALPR. Therefore, we have no information relative to your questions numbered 3, 4, 5, 6, 7, 8, 9, and 11.”

The FHWA Office of Operations also indicated the following regarding items numbered 1, 2 and 10: “Regarding items numbered 1 and 10, while the procurement or acquisition of ALPR technology by State agencies may be eligible for FHWA funding reimbursement under appropriate Federal-aid programs authorized by legislation, there is no specific funding for ALPR or related technologies and no financial records are maintained by FHWA that provide that detailed level of information. In response to item number 2, enclosed is a package of material provided by an ALPR vendor (Federal Signal) in 2009.”

ANALYSIS OF AGENCY DECISION

In your appeal letter dated September 27, 2012, you bring into question the adequacy of the search regarding items 1, 2, and 10 performed by the FHWA Office of Operations. Specifically, you state the following:

1. “In response to questions 1 and 10 the FHWA states that ‘the procurement or acquisition of ALPR technology by State agencies may be eligible for FHWA funding reimbursement under appropriate Federal-aid programs authorized by legislation.’ Yet, it then goes on to say that it has no records regarding this funding. Merely stating that records are unavailable because ‘there is no *specific* funding for ALPR or related technologies’ (emphasis added) and thus, because of this lack of specificity, ‘no financial records are maintained by FHWA that provide that detailed level of information’ is sufficient. The mere fact that the FHWA knew enough about toward what causes its reimbursements are directed to tell the ACLU that states *could* apply for FHWA funding in relation to ALPRs indicates that there *must* be some documentation maintained at the FHWA indicating, at a minimum, that ALPRs qualify for certain general Federal grants and FHWA reimbursement. In failing to provide ACLU with these documents, the FHWA failed to meet its obligations under the Freedom of Information Act.”

2. “The ACLU also challenges the adequacy of the FHWA’s search in response to question 2. All but one page of the documents the FHWA provided in response to this question are datasheets detailing the specifications of various Federal Signal Corporation ALPR systems (e.g. traffic monitoring system, mobile system, base defense system). These datasheets are publically available on the Federal Signal website... The ACLU argues that the FHWA has additional documents relating to ALPRs that are not widely publically available, but that the agency only included publically available documents in its response. In a September 30, 2009 letter from David R. McConnaughey, President of Federal Signal Corporation, to Jeffrey Lindley, Associate Administrator for Operations at the FHWA, included as part of the FHWA’s response to our request and attached at **Exhibit D**, Mr. McConnaughey references a September 16th meeting between the parties ‘to discuss Federal Signal Corporation’s capabilities.’ He further explains that ‘[t]here are many areas where [Federal Signal] can provide insight as well as the appropriate technology to meet the needs of the intelligent transportation industry.’

Unless the FHWA completely failed to respond to this letter, the agency necessarily has further communications regarding the implementation of ALPRs that it failed to disclose to the ACLU. This conclusion is strengthened by the fact that Mr. McConnaughey concludes his letter by explaining that, 'as we discussed, we would be honored to help you and your organization by serving on any committees or teams that you would feel are appropriate.' If Federal Signal did indeed serve on a committee or team following this communication, there would be documentation of this activity, if Federal Signal did not serve on a committee or team following this communication, there would be records explaining this decision. Thus, regardless of the specific outcome this relationship, the FHWA has additional responsive records that it has failed to disclose."

Adequacy of the Search

It is the U.S. Department of Transportation's (DOT) policy to make its records available to the public to the greatest extent possible. 49 CFR § 7.13(a). As a general rule, an agency must undertake a search that is "reasonably calculated to uncover all relevant documents." Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The adequacy of an agency's search is measured by a "standard of reasonableness" which will vary from case to case. Id. "An agency's inability to locate every single responsive record does not undermine an otherwise reasonable search." See Hoff v. DOJ, No. 07-4499, slip op. at 4 (6th Cir. July 23, 2008) (unpublished disposition). Instead, "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003).

Document Requests Numbers 1 and 10

In regard to questions 1 and 10, you requested "(1) All records regarding your policies, practices and procedures for procuring and using ALPR technology; for storing, accessing and sharing data obtained through ALPR technology; and for funding the acquisition and use of ALPR technology by other federal, state and local governmental agencies" and "(10) All records regarding your funding of the acquisition and use of ALPR technology or data by other federal, state and local governmental entities."

After receiving your appeal pertaining to questions 1 and 10, the Office of Operations coordinated additional searches in the following FHWA offices: Federal Lands Highway Division Offices (Eastern, Central, Western and Headquarters); Office of Safety, Office of Policy, Offices of the Federal Aid Highway Program Policy and Guidance Center, and again within the Office of Operations. Employees at these offices searched their e-mails, project files and Share Point sites for records containing references to "Automatic License Plate Readers" and "ALPR". The results of these additional searches failed to locate any records that explicitly indicates Automatic License Plate Readers (ALPR) are eligible for reimbursement through Federal-aid funding or other Federal grants.

An FHWA policy memorandum from January 2000, available at http://www.ops.fhwa.dot.gov/travelinfo/resources/ops_memo.htm, includes an attachment available at http://www.ops.fhwa.dot.gov/travelinfo/resources/ops_guide.htm that explains, "The operating costs for traffic monitoring, management, and control systems, such as integrated

traffic control systems, incident management programs, and traffic control centers, are eligible for Federal reimbursement from National Highway System and Surface Transportation Program funding.” Further, paragraph (d) of Section 1201 of Public Law 109-59 (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users – SAFETEA-LU) provides that “a State may obligate funds apportioned to the State under sections 104(b)(1), 104(b)(2), and 104(b)(3) of Title 23, United States Code, for activities relating to the planning and deployment of real-time monitoring elements” that advance the goals of the Real-Time System Management Information Program described in Section 1201. The referenced Federal-aid funding sections of the United States Code are for the National Highway System, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Improvement programs. Based on these policies and regulations, if ALPR technologies were part of traffic monitoring systems for transportation management as described above, the ALPR technologies would be eligible for Federal-aid reimbursement by the State or other public transportation agency receiving Federal-aid allotments. However, FHWA has no records of a State Department of Transportation or a Federal Highway Division Office asking the FHWA Headquarters Office of Operations whether ALPR technologies are eligible for Federal Aid funds reimbursement.

Document Request Number 2

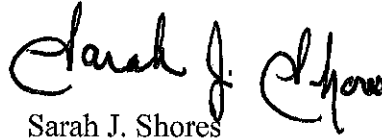
In regard to question 2, you requested “All records regarding the procurement of ALPR technology.” After receiving your appeal pertaining to question 2, the Office of Operations conducted a further search, which included a search of e-mails, project files and Share Point sites for records containing references to “Automatic License Plate Readers” and “ALPR”. The search revealed that there is no further communication from FHWA pertaining to the September 30, 2009 letter from David McConaughy of Federal Signal Safety and Security Systems. The letter from Mr. McConaughy was deemed a courtesy response to Mr. Lindley related to the meeting between Mr. McConaughy and Secretary LaHood that Mr. Lindley attended. FHWA determined that the letter did not require any direct response. The letter offered that Federal Signal would serve on any committee or teams that FHWA felt would be appropriate. No committee or team has been formed related to ALPR, therefore, there has been no subsequent documentation to the incoming September 30, 2009 letter.

It is my determination that the searches conducted by the FHWA Office of Operations for responsive records to your initial FOIA request, were adequate and reasonable in accordance with the FOIA as well as DOT’s FOIA regulations. I find that the FHWA Office of Operations’ extensive search was reasonably calculated to uncover responsive documents and the methods used to carry out the search were appropriate.

I am the FHWA official responsible for this decision, which has been concurred in by Adam Sleeter, with the FHWA’s Office of the Chief Counsel. You are advised that, under the provisions of 5 U.S.C. § 552(a)(4)(B), you are entitled to seek judicial review in the U.S. District Court in the district where you reside, the district where you have your principal place of business, the district in which the records are kept, or the District of Columbia. We apologize for the delay in responding to your appeal and regret any inconvenience this may have caused you.

If you have any questions with regard to this letter, please feel free to contact Mr. Ronald Gagnon at 202-366-0948.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sarah J. Shores". The signature is fluid and cursive, with the first name "Sarah" being the most prominent.

Sarah J. Shores
Associate Administrator
for Administration

cc: HOP