

MCCA Agency Use of License Plate Readers (LPRs)

Results of Survey Conducted by Major Cities Chiefs Legal Advisors' Committee

Presented MCCA Winter Conference
Washington D.C., January 28 – 29, 2013

At the Fall MCCA Conference, the Legal Advisors' Committee was asked to survey the MCCA agencies concerning the use of LPRs, including issues such as how they are used, how long the data is retained and how such data is classified. The results of the survey were to be presented at the MCCA Winter Conference, along with suggested best practices, legal recommendations and/or cautionary guidance based upon the survey responses.

All agencies in the MCCA were given the opportunity to participate in this project.¹ Twenty-seven agencies responded to the survey.²

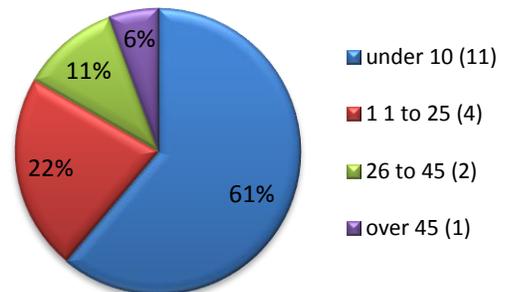
The survey questions, the results³ and best practices, legal recommendations and cautionary guidance are set forth below:

1. Does your agency use LPRs?

- Only two of the agencies that responded indicated that they do not use LPRs.
- The fact that many agencies did not participate may be evidence that some or all of those non-participating agencies do not use LPRs.

2. How long has your agency used LPRs and how many LPRs does your agency have?

- The earliest report of LPR use was 2004 and the most recent is 2012.
- At least one agency was awaiting its first order of LPRs when the survey was conducted.
- The number of units ranged from 1 to 247.



¹ All agencies were sent a survey via email, addressed to the members of the Legal Advisors' Committee or, for those agencies without a legal advisor representative on the Committee, to MCC General Counsel's contact individuals for those agencies, along with several follow-up email opportunities to participate.

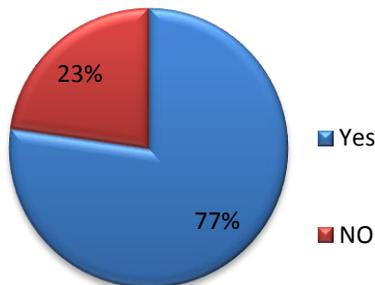
² The agencies that participated by completing the survey include: **Boston** Police Department; **Charlotte-Mecklenburg** Police Department; **Columbus** Police Department; **Edmonton** Police Service; **Fairfax County** Police Department; **Fresno** Police Department; **Honolulu** Police Department; **Houston** Police Department; **Kansas City** Police Department; **Las Vegas** Metropolitan Police Department; **Louisville** Police Department; **Mesa** Police Department; **Newark** Police Department, **New York City** Police Department; **Philadelphia** Police Department; **Pittsburgh** Police Department; **Prince George's County** Police Department; **Raleigh** Police Department; **Sacramento** Police Department; **Salt Lake City** Police Department; **San Diego** Police Department; **San Jose** Police Department; **Seattle** Police Department; **Tulsa** Police Department.

³ The results will be reported only as a percentage of those agencies that responded to the survey.

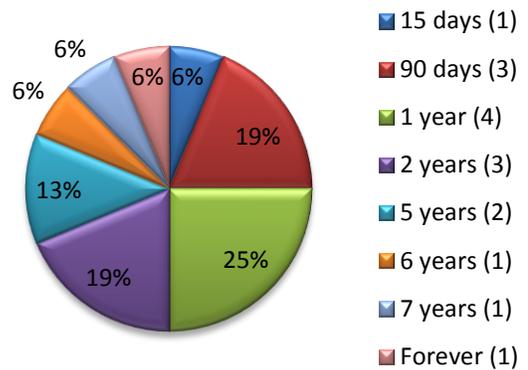
3. Describe the ways your agency uses LPRs.

- **Recovering Stolen Vehicles**
 - By far this is the most cited (almost unanimous) reason agencies deploy LPRs.
 - For many agencies, recovering stolen vehicles is the only reason they use LPRs.
- **Scanning High Crime Areas**
 - Many agencies also utilize LPRs for proactive policing.
 - LPRs are used to scan and record data in high risk/high crime locations.
 - The information is used for crime analysis and to monitor current crime trends.
- **Searching for Wanted Persons**
 - The third most cited use of LPRs is to search for wanted persons.
 - Many agencies use the LPR to follow-up on hot lists and bulletins from state law enforcement agencies.
 - LPRs are also deployed to look for missing persons during Amber Alerts and similar operations.
- **Other Uses**
 - Scanning homicide and crime scenes.
 - Counter-terrorism

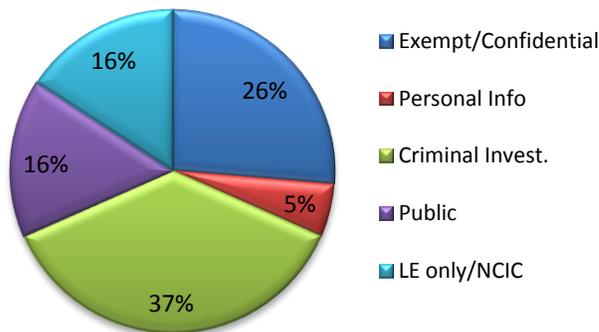
4. Does your agency retain LPR data?



5. If so, how long is LPR data retained?



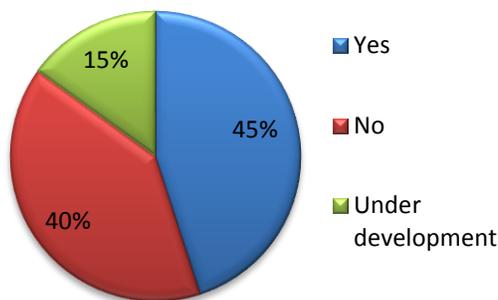
6. Under your state’s open records’ law, how does your agency classify recorded LPR data?



Release of LPR data is determined by how the data is classified:

Exempt/Confidential	} Not released to public or press; shared with other LE agencies
Criminal Investigation	
LE only/NCIC	
Personal	Released to subject of the record
Public	Released to public and press upon request

7. Does your agency have any policies relating to the use of LPRs, including but not limited to, the classification or retention of LPR data? If so, please provide a copy of the policy.



8. Please provide any other information you feel will be useful, such as any litigation your agency has experienced because of LPRs, large open records requests, etc.

- None of the reporting agencies had experienced litigation arising directly from using LPRs or from any refusal to release data pursuant to an open records request.
- Several agencies reported receiving large records requests for LPR data from the American Civil Liberties Union (ACLU).

Best Practices, Legal Recommendations and Cautionary Guidance

Have a policy. Almost half of the responding agencies that use LPRs do not have LPR policies. At a minimum, the LPR policy should set forth the parameters for deployment, the classification of the data, and the length of time the data will be retained. Developing a policy does not need to be an overwhelming undertaking. Several of the responding agencies provided policies that can be shared. The International Association of Chiefs of Police (IACP) also has developed a Model LPR Policy⁴ that can be tailored to an agency's specific needs.

Know the issues. Use of LPRs by law enforcement often generates concerns about the privacy of ordinary citizens. The purpose behind the ACLU's requests for LPR data is to see what information is being collected and retained by law enforcement about individuals who are not suspects, wanted criminals, or persons of interest. Other issues that arise from using LPRs include those dealing with state open records and retention laws and discovery rules, to name a few. Understanding the issues that are implicated by an agency's use of LPRs facilitates better communication with the community, strengthens policies, and aids in better strategic deployment of the LPRs.

Keep retention time realistic. The length of time that agencies retain LPR data varies widely among the responding agencies, from 15 days to forever. More than half of the agencies retain the data for two years or less. If your agency only uses LPRs to recover stolen vehicles from "hot lists," an extended retention schedule of many years may not fit the realities of the

⁴ IACP, *Model Policy: License Plate Readers*, can be ordered at <http://www.theiacp.org/tabid/486/Default.aspx>

primary use of the LPR. On the other hand, if you have a lengthy retention schedule because you deploy LPRs as a proactive measure to gather data for counter-terrorism purposes, you should be able to explain why the need to retain such a large volume of information about so many individuals outweighs any concerns citizens or others may have about such an extended data retention schedule. Also, if your state records retention laws and regulations establish a particular length of time for retention, your agency should be prepared to offer sound reasons for choosing to retain LPR data longer than the times established by state law.

Caution – LPR data may be subject to strict discovery rules governing electronically stored information. The state and federal courts have developed strict rules pertaining to the discovery of electronically stored information (ESI). Whenever there is a situation where a claim is likely to be made against an agency, officer, or municipality, and ESI may be relevant (whether inculpatory or exculpatory), then the agency, officer, and/or municipality must retain that ESI data. Usually notice that the data must be preserved will be in the form of a litigation hold (i.e. hold onto the information in the event litigation is filed, or while litigation is pending). LPR data may be subject to these holds, depending on how LPRs are deployed. For example, if LPRs are sent to every officer-involved shooting, it is reasonable to think that a claim may arise from the shooting. Thus, the LPR data should be held until such time as the statutory time for filing a claim has expired or a claim has been filed and the data has been collected for that case. There are serious penalties for deletion of ESI data so your agency should be aware of how LPR data is impacted by the discovery rules based upon the various ways your agency chooses to deploy the device.

Involve your legal advisor. Determining whether or not to purchase and deploy LPRs is certainly a policy decision that rests with the heads of the law enforcement agencies. Including your legal advisor in a discussion of the legal issues surrounding LPRs will simply help you make informed decisions about how your agency uses LPRs. Your legal advisor will know your state open records and retention laws and the discovery and privacy issues, and can help you analyze the legal impact LPRs may have on your agency.

If you have any questions about the survey results or would like some or all of the policies that were provided by the responding agencies, please do not hesitate to contact me:

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Additional Resources:

IACP, *Automated License Plate Recognition (ALPR) Systems: Policy and Operational Guidance for Law Enforcement*. David J. Roberts and Meghann Casanova. Washington D.C., U. S. Department of Justice, National Institute of Justice (October 2012)(127 pages)

http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf

IACP, *Privacy Impact Assessment Report for the Utilization of LPRs* (September 2009)(93 pages)

<http://www.theiacp.org/LinkClick.aspx?fileticket=N%2bE2wvY%2f1QU%3d&tabid=87>