

Charles C. Hoffmeyer
517 Hamilton Avenue
Lansing, Michigan 48910

January 29, 2015

Derrick Quinney
Lansing City Council
124 West Michigan Avenue
10th Floor City Hall
Lansing, Michigan 48933

RE: FOIA APPEAL

Dear President Quinney,

This letter is to appeal the final denial from the Office of the City Attorney. I am formally requesting that you release information under the Michigan Freedom of Information Act, MCL 15.231, et seq.

On December 26th, I submitted a FOIA request to the Lansing Police Department for “an electronic extract of all license plate data collected or obtained by the City of Lansing / Lansing Police Department through the use of automated License Plate Recognition (LPR/ALPR) technology.”

On January 7th, The Office of the City Attorney responded with a 10-day extension letter to determine if the City possessed non-exempt records responsive to the request.

On January 20th, The Office of the City Attorney responded by denying the request in full, stating “The City has not collected or obtained any such data due to the malfunctioning of the automated LPR technology”.

On January 26th, The Office of the City Attorney revised their denial, stating, “Records responsive to your request do exist, however, your appeal is denied... pursuant to the personal privacy exemption found at MCL 15.243(1)(a) of FOIA... Disclosure of the information would not advance the core purpose of FOIA, which is to significantly contribute to the public understanding of government.” The denial also argues that the requested information is not public information and states, “It was believed that data responsive to your request did not exist, in part because the City had not actively used the system”.

On January 27th, Chief Yankowski responded to questions sent to the LPD Public Information Officer, stating that LPD has not stopped using the ALPR equipment.

Copies of these letters are attached for your reference.

MCL 15.243(1)(a) states:

(1) A public body may exempt from disclosure as a public record under this act any of the following: (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

Both of these criteria must be met for the exemption to apply – the information must be of a personal nature, and disclosure of that information must constitute a clearly unwarranted invasion of an individual's privacy.

In *Bradley v. Saranac Community Schools*, the Michigan Supreme Court found that "information is of a personal nature if it reveals intimate or embarrassing details of an individual's private life." (455 Mich. at 294, 565 N.W.2d 650). The requested records contain a geographic location, a date, a time, and a license plate number. None of this data is intimate or embarrassing, nor does it contain personal information about any specific person. A vehicle license plate must be visible to be collected by LPD, and therefore its location was not kept from public view.

To argue that the release of these records would be an invasion of privacy, you must also accept that the City of Lansing had committed "a clearly unwarranted invasion ... of privacy" in collecting this data to begin with. Data does not change from public to private merely by being held in a city database.

Even a record as small as the location of a vehicle license plate at a specific point in time qualifies as a public record. The act states, "'Public record' means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

Electronic database records have been upheld as public records and are subject to the act. The requested records were created by LPD officers who, according to LPD Operational Procedure 600-62 regarding ALPR devices, were using a device that can only be used for official agency purposes. These are clearly public records as defined under the act.

While the statute does not require any person to justify their request for public information to the public body, I believe this request is clearly aligned with the core purpose of FOIA and the records sought have value in understanding the "workings" of government. The City of Lansing used Federal and local funds to purchase controversial technology, and this request will improve my understanding of how the City used this technology in its official functions (including frequency and general area of use, volume of data collection, number of devices collecting data, and the mean/median/mode for individual license plates captured over periods of time), and that it is using these resources effectively and fairly. In doing so, I expect that it

will allow me to better participate in the democratic process by enhancing my ability to communicate any identified concerns with my elected representatives.

As head of the public body, MCL 15.240(2) requires that you review the reason that the Office of City Attorney provided when denying the request, determine if the denial is permitted by the statute, and take one of the following options within 10 days:

- (a) Reverse the disclosure denial.*
- (b) Issue a written notice to the requesting person upholding the disclosure denial.*
- (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.*

If you opt for options (b) or (c), I ask that you continue to protect the public record from destruction, as required by MCL 15.233(3), for judicial appeal of the denial.

Sincerely,

A handwritten signature in black ink, appearing to read 'CH', with a stylized flourish extending to the right.

Charles Hoffmeyer



City of Lansing

OFFICE OF THE CITY ATTORNEY

Janene McIntyre, City Attorney

January 7, 2015

Charles Hoffmeyer

Via email to: Charles.hoffmeyer@gmail.com

RE: Freedom of Information Act (FOIA) Request
Electronic extract of all license plate data collected through use of
LPR/ALPR technology

Dear Mr. Hoffmeyer:

The City has received your request for public records under the Michigan Freedom of Information Act (FOIA).

In order to determine whether the City possesses non-exempt public records responsive to your request, we are extending the time for responding to your request by ten (10) business days, as permitted under MCL 15.235, Section 5(2)(d). Therefore, a written response will be issued on or before January 21, 2014.

If you have any questions concerning this matter, please feel free to contact our office at the address or phone number below, and enclose a copy of this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen D. Simmons".

Kristen D. Simmons
Assistant City Attorney and
FOIA Coordinator

/mjp



City of Lansing

OFFICE OF THE CITY ATTORNEY

Janene McIntyre, City Attorney

January 20, 2015

Charles Hoffmeyer
517 Hamilton Avenue
Lansing, MI 48910

RE: Freedom of Information Act Request (FOIA)
Electronic extract of all license plate data collected through the use of automated
LPR technology

Dear Mr. Hoffmeyer:

Pursuant to your FOIA request which this office received on December 26, 2015, please be advised that your request is denied. The City has not collected or obtained any such data due to the malfunctioning of the automated LPR technology.

If you disagree with this determination, you have the right to either appeal to the "head of the public body," i.e. the President of the City Council, pursuant to MCL §15.232(d)(iii), or judicial review in Circuit Court within 180 days of the denial. If you elect to appeal to the President of the City Council, you must submit a written appeal which specifically states the word "appeal" and identify the reason or reasons for the reversal of the disclosure denial. If you elect the Circuit Court and the Court determines that records have been arbitrarily and capriciously denied, it may award actual or compensatory damages, punitive damages (in the amount of \$500.00), reasonable attorney fees, costs and disbursements.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Simmons", is written over a horizontal line.

Kristen Simmons
Assistant City Attorney and
FOIA Coordinator

/eg



Automated License Plate Recognition (ALPR) Status

Charles Hoffmeyer <charles.hoffmeyer@gmail.com>

Wed, Jan 21, 2015 at 11:52 AM

To: Robert.merritt@lansingmi.gov

Officer Merritt,

I had submitted a FOIA request for data collected by ALPR devices on December 26th, and yesterday I received a response that the request was denied because "... the City had not collected such data due to the malfunctioning of the automated LPR technology."

Given that Meridian Township had openly discussed the effectiveness of this technology and LPD had discussed how critical this technology would be to solving crimes in Lansing, I was a little surprised by this response. I have a few questions as a result:

- When did LPD stop using this technology?
- Could you expand on what kind of malfunction occurred?
- Will the malfunction be resolved, and when?
- Is LPD planning to use this technology again in the near future?
- If LPD will not be using the technology, what was the disposition of the ALPR devices?
- Was LPD reimbursed by the vendor for the City's expenses in acquiring and testing the technology?
- How much did LPD spend on acquisition, installation, and support of this technology during the life of the project? How much of this was grant funded vs. city funded?

LPD Operational Procedure 600-62, Automated License Plate Readers, was also obtained through the FOIA process. A few questions related to this policy:

- IV(B) indicates that misuse of the data obtained through these devices may be subject to criminal sanctions. Could you elaborate on what criminal statute would apply to misuse of data collected through LPD's LPR technology by LPD employees?
- V(A) identifies several oversight responsibilities for LPD, including "setting protocols... to ensure the security and integrity of data captured, stored, or retained by the ALPR system". Were these protocols developed/implemented and if so, what do they require of LPD to ensure the security of the data?
- IX advises that collected data may be shared for law enforcement purposes. Has LPD entered into any data sharing agreements related to the LPR data? If so, with whom? What does the agreement require in terms of data use and protection? Roughly speaking, how many LPR records have been shared with other agencies?

Finally, do you have any statistics or data about the effectiveness of this technology in solving crimes within Lansing while it was operating properly?

Thanks,

Charles Hoffmeyer
charles.hoffmeyer@gmail.com



City of Lansing

OFFICE OF THE CITY ATTORNEY

Janene McIntyre, City Attorney

January 26, 2015

Charles Hoffmeyer
517 Hamilton Avenue
Lansing, MI 48910

RE: Freedom of Information Act Request (FOIA)
Electronic extract of all license plate data collected through the use of automated
LPR technology

Dear Mr. Hoffmeyer:

This is in response to your appeal of the denial of your Freedom of Information Act (FOIA) request, originally received by the Lansing Police Department on December 26, 2014. Upon review, records responsive to your request do exist, however, your appeal is denied for the reasons contained herein.

It appears there was an internal misunderstanding with regard to your request. It was believed that data responsive to your request did not exist, in part because the City has not actively used the system. However, I'm advised that data does exist going back to October 6, 2014. Older data is deleted. Therefore, data responsive to your request exists.

Your request, however, is denied pursuant to the personal privacy exemption found at MCL 15.243(1)(a) of FOIA. The data you request are determined to meet the two pronged exemption test established by the Michigan Supreme Court, i.e. the information is personal in nature and its disclosure would constitute a clearly unwarranted invasion of the individual's



City of Lansing

OFFICE OF THE CITY ATTORNEY

Janene McIntyre, City Attorney

privacy. The information is personal in nature because the mere fact of driving or parking one's car in Lansing is not regarded as public information. Furthermore, it does not become public information merely because it is passively recorded by a passing police car. Disclosure of the information would not advance the core purpose of FOIA, which is to contribute significantly to the public understanding of government.

Sincerely,

Kristen Simmons
Assistant City Attorney and
FOIA Coordinator

/eg



Charles Hoffmeyer <charles.hoffmeyer@gmail.com>

ALPR follow up questions

Yankowski, Michael <Michael.Yankowski@lansingmi.gov>
To: "charles.hoffmeyer@gmail.com" <charles.hoffmeyer@gmail.com>

Tue, Jan 27, 2015 at 11:21 PM

Charles,

My answers to your questions are in bold:

Mike

Chief Mike Yankowski

Lansing Police Department

(517) 483-4801

Michael.Yankowski@lansingmi.gov



CONFIDENTIALITY NOTICE:

This email message and any attachments to it is intended only for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, please contact the sender by reply email and destroy all copies of the original message. You are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

When did LPD stop using this technology? Could you expand on what kind of malfunction occurred?

LPD has not stopped using it, but we continue to still have technical difficulties with the equipment. (i.e. set up is draining the car batteries, hot sheets not downloading automatically). Additionally, the three main players who worked on

the project since 2012, no longer work for the city. With that said we have had to get other staff members up to speed on the technology and project. That has led to other complications.

Will the malfunction be resolved, and when?

It is unknown at this time, but we continue to work on correcting the problems. One of the ALPR cars was involved in a car accident and some of the equipment was damaged.

- Is LPD planning to use this technology again in the near future?

Our goal is to find acceptable solutions to the ongoing problems, so we can utilize the technology tool.

- If LPD will not be using the technology, what was the disposition of the ALPR devices?

LPD still has possession of the equipment

- Was LPD reimbursed by the vendor for the City's expenses in acquiring and testing the technology?

Not applicable

- How much did LPD spend on acquisition, installation, and support of this technology during the life of the project? How much of this was grant funded vs. city funded?

Grant funded dollars-

LPD purchased a total of four (4) L3 Automatic License Plate Readers - \$72,000

City Labor- figures not available as we did not track the number of personnel hours dedicated to the project since 2012.

LPD Operational Procedure 600-62, Automated License Plate Readers, was also obtained through the FOIA process. A few questions related to this policy:

- IV(B) indicates that misuse of the data obtained through these devices may be subject to criminal sanctions. Could you elaborate on what criminal statute would apply to misuse of data collected through LPD's LPR technology by LPD employees?

Dissemination of LEIN information: LEIN violation

- V(A) identifies several oversight responsibilities for LPD, including "setting protocols... to ensure the security and integrity of data captured, stored, or retained by the ALPR system". Were these protocols developed/implemented and if so, what do they require of LPD to ensure the security of the data?

Yes the protocols were developed and implemented in Oct. 2013. Only certain authorized and limited employees have access to the data as administrators.

- IX advises that collected data may be shared for law enforcement purposes. Has LPD entered into any data sharing agreements related to the LPR data? If so, with whom?,

Yes, Meridian Township, Ingham Co. Sheriff and East Lansing.

What does the agreement require in terms of data use and protection?

You must get permission from the Agency first.

Roughly speaking, how many LPR records have been shared with other agencies?

At this time I'm not aware of any records being shared with any of the agencies.

Finally, do you have any statistics or data about the effectiveness of this technology in solving crimes within Lansing while it was operating properly?

LPD does not have any successful examples at this time due to the fact that we have not yet truly gotten the equipment to be fully functional and effective since it went live in Oct. of 2013.