



May 20, 2019

Mimi Bolaffi, Manager of Security Programs, BART Police Department

cc: BART Board of Directors
Kaiser Center, 2040 Webster Street, 3rd Fl
Oakland CA 94612

Members: Debora Allen, Liz Ames, Bevan Dufty, Mark Foley, Janice Li, John McPartland, Robert Raburn, Rebecca Saltzman, Lateefah Simon

Re: Parking Lot License Plate Readers

Dear Ms Bolaffi,

This letter is a follow-up to our discussions at the BART board meeting of April 25 regarding BART's automated license plate reader surveillance policy and the associated pilot project.

We raised two issues at that meeting and would like to continue discussions on both.

The first issue related to a future equipment purchase where we requested that BART consider the purchase of rear unit cameras in order to take pictures of auto license plates without capturing images of car occupants. License plate readers with rear facing cameras maintain the functionality of capturing a scan of the license plate, but do not randomly capture superfluous footage which increases privacy risk. It should require extra steps to connect license plate numbers to specific individuals. And such steps should always be tied to reasonable suspicion of having committed a crime. With no loss of license plate reader capture by the use of the less intrusive equipment, this is a simple privacy-respecting enhancement that BART can and should make, when and if the Board decides to move ahead with the purchase of new equipment.

The second issue relates to difficulty of maintaining compliance with BART's Sanctuary Transit policy in what is a very muddled situation with varying state and federal protocols and clearly unacceptable behavior regarding immigration enforcement at the federal level. It is understood that the ramifications go far beyond BART's responsibility and level of control. However, it is important to understand the current limitations, the possible risks, and what can and can't be done to protect our immigrant friends and neighbors.

Before providing some background material on the current state of driving records, ALPR data and ICE/CPB, we want to reiterate that it is very important that BART negotiate a specific and customized memorandum of understanding (MOU) with the Northern California Regional Intelligence Center (NCRIC).

An agreement similar to the one BART made with NCRIC circa 2014 will not fulfill the promises you have made to your riders in your Sanctuary Transit Policy and the ALPR Surveillance Use Policy and will have no measurable impact on whether or not the data you provide makes its way to federal immigration enforcement.

A standard or default agreement circa 2019 will also provide an inadequate level of protection, for reasons that will be described below. As we have discussed, BART data has enhanced utility because it is closely tracked to daily commuting information.

The mere assurance that ICE Enforcement and Removal Operations does not have direct access to the NCRIC ALPR database after the passage of the California Values Act is not sufficient.

*Safe Transit Act June 22, 2017 "Section 4.1. No employee of the San Francisco Bay Area Rapid Transit District shall use any District funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding release status of individuals or any other such personal information unless such assistance is required by federal or state statute, regulation, or court decision."*¹

*Provisionally approved ALPR Surveillance Use Policy 4-25-2019. The administrator of the data collection, the NCRIC, will not share information with ICE, or any agency performing immigration enforcement or removal operations.*²

A public records act request from the ACLU uncovered an operator at NCRIC's fellow state fusion center in Southern California (Orange County Intelligence Assessment Center - OCIAC) responding directly to license plate reader information requests from an ICE office and dispensing scan data to that ICE office after the effective date of the California Values Act. This was an act prohibited by state law.³ The fusion center employee used OCIAC access to the privately held Vigilant National Vehicle Locator System (NVLS) database to evade fusion center log requirements.

Several California law enforcement agencies have continued to informally share license plate data with ICE via NVLS despite state law, including police departments in Union City and Merced.⁴ San Diego directly shared license plate data with ICE until the Voice of San Diego reported on it.⁵ The informal sharing of license plate scan data between local law enforcement agencies that have access to NCRIC's database and ICE, Customs and Border Patrol and the FBI's Joint Terrorism Task Force has not entirely ceased.

With regard to connecting license plates to individuals whose immigration status may be known by federal agencies, 40 different agencies under the Department of Homeland Security have access to the DMV databases (using shared platforms like the California Law Enforcement Telecommunications System (CLETS), which connect license plate numbers to names, street addresses, and photographs via the Cal Photos database. Among them are several different ICE and ICE-HSI offices⁶

In one 15 month period, DHS-affiliated agencies made 1,600 inquiries in the California DMV database in order to link individuals to their vehicle data, including license plate numbers and vehicle registration data.⁷ These inquiries were not pegged to a court order or a warrant nor did they require individualized reasonable suspicion of committing a crime. Many of these DHS-affiliated agencies continue to be able to access information via NCRIC.

The problem is so severe that San Diego assemblyperson and Appropriations chair Lorena Gonzalez-Fletcher has authored a state bill (AB 1747) to specifically cut off access for federal agencies engaged in immigration enforcement from the DMV and databases that access DMV records. AB 1747 is a fix-it bill for 2018 bill SB244 from Ricardo Lara, which attempted to do the same thing, but was largely ignored by the DMV, which said it did not have "mechanisms" in place to meet the 2018 bill's requirements.

1 <https://www.bart.gov/news/articles/2017/news20170622-0>

2 <https://www.bart.gov/news/articles/2019/news20190403>

3 https://www.aclunc.org/docs/Pages%20from%20DOCS_031319_Emails.pdf

4 <https://www.sfchronicle.com/crime/article/ICE-had-access-to-hundreds-of-millions-of-license-13685652.php>

5 <https://www.voiceofsandiego.org/topics/government/sdpd-quietly-stopped-sharing-license-plate-data-with-the-feds/>

6 <https://www.nilc.org/issues/immigration-enforcement/how-calif-dl-records-shared-with-dhs/>

7 <https://www.nilc.org/issues/immigration-enforcement/how-calif-dl-records-shared-with-dhs/>

While it remains to be seen if AB 1747 will pass out of the CA Legislature, be signed by the governor, and prove to be more operational than its predecessor bill in 2020, the current state of affairs demonstrates three things;

- License plate scans must be considered personally identifying information (PII) given the ease of connecting them to individual's names, street addresses and photographs via ubiquitous databases with virtually unlimited local, state and federal access.
- Law enforcement agencies in California continue to share license plate reader information, both formally and informally, with federal agencies.
- Federal fusion centers are not bulletproof institutions. Fusion center employees have been disclosing license plate reader data to immigration authorities on occasion. While NCRIC says it will not share directly with ICE, law enforcement agencies that can request BART data from NCRIC's ALPR database do not all have policies which prohibit such sharing of downloaded data with ICE or other Federal agencies (and some may have no policies at all). This creates a relatively easy way for ICE agents to circumvent NCRIC's policies.

As of May 19, California's AG has attempted to tighten the loophole by declaring the use of DMV data obtained from CLETS for immigration enforcement to be formal misuse of the database that can result in sanctions or suspension/termination of agency access. That this rule change was deemed to be necessary is an indication that the scale and scope of the problem has not been small.⁸

In order to address this less than ideal situation and to allow BART to keep the promises it has made to its riders in its Sanctuary Transit Policy and the ALPR Surveillance Use Policy, we suggest two possible courses of action.

- If it is possible, and it may be less burdensome with only 30 days of data requiring storage, BART could not upload its license plate reader data to the federal fusion center and keep it in-house, thus maintaining full internal use of the data and full control over if, when and how it is shared.
- If the first option is excessively burdensome, BART could craft an agreement with NCRIC that does not allow BART's parking lot ALPR data to be shared with other law enforcement agencies via NCRIC's database. This would still allow BART staff who follow BART policies regarding sanctuary transit, and CA law regarding information sharing, to download data for their own use while preventing leaks and allowing for a direct accountability trail for any information shared with other law enforcement agencies.

Either of these actions would do a great deal towards delivering on the assurances BART wishes to make to its undocumented riders and those in the community who are uncomfortable with the Trump administration's policies.

We continue to emphasize that installing license plate readers in all of BART's parking lots will result in the unnecessary collection of vast amounts of data and the collection of such data without particularized suspicion always generates increased privacy risks to the public.

Respectfully,

Tracy Rosenberg

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⁸ <https://www.eff.org/deeplinks/2019/05/california-now-classifies-immigration-enforcement-misuse-statewide-law-enforcement>