



VIA Email

February 2, 2018

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
ice-foia@dhs.gov

RE: ICE Access and Use of Commercial License Plate Reader Database

To whom it may concern:

This letter constitutes a request under the Freedom of Information Act (“FOIA”) and is submitted on behalf of the Center for Democracy & Technology (“CDT”)¹ to United States Immigration and Customs Enforcement (“ICE”).

ICE has completed a contract with a vendor to gain access to a license plate reader (“LPR”) database. CDT seeks this contract, training materials, communications, policies and procedures, and other documents related to the purchase and use of this database. We also seek the ICE agency guidance entitled “Privacy Guidance: Agency Access to and Use of License Plate Reader Data and Technology” issued December 2017, from the ICE Office of Information Governance & Privacy.

Documents Requested

- 1) Any records, contracts, or other communications made with the vendor and commercial partner with whom ICE executed a contract regarding Solicitation number 70CDCR18Q00000005 “Access to Commercially Available LPR Database.”

¹ The Center for Democracy & Technology is a 501(c)(3) organization that advocates for global online civil liberties and human rights. CDT drives policy outcomes that keep the internet open, innovative, and free. The organization supports laws, corporate policies, and technology tools that protect privacy, and it advocates for stronger legal controls on government surveillance.

- 2) Any training materials, presentations, manuals, or publications provided to those who use the commercial License Plate Reader Database.
- 3) ICE Agency guidance entitled “Privacy Guidance: Agency Access to and Use of License Plate Reader Data and Technology” from the ICE office of Information Governance & Privacy. (cited in December 27, 2017 DHS/ICE PIA-039(a)).
- 4) All communications between agency personal and third parties other than the vendor in this contract regarding use of license plate reader data by agency personnel, or by third parties.
- 5) Any information tending to show the circumstances in which ICE would share or has shared LPR data with federal, state, or local officials.

Background

In March 2015, ICE issued a Privacy Impact Assessment (“2015 PIA”) describing “how it intends to procure the services of a commercial vendor of LPR information in order to expand the availability of this information to its law enforcement personnel.”² ICE noted that the data to which it would be seeking access is sensitive, and that as such, ICE would implement a framework to mitigate privacy and civil liberties concerns.³ Further ICE stated that “[t]he requirements of the framework will be incorporated into any solicitation that ICE may issue for the acquisition of commercial LPR information, and will be documented in appropriated ICE policies.”⁴

According to the 2015 PIA, this framework is composed of multiple parts. The first is training, which ICE stated will be a prerequisite to any ICE personnel accessing the commercial data. Specifically personnel will be “trained on the nondiscriminatory use of the commercial system containing the LPR data and the agency’s rules for acquiring and using the data.”⁵ Second, the vendor’s commercial system must provide an initial splash screen that describes the permissible uses of the system prior to ICE personnel accessing the data.⁶ Third, the vendor must limit the timeframe of the results of a query.⁷ Fourth, ICE would require the vendor to prompt ICE personnel to reexamine at least annually their hotlist, or a list of license plate numbers that prompt an immediate notice to ICE personnel that the license plate was encountered.⁸ Fifth, the

² DHS/ICE/PIA-039 Acquisition and Use of License Plate Reader Data from a Commercial Service at 1, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-lpr-march2015.pdf>.

³ Id. at 5.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at 6.

⁸ Id.

vendor would provide an audit trail of each query made in order to permit confirmation that the database is being used appropriately.⁹ Sixth, ICE managers would be held accountable for ensuring that personnel with access to the database would be properly trained, and they would conduct periodic audits.¹⁰

On December 15, 2017, ICE posted solicitation 70CDCR18Q00000005 “Access to Commercially Available LPR Database.”¹¹ In the synopsis ICE stated that it would issue an update to the 2015 PIA prior to use of the commercial database.¹² This was also promised in the 2015 PIA.¹³

A second PIA was released on Dec. 27, 2017 in which it was confirmed that “ICE has now entered into a contract with a vendor to provide ... access to a commercial LPR database operated by a commercial partner.”¹⁴ In this PIA, ICE made reference to a document entitled “Privacy Guidance: Agency Access to and Use of License Plate Reader Data and Technology.”¹⁵ The PIA describes the contract made and the inclusion of the above described framework. For example, it is stated that the vendor provides training to ICE personnel on the use of the LPR data service.¹⁶

ICE intends to use the data from this vendor to further its investigative needs. The database raises several privacy and civil liberties concerns which could be alleviated by disclosure of the requested documents.

Expedited Processing

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest¹⁷ and there exist possible questions about the government’s

⁹ Id. at 7.

¹⁰ Id. at 7.

¹¹ *Access to Commercially Available LPR Database*, FBO.org, <https://www.fbo.gov/index?s=opportunity&mode=form&id=b485dfaf65dbb893f4f6dd164cf8be8b&tab=core&tabmode=list&=>.

¹² Id.

¹³ DHS/ICE/PIA-039 Acquisition and Use of License Plate Reader Data from a Commercial Service at 1, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-lpr-march2015.pdf>.

¹⁴ DHS/ICE/PIA-039(a) Acquisition and Use of License Plate Reader (LPR) Data from a Commercial Service at 1, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-lpr-january2018.pdf>.

¹⁵ Id. at 1 fn. 2. (“The principles and practices ICE adheres to when accessing and using LPR data are described in agency guidance titled, “Privacy Guidance: Agency Access to and Use of License Plate Reader Data and Technology”, issued December 2017, from the ICE Office of Information Governance & Privacy.”)

¹⁶ Id. at 11.

¹⁷ See e.g., Russell Brandom, *Exclusive: ICE is about to start tracking license plates across the US*, The Verge (Jan. 26, 2018), <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>; Tal Kopan, *ICE inks contract for access to license plate*

integrity, which affect public confidence. CDT, on whose behalf I am filing this request, is engaged in disseminating information to the public and, in this case, there is an urgent need to inform the public about the specific government activity that is the subject of this request. For example, questions in the last year have been raised by ICE's enforcement actions at 'Sensitive Locations' counter to its policy memo.¹⁸ Because access to LPR data could enable ICE to circumvent its Sensitive Locations policy, questions have been raised about this government's integrity, which satisfies the criteria for expedited FOIA processing. The documents requested are matters of public interest, and there is an urgent need for their prompt disclosure.

Accordingly, this request satisfies the criteria for expedited processing.

Request for Fee Waiver

CDT requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). CDT also requests a waiver of search fees on the grounds that CDT qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- 1. Disclosure of the requested records is likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of CDT.*

The information requested will aide the public in understanding how ICE plans to use license plate data, which ICE itself has recognized can reveal incredibly personal and sensitive information. Furthermore, the documents requested will shed light on whether or not ICE is violating the spirit or letter of its Sensitive Locations policy. This policy limits ICE's ability to commit enforcement actions at certain 'sensitive locations' like schools. Senators have indicated concern that ICE is violating this policy in some of its other enforcement practices.¹⁹ The release of the requested documents could help maintain public confidence that ICE is adhering to this policy, or the need for reform if it is not adhering.

database, CNN (Jan. 26, 2018) <https://www.cnn.com/2018/01/26/politics/ice-license-plate-readers/index.html>.

¹⁸ *Letter to Elaine Duke and Kevin McAleelan from 13 Senators* (Nov. 13, 2017), <https://www.blumenthal.senate.gov/imo/media/doc/11.13.17%20Follow-Up%20Letter%20to%20DHS%20on%20Sensitive%20Locations.pdf>. (Letter raises concerns about enforcement actions at sensitive locations, and asks ICE and CBP questions about their response to these violations).

¹⁹ *Id.*

CDT is not filing this FOIA to fulfill a commercial interest. CDT is a 501(c)(3) nonprofit organization, and it works to preserve privacy and freedom of expression. This request is made in furtherance of the work CDT does for the public interest.

2. *CDT qualifies as "a representative of the news media" and the records requested are not sought for commercial use.*

CDT also requests a waiver of search fees on the grounds that CDT qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). CDT meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III). CDT maintains an active website and social media presence that helps it distribute its commentary and reporting on topical issues related to its mandate.²⁰

For these reasons CDT requests that fees for this FOIA request be waived. Please send materials associated with this request to:

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Washington, DC 20005
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(202) 407-8828

Thank you for your attention to this matter.

Mana Azarmi

²⁰ See e.g., Jake Laperruque, *Government Keeps Its Eyes on the Road with Invasive License Plate Reader Program*, CDT (April 6, 2015), <https://cdt.org/blog/government-keeps-its-eyes-on-the-road-with-invasive-license-plate-reader-program/>; Natasha Duarte, *5 Takeaways from the New DHS Privacy Guidance*, CDT (May 17, 2017), <https://cdt.org/blog/5-takeaways-from-the-new-dhs-privacy-guidance/>; Taylor Moore, *DHS Misses the Mark in Attempts to Quell Public Concerns on the Gathering of Social Media Handles*, CDT (Sept. 30, 2016), <https://cdt.org/blog/dhs-misses-the-mark-in-attempts-to-quell-public-concerns-on-the-gathering-of-social-media-handles/>.