



ROD UNDERHILL, District Attorney for Multnomah County

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May 6, 2015

Taylor W. Anderson
State Government & Politics Reporter
The Bend Bulletin
P.O. Box 6020
Bend, OR 97708

David Woboril
Senior Deputy City Attorney
Office of City Attorney
1221 SW 4th Avenue, Suite 430
Portland, OR 97204

Re: Petition of Taylor Anderson on behalf of *The Bend Bulletin* regarding data from
Portland Police Bureau's Automated License Plate Readers

Dear Mr. Anderson and Mr. Woboril:

After due consideration, and for the reasons expressed in this letter, my office denies *The Bend Bulletin's* request for the release of all geolocation information and any other coordinates of Mr. Taylor Anderson's license plate gathered by Automated License Plate Readers (ALPRs) in the possession of the Portland Police Bureau.

Background

In accordance with The City of Portland Directive 445.00, the Portland Police Bureau uses APLRs for law enforcement purposes. As police vehicles equipped with plate readers travel, the reader observes license plate numbers and letters, and compares them to a database of stolen vehicles or vehicles of interest in criminal investigations. The reader also records an image of each plate and notes the time and location of each observation. The driver of the reader vehicle sees the data only on stolen cars, for which the reader alerts, and the rest of the data are delivered unseen to a secure database. The date, time, plate number, etc., exist as unconnected values in a database until they are aggregated by an operator who queries the database.

Use of ALPR equipment or database records for non-law enforcement purposes is expressly prohibited by Directive 445.00 and by state law:

ORS 181.575 Specific information not to be collected or maintained

No law enforcement agency, as defined in ORS 181.010, may collect or maintain information about the political, religious or social views, associations, or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.

Generating a database report, absent a reasonable suspicion of criminal conduct, could yield information about a citizen's associations or activities that run afoul of the provisions of ORS 181.575, designed to balance law enforcement objectives and personal privacy. As such, persons approved to access the data are permitted to do so only when there is a reasonable belief that the data are related to an investigation in a specific criminal action.

The Record Request

On April 22, 2015 Mr. Anderson, a reporter for *The Bend Bulletin* requested to review "all geolocation information and other coordinates of my license plate possessed by the [Portland Police] department using Automated License Plate Readers (ALPRs)." Ryan Rees, Portland Police Bureau's records custodian, denied the request, citing ORS 181.575, and noting that the "ALPR database may only be accessed when there is probable cause during the course of an already-ongoing criminal investigation." Mr. Anderson petitioned this office to seek an order directing the release of the requested records.

Discussion

This office has considered and rejected a previous request for disclosure of ALPR data, citing the criminal investigatory exemption ORS 192.501(3). See *Petition of Andrea Damewood regarding certain data from the Portland Police Bureau's database of license plates as collected by automated license plate readers (9/30/13)*. Petitioner requested data related to fifteen specific license plate numbers. This office declined to order disclosure, noting that absent an ongoing criminal investigation, the City had no access to the data and could not create an aggregate report. If a report existed for any of the fifteen requested plates, it would have been created in the course of a criminal investigation and would be exempt under the criminal investigatory exemption.

Likewise, the City has no access to Mr. Anderson's data for non-law enforcement purposes.¹ To the extent his plate was included incidentally in an aggregate report – created, for

¹ As stated by the City Attorney's Office, "the act of compiling otherwise lawful observations in the absence of a criminal investigation predicate would violate City policy and state law and could have significant implications for individual privacy." Even with the consent of the plate owner, generating a report can create privacy and safety issues where multiple drivers have

example, by a query for plates in a parking lot near a crime scene – such report would also be exempted from disclosure under the criminal investigatory exemption.

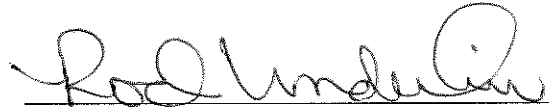
Additionally, the requested records are exempted from disclosure by ORS 192.502(9)(a). Under this “catchall” exemption, “laws that restrict disclosure of information to particular recipients or particular purposes, create a privilege, or create a rule of confidentiality” that is incorporated into the public records law. *Attorney General’s Public Records and Meeting Manual* (2014), at 92. ORS 181.575 so limits collection (and therefore dissemination) of information about the activities of an individual, unless it is for the particular purpose of investigating criminal activity. This prohibition is incorporated into the public records law and bars the requested data aggregation.²

Finally, a public body cannot be compelled to disclose what it cannot lawfully access and is not required to create information in response to a public records request. *See Oregon Attorney General Letter of Advice* (OP-6126) (June 1, 1987) (finding that a public body is not required to apply a computer program to generate appraisal information on a particular property).

Conclusion and Order

Accordingly, the petition of *The Bend Bulletin* is denied.

Regards,



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Multnomah County, Oregon

access to the vehicle or in a domestic violence or stalking situation. For these reasons, the law prohibits all access for non-law enforcement purposes.

² Petitioner makes the point that PPB policy (Directive 445.00) is not a state statutory law which is incorporated by the catchall in ORS 192.502(9)(a) and therefore is not valid justification for an exemption; however, the policies and rules put in place to effectuate state law have been found to justify withholding records. *See e.g., Springfield School District v. Guard Publishing Co.*, 156 Or App 176 (1998) (applying the catchall exemption where district rules did not permit public access to teacher personnel files); *Oregon Attorney General Opinion OP-2000-1* (July 11, 2000) at 38 (advising DPSST to consult its agreement with the Oregon State Police (OSP) and the statutes and rules pertaining to agency use of OSP’s database before disclosing in response to a public records request).