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Via email and First Class Mail
terrel.harris@state.ma.us

Mr. Terrel Harris, Communications Director
Executive Office of Public Safety and Security
One Ashburton Place, Suite 2133
Boston, MA 02108

Dear Mr. Harris,

On July 17, 2013, the ACLU of Massachusetts issued a public statement regarding the release of documents on automatic license plate readers (ALPR) from 300 police departments nationwide, and included the statement:

*The ACLU of Massachusetts has been trying for over two years to gain access to **privacy and data retention policies** for this [ALPR] system, but the state has thus far produced no records describing how this extremely alarming database will be maintained.**

At 5:35 p.m. on July 17, 2013, you left a voice mail message for one of our staff stating: "The assertion that you guys made in your press release was a lie. Bottom line." You made similar accusations directly to me in our phone conversation earlier that day, and were quoted in the media stating that the ACLU's public statements regarding our unsuccessful efforts to obtain copies of an ALPR data retention and privacy policy from the state were "blatantly false."[†]

You subsequently emailed to me four documents (dated April 6, 2011, March 18, 2011, Sept. 12, 2011, and Sept. 8, 2011) that you said would support your accusations.

Given the cordial and cooperative relations that have long existed between the ACLU of Massachusetts staff and EOPSS leadership and staff, and the seriousness of

* http://www.aclum.org/news_7.17.13

† <http://www.metrowestdailynews.com/news/x1806126003/ACLU-With-license-plate-scanners-you-are-being-tracked>.

your allegations, I have reviewed our extensive correspondence file between the ACLU of Massachusetts and EOPSS, which includes the four documents that you subsequently sent for my review.

Based on this review, as set forth below, it appears that *the statements in the ACLU of Massachusetts press release were entirely accurate* and that your statements otherwise may have been based on a misreading of the press release and supporting documentation.

In support of the ACLU of Massachusetts public statement, our records show that:

- On March 15, 2011, in a letter to from ACLU of MA Legal Director John Reinstein to General Counsel Gregory Massing, we requested, *inter alia*:

Any guidelines, regulations or procedures governing submission and capture of license plate data to the state repository maintained by the CJIS Division and the dissemination of that data to other agencies by the CJIS Division, including any federal guidelines or regulations which may be applicable to this program.

- On April 6, 2011, Mr. Massing replied by letter stating that EOPSS had “not yet finalized the data fields or be maintained or the applicable policies and procedures for submission and retention of ALPR data. I will be in touch with you in the near future to arrange a meeting to discuss these issues.”
- On August 18, 2011, an ACLU of Massachusetts staff attorney attended a meeting of stakeholders and EOPSS staff, at which Jane Gabriel, Deputy General Counsel, stated that she was drafting a model privacy and data retention policy and would circulate copies of it when the drafting was completed. The ACLU of MA has never received a draft data retention or privacy policy.
- On November 21, 2011, an ACLU of Massachusetts staff attorney wrote an email to Jane Gabriel inquiring about the “progress of the ALPR policy.” Ms. Gabriel responded the next day, stating that EOPSS was working on “final drafts” and planned to reach out to advocates for follow-up meetings.
- On July 31, 2012 – nearly one year after the meeting with Ms. Gabriel – Mr. Reinstein sent a follow up email to Jane Gabriel again inquiring about the status of the promised privacy and data retention policy.

- On August 10, 2012, Ms. Gabriel replied by email that the “ALPR guidelines/policies continue to be developed and under review.”
- On March 29, 2013, Mr. Reinstein sent an email to EOPSS General Counsel Elizabeth Nadzo, once again requesting information and regulations regarding the “establishment of a central repository for data collected by automated license plate readers.”
- On April 4, 2013, Mr. Reinstein and Ms. Nadzo spoke by phone, at which time Mr. Nadzo reiterated that the ALPR guidelines/policies continued to be developed and under review.
- On April 9, 2013, the *Boston Globe* reported that the State Police Spokesperson Dave Procopio replied to a separate public records request submitted by MuckRock that “as of this writing, there is not an approved policy in place that would be responsive to the records request.”
 - Here’s a link to the Boston Globe story:
<http://www.bostonglobe.com/metro/2013/04/08/big-brother-better-police-work-new-technology-automatically-runs-license-plates-everyone/1qoAoFfgp31UnXZT2CsFSK/story.html>
 - Here’s a link to the MuckRock database, including the statement by Mr. Procopio that the State Police had no privacy or data retention policy for ALPR:
<https://docs.google.com/spreadsheet/pub?key=0AtLWpLmAmYz4dExTZ1FWbzBITTk5OFFtSlhMTTFTSkE&single=true&gid=0&output=html>

As this record clearly indicates, the ACLU of Massachusetts (and others) have been trying for over two years to obtain privacy and data retention policies for the ALPR system, but the state has thus far produced no records describing how this database will be maintained.

If, in fact, a privacy and data retention policy now exists, we urge the Executive Office of Public Safety and Security to make that policy available to the public. At your suggestion, the ACLU of Massachusetts has sent a renewed request for such policies under the Public Records Law, G.L. c. 66, §10 to EOPSS General Counsel Elizabeth Nadzo.

Finally, the documents that you sent to me reflect correspondence between the ACLU of Massachusetts and EOPSS regarding a separate public records request, namely, for ALPR grant applications and user agreements. EOPSS has made publicly available lists of at least some of the grantees, but no user agreements.

Please note, however, that none of the documents that you sent to me referenced an ALPR privacy and data retention policy, which was the subject of multiple ACLU of Massachusetts requests over a two-year period, as well as our press release and related news stories.

I trust that this letter will clear up what appears to be a simple misreading of the record by the EOPSS communications department. We remain hopeful that the Executive Office of Public Safety and Security has or will soon finalize an ALPR privacy and data retention policy and make such policy available to the people of Massachusetts, who clearly care about this issue.

Beyond that, we urge EOPSS to lead efforts to make Massachusetts a model state regarding ALPR data protection nationwide by supporting passage of the License Plate Privacy Act (H.3068/S.1648, "An Act to regulate the use of automatic license plate reader systems"), currently before the Transportation Committee of the state legislature. Staff at the ACLU of Massachusetts are available to meet with the appropriate people at EOPSS to discuss ways that we can be a resource with regard to this legislation or otherwise.

Thank you again for reaching out so that we could clear up any confusion. If you have questions or wish to discuss further, please do not hesitate to give me a call.

Yours sincerely,

Carol Rose

cc: Elizabeth D. Nadzo, Esq., General Counsel, EOPSS