



Date: February 8, 2024
To: Board of Directors
From: David Aranda, Interim General Manager
Subject: Approval of the Automated License Plate Reader Policy

Recommendation

Approval of the Automated License Plate Readers Policy (ALPRs).

Background

At the January 11, 2024, Board of Directors meeting, the agenda consisted of purchasing a software program that allows license plate reading to assist the Police Department in dealing with various potential crimes in the community. The Board approved the purchase with a company called FLOCK, subject to the proper contract wording as presented by legal. FLOCK agreed to using the contract wording presented and the contract has been executed.

The Board also requested a policy to address this software and the use and distribution of what the software generates. The motion that was approved in January was to make some changes to the policy that was presented and to bring the policy back to the Board. Below is the motion that was made in January noting the changes that staff was directed to make.

- Motion by Director Hacaj, seconded by Director Duggan, that the Board of Directors adopted the policy before us with the following modifications which we will need to see back before us and those modifications are a correction on Section 426.3.1 outlined by Vice-President Aquino-Fike which is to strike the second sentence and turn the third sentence into a new subsection F and renumber F to G to clarify the first paragraph on page 5 that begins with all "ALPR data downloaded to the server" in particular to understand which server they are referring to, and lastly to reference the civil code for the records release and maintenance policy under 426.6, carried (5-0) by the following roll call vote: AYES (Aquino-Fike, Duggan, Gough, Hacaj and Spath); NOES (None); ABSTAINED (none); ABSENT (none).

The attached draft policy highlights those changes in yellow.

Exhibit(s)

- Automated License Plate Readers Policy 426

Automated License Plate Readers (ALPRs)

426.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

426.2 DEFINITIONS

- Automated License Plate Reader (ALPR) : A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- ALPR Operator : Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- ALPR Administrator : The Chief of Police or their designee, serve as the ALPR Administrator for the Department.
- Hot List : A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- Vehicles of Interest : Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- Detection : Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- Hit : Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

426.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the Kensington Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the Kensington Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Chief of Police who will assign members under his/her

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command to administer the day-to-day operation of the ALPR equipment and data.

426.3.1 ALPR ADMINISTRATOR

The Chief of Police shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Only properly trained sworn officers, crime analysts, communication operators, records clerks and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation is maintained.
- (f) Continually working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

426.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) The officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) or dispatch before taking enforcement action based solely on an ALPR alert. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the

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driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.

- (e) Designation of hot lists to be utilized by the ALPR system shall be made by the Chief of Police or their designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this policy. Hot lists utilized by the Department's ALPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's ALPR system will not have access to real time data. Occasionally, there may be errors in the ALPR system's read of a license plate, therefore an alert alone shall not be a basis for a police action (other than following the vehicle of interest).

Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:

- (a) Verification of status on a hot list; An officer must receive confirmation, from a Police Department Communications Dispatcher or other Department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).
- (b) Visual verification of license plate number; Officers shall visually verify that the license plate of interest matches the image of the license plate number captured (read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a hot plate (hit) in a specific BOLO (be on the lookout) list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

Department members will clear all stops from hot list alerts by indicating the positive ALPR hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

General hot lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

- (a) All entries and updates of specific hot lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific hot lists shall be approved by the ALPR Administrator (Lieutenant or Chief of Police designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All hot plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- (a) Entering Department member's name

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- (b) Related case number.
- (c) Short synopsis describing the nature of the originating call.

Login/Log-Out Procedure.

- (a) To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses.

- (a) The ALPR system, and all data collected, is the property of the Kensington Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this policy. The following uses of the ALPR system are specifically prohibited:
 1. *Invasion of Privacy*: Except when done pursuant to a court order such as a search warrant, it is a violation of this policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
 2. *Harassment or Intimidation*: It is a violation of this policy to use the ALPR system to harass and/or intimidate any individual or group.
 3. *Use Based on a Protected Characteristic*: It is a violation of this policy to use the ALPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
 4. *Personal Use*: It is a violation of this policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
 5. *First Amendment Rights*: It is a violation of this policy to use the ALPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- (a) criminal prosecution,
- (b) civil liability, and/or
- (c) administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies

426.5 DATA RETENTION AND COLLECTION

The Chief of Police is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with Department procedures.

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In the event ALPR data must be downloaded from the Flock server to the police department server for an ongoing criminal investigation, it shall be stored for no longer than one year in accordance with the established records retention schedule. Thereafter, all ALPR data shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances, the applicable data shall be downloaded from the police department server onto a separate secure media device and placed into evidence.

The ALPR vendor, Flock Safety, will store all captured KPD data on their servers and ensure proper maintenance and security of the information is kept. Flock Safety shall purge all KPD data at the end of the 30 days of storage.

Restrictions on use of ALPR data:

- (a) Information gathered or collected, and records retained by Flock Safety cameras or any other Department ALPR system will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

426.6 ACCOUNTABILITY AND SAFEGUARDS

All data will be closely safeguarded and protected by both procedural and technological means. The Kensington Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date, and time.
- (c) Persons approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or Department related civil or administrative action.
- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) Every ALPR detection browsing inquiry must be documented by either the associated Kensington Police case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

426.7 POLICY

The policy of the Kensington Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public. All data and images gathered by the ALPR are for the official use of this Department. Because such data may contain confidential information, it is not open to public review.

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The Kensington Police Department does not permit the sharing of ALPR data gathered by the KPPCSD or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol.

426.8 ALPR DATA DETECTION BROWSING AUDITS

It is the responsibility of the Chief of Police to ensure that an audit is conducted of ALPR detection browsing inquiries at least once during each calendar year. The Department will audit a sampling of the ALPR system utilization from the prior 12-month period to verify proper use in accordance with the above authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by Department employees during the preceding six-month period and determine if each inquiry meets the requirements established in policy section 462.6(e).

The audit shall be documented in the form of an internal Department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be filed and retained by PSD.

426.9 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies when there is a need to know, a right to know or legal obligation to provide the information.

The agency request for the ALPR data must be in writing and include:

- (a) The name of the agency.
- (b) The name of the person requesting.
- (c) The intended purpose of obtaining the information.

The request is should be reviewed and approved by the Chief of Police or the authorized designee before the request is fulfilled.

The Chief of Police will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The Kensington Police Department does not permit the sharing of ALPR data gathered by the KPPCSD or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

The Chief of Police will also consider the California Reproductive Privacy Act (Health and Safety Code § 123460 - § 123469) before approving the sharing of ALPR data for the purpose of investigating any person seeking to exercise their reproductive health care rights within California. The Kensington Police Department does not permit the sharing of ALPR data gathered by the District or its contractors/subcontractors for the purpose of prosecuting, investigating or initiating

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any legal proceeding against any person for the exercise of reproductive health care rights as defined by California law.

The approved request is retained on file. Requests for ALPR data by non-law enforcement or nonprosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Agencies outside of California that request to access ALPR data through Flock Safety Portal must agree to abide by all applicable Federal and California State Laws as well as Department policy.

- (a) The Department will send a data sharing request to the agency which must be completed and returned prior to the granting of access
- (b) The ALPR Administrator (Lieutenant or Chief of Police designee) will maintain these documents for the entirety of the shared data agreement
- (c) Access to KPD ALPR data can be stopped at anytime by authorized KPD Command Staff.

426.10 TRAINING

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code §1798.90.53).

No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.