

**FOCUS:
MUNICIPAL LAW**


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Catching criminals is a good thing. Preventing a crime from occurring in the first place is a really good thing. It is not a surprise that federal, state, and local governments dedicate sizable portions of their yearly budgets to train and operate sophisticated police departments to serve and protect its citizens. This is a core function of government. However, as technology continues to evolve, governments at all levels must ensure that the latest and greatest crime prevention and enforcement tools are not used against the very same people they are meant to protect. Enter the debate on the release of license plate reader (LPR) data for non-law enforcement purposes.

What are LPR Cameras?

An LPR is a camera that is typically attached to a pole or a police car that catalogs every license plate that it reads. Police departments may also maintain LPR cameras at certain locations within its jurisdiction. LPR cameras are used to, among other things, identify wanted persons, stolen vehicles, stolen plates, missing persons, vehicles wanted in connection with an Amber Alert, and local plates of interest. These cameras can provide police departments and other law enforcement agencies with critical information about when a vehicle entered or left a crime scene and enable police officers to identify a vehicle suspected to be used in the commission of a crime.

The use of LPR cameras across Nassau County is rising. The Old Westbury, Muttontown-Upper Brookville, City of Glen Cove, Old Brookville, Brookville, and Oyster Bay Cove Police Departments have all made sizable purchases of LPR cameras.¹ On January 6, 2024, members of the Nassau County Legislature's Rules Committee unanimously advanced a measure to the full body to install 20 license plate reader cameras in Jericho.²

LPR cameras, when used in connection with crime prevention and criminal investigations, serve a legitimate public purpose. But what if this ever-present law enforcement tool is deployed

Stay in Your Lane! Prevent Misuse of License Plate Reader Data

for matters completely unrelated to law-enforcement?

Can or should civil litigants be permitted to utilize LPR technology and its data to prove negligence or breach of contract cases? Should parents be permitted to access LPR data to track their child's movements? Can parties in divorce proceedings use LPR data to prove the existence of an alleged paramour at the marital residence? Is there a basis in law to request such information? How can police departments protect this data from being used for purposes unrelated to law enforcement?

Parties can use a variety of mechanisms to attempt to obtain LPR data. The most common methods are by submitting a FOIL request or by subpoena.

Submitting a FOIL Request

In its legislative declaration of Article 6 of the Public Officers Law (also known as the Freedom of Information Law), the New York State Legislature opined that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the government.³

While §§ 84 through 90 of the Freedom of Information Law provide the public with broad access to government records, disclosure is subject to certain exemptions. Some exemptions include records that are specifically exempted from disclosure by state or federal statute, records that if disclosed would constitute an unwarranted invasion of personal privacy, and records that are compiled for law enforcement purposes only to the extent that disclosure would interfere with law enforcement investigations or judicial proceedings, deprive a person of a right to a fair trial or impartial adjudication, identify a confidential source or disclose confidential information relating to a criminal investigation, or reveal criminal investigative techniques or procedures, except routine techniques and procedures.⁴

There is limited case law surrounding FOIL requests for LPR data. In *Matter of Lane v. Port Wash. Police Dist.*, the petitioner sought records identifying the number and location of LPR cameras, the rules promulgated for the cameras, and for the last five years, any alerts, emails,

or correspondence sent to other law enforcement agencies sharing information derived from the police department's cameras.⁵ The police department objected to the request and the petitioner filed suit. Noting that the subject police department had apparently no rules to govern the use of LPR cameras, the court found that the risk of indiscriminate use by the department to target law abiding citizens was high, and opined that the police department failed to prove that the law enforcement exemption applied to disclosure of the number and location of the cameras.

Serving a So-Ordered Subpoena

In a docketed case, parties may attempt to serve a so-ordered subpoena on a police department. Although generally the disclosure provisions of the CPLR should be liberally construed, the scope of permissible discovery is not unlimited and courts are invested with broad discretion to supervise discovery.⁶ Furthermore, confidential information in the care and custody of governmental entities may be barred from discovery pursuant to an entity's assertion of its public interest privilege.

The privilege includes confidential information communications between public officers, and to public officers, in the performance of their duties, where the public interest requires that such confidential communications or the sources should not be divulged.⁷ Determining "whether the privilege attaches in a particular setting is a fact-specific determination for a fact-discretion weighing court, operating in-camera if necessary. The public interest, and what adds up to sufficient potential harm to it, are necessarily and inherently flexible concepts."⁸

Public Policy Implications

LPR cameras are an important tool that police departments use to protect citizens. Granting access to LPR data for reasons totally unrelated to law enforcement, namely, to aid a party in private disputes, potentially compromises a police department's use of the information and makes available strategic, confidential information as to the methodology police departments used to protect the public.

While New York has not enacted specific legislation prohibiting the release of LPR data for non-law enforcement purposes, several states, including, but not limited to, California,⁹ Florida,¹⁰ Maine,¹¹ Arkansas,¹² Oklahoma,¹³ and

Tennessee¹⁴ have. The reason such states have prohibited the release of LPR data for non-law enforcement purposes is because the disclosure of police department LPR data to civil litigants, or other non-law enforcement requesting parties, essentially allows a crime fighting tool to be used to assist in civil litigation and invade personal privacy.

Disclosure of LPR data will allow civil litigants to use law enforcement tools to essentially surveil anyone who drives through a particular jurisdiction and analyze the data to effectively chart where an individual goes to eat, pray, or engage in recreation.

While a recorded "read" by a license plate reader is not an invasion of privacy, "the cumulative effect of many "reads" or bits of government (often police) collected information must be considered. This raw accumulated data can create a non-contextual "mosaic" which is essentially a high-resolution image of an individual, defined by his or her vehicle's randomly recorded movements and locations." See *Gannett Co., Inc. v. County of Monroe*.¹⁵

Enlisting police to engage in non-criminal disputes between neighbors, relatives, or even strangers may be contrary to the public good. Municipal attorneys must carefully evaluate any request for LPR data and the implications of the release thereof. ⚖️

1. <https://www.newsday.com/long-island/towns/license-plate-readers-nassau-villages-suzpzius5p>.
2. <https://www.newsday.com/long-island/politics/nassau-license-plate-readers-jewrnsnd>.
3. NY Pub Off § 84.
4. NY Pub Off § 87(2)(e).
5. 221 A.D.3d 698 (2d Dept. 2023).
6. 87 A.D.3d 1108 (2d Dept. 2011).
7. 93 N.Y.2d 1 (1999).
8. *Id.*
9. Calif. Veh. Code § 2413, Calif. Civil Code. §§ 1798.29 and 1798.90.5.
10. Fla. Stat. § 316.0777.
11. 29-A M.R.S.A. § 2117-A(2).
12. Ark. Code §§ 12-12-1801 to 12-12-1808.
13. Okla. Stat. §§ 47-4-606.1.
14. Tenn. Code §§ 55-10-302, 10-7-504(a).
15. 47 Misc. 898 (Sup. Ct. Monroe Cnty. 2015).



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