



June 4, 2014

The Honorable Faye O. Prichard  
Mayor, Town of Ashland  
Town Hall  
101 Thompson St.  
Ashland, VA 23005

The Honorable Dr. George F. Spagna  
Vice Mayor, Town of Ashland  
Town Hall  
101 Thompson St.  
Ashland, VA 23005

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Dear Mayor Prichard and Vice Mayor Spagna:

We write to congratulate you on your vote to protect the privacy of Ashland residents by rejecting the proposal by your police department to retain residents' license plate data acquired using automated license plate readers (ALPRs) for 24-hours. As you recognized, Virginians do not need to give up our liberty to secure our safety. Your decision reaffirms the basic American principle that important policy decisions affecting the rights and liberty of the people should be made in a transparent and open process that includes their voices. We hope that your decision to reclaim the people's voice in setting policies that guide law enforcement will serve as a model for good governance throughout the Commonwealth.

As you are aware, ALPRs are devices that can be mounted on police cars or stationary objects that automatically record every license plate that comes within their field of vision. Each ALPR is able to record thousands of license plates per minute. ALPRs can serve useful law enforcement purposes, such as aiding the search for stolen vehicles by rapidly checking the license plates it scans against the hot list to identify these vehicles or helping to find a vehicle identified in an Amber, Blue, or SeniorAlert. And, as long as law enforcement regularly purges the records not related to an ongoing investigation or identified in a warrant issued based on probable cause, the technology poses minimal threat to privacy.

Unfortunately, ALPRs can also be used to build a vast database of vehicle locations that may be queried to build profiles of where an individual goes, at what times, how often, and who else is in the vicinity. And, as we saw earlier this year,

numerous Northern Virginia law enforcement agencies are engaging in this broad surveillance<sup>1</sup> despite an Attorney General opinion to the contrary<sup>2</sup>.

Virginia's Government Data Collection and Dissemination Practices Act (the Data Act) limits the types of personal information that government agencies may collect, store, and distribute and requires that there be an established "need" for the data before it is collected.<sup>3</sup> In February 2013, then Attorney General Ken Cuccinelli's issued an opinion stating that the "passive" use of ALPRs to create massive data bases violates the Data Act.<sup>4</sup> This opinion led the Virginia State Police to purge its existing database of almost 8,000,000 license plate records, including records created by using ALPRs at political campaign events and rallies. But, as the *Washington Post* reported, many Northern Virginia law enforcement agencies have ignored the opinion and continue to collect and store this information.<sup>5</sup> In addition, these local law enforcement agencies, along with others in Virginia, D.C., and Maryland, share this information with other government agencies across jurisdictional lines.<sup>6</sup> By targeting everyone, this massive surveillance of Virginians not suspected of any criminal activity results in an unwarranted invasion of our privacy. These revelations of abuses in Northern Virginia make your decision to reign in the use of this technology all the more important.

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We also understand that the Ashland Police Department has purchased police body-mounted cameras. The use of these cameras can be a win, win. They can both protect law enforcement from false accusations of abuse and protect the public from police misconduct. But, their utility is dependent on having policies in place that govern their use.

For example, here are four policies that we believe should be in place **before** law enforcement deploys body-mounted cameras:

First, police wearing body mounted cameras should inform people they are interacting with that they are being recorded, including when entering a home or office. And, residents should be able to request that the camera be turned off when entering their home, unless it is an emergency situation or a raid.

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<sup>1</sup> Tom Jackman, *Despite Cuccinelli's advice, N.Va. police still maintaining databases of license plates*, WASH POST, Jan. 16, 2014, available at [http://www.washingtonpost.com/local/despite-cuccinellis-advice-nva-police-still-maintaining-databases-of-license-plates/2014/01/16/055ec09a-7e38-11e3-9556-4a4bf7bcbd84\\_story.html](http://www.washingtonpost.com/local/despite-cuccinellis-advice-nva-police-still-maintaining-databases-of-license-plates/2014/01/16/055ec09a-7e38-11e3-9556-4a4bf7bcbd84_story.html).

<sup>2</sup> Op. Va. Att'y Gen. No. 12-073 (Feb. 13, 2013) available at <http://ag.virginia.gov/Opinions%20and%20Legal%20Resources/OPINIONS/2013opns/12-073%20Flaherty.pdf>.

<sup>3</sup> VA. CODE ANN. §§ 2.2-3800 – 2.2-3809 (2011).

<sup>4</sup> Op. Va. Att'y Gen. No. 12-073 (Feb. 13, 2013) available at <http://ag.virginia.gov/Opinions%20and%20Legal%20Resources/OPINIONS/2013opns/12-073%20Flaherty.pdf>.

<sup>5</sup> Jackman, *supra* note 1.

<sup>6</sup> *Id.*

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Second, the guidelines should be clear about when the cameras are to be turned on, and officers should not be given discretion to turn them on and off at will. A quote from Sgt. Scott Menzies in the *Herald Progress* Story on May 29<sup>th</sup> suggests that officers in Ashland may currently have such discretion vis-à-vis their in-car cameras.<sup>7</sup> He was quoted as saying, “[w]e would use this in traffic stops, just as we would use our in-car cameras now, for suspicious situations, field interviews and anytime an officer feels like it might be important for evidence purposes.”<sup>8</sup> We hope you will look into the policies being applied to the deployment of the lapel cameras, as well as policies currently governing the use of in-car cameras, to ensure that individual officers do not have the discretion to decide when the cameras are on and when they are off.

Third, the guidelines should be clear about what happens to the video from the cameras, where it is stored, how long it is stored, and who has access to it. Guidelines should balance the rights of the public to see public records against the privacy rights of individuals who may have been recorded. Individuals who are recorded should have access to recording(s) of them. The guidelines should also make sure that no other disclosures of personally identifiable images of people are made without the individual’s consent and that personally identifiable images of any person filmed are redacted before the videos are made public. All videos with appropriate redactions should be available to the public unless they are related to an ongoing criminal investigation.

Fourth, the law enforcement agency and public officials outside the agency should review the videos on an ongoing basis to determine whether the videos provide information that suggests that police are acting inappropriately or exhibiting bias. Action should be taken to address issues where they are identified, subject to proper procedural protections for the officers involved.

A more comprehensive description can be found [here](#) of the policies we believe should be in place to make the use of body-mounted cameras truly a win, win.<sup>9</sup> We hope that the residents of Ashland will be able to weigh in on appropriate practices and that you will decide what guidelines should apply to the use of both vehicle-mounted and lapel cameras before the Ashland Police Department deploys the new body-mounted cameras.

Automatic license plate readers and police body-mounted cameras, indeed many surveillance devices, can be used to keep us safe. But, as we’ve seen at the federal

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<sup>7</sup> *Town council rejects retaining license plate data*, HERALD PROGRESS, May 29, 2014, available at <http://www.herald-progress.com/?p=16074>.

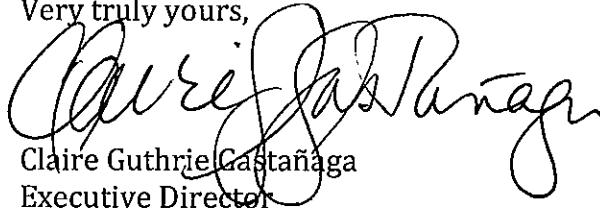
<sup>8</sup> *Id.*

<sup>9</sup> Jay Stanley, American Civil Liberties Union, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All* (Oct. 9, 2013), available at <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>.

level with NSA surveillance of innocent Americans, and at the local level with the decision of many Northern Virginia law enforcement agencies to track and store data about the movements of their law-abiding residents, technology can also be abused. We commend your decision to make these important public policy decisions in an open and transparent process that includes the voices of the people.

Thank you for your time, and please don't hesitate to contact me if you would like to discuss our recommendations or any other civil liberties matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Claire Guthrie Castañaga". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire Guthrie Castañaga  
Executive Director

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cc: Members of the Town of Ashland Town Council