

MNCOGI COMMENTS ON MINNEAPOLIS APPLICATION TO CLASSIFY DATA ABOUT USE OF AUTOMATED LICENSE PLATE READERS AS NOT PUBLIC

**GENERAL**

**1. The Commissioner should only act if the legislature is not available to act.**

This application was received by the Department of Administration (Admin.) on December 18, 2012. The 2013 Legislature begins meeting within a month after that date. Given the close proximity of the commencement of the legislative session, this application should have been rejected by the Commissioner and returned to the City of Minneapolis.

The Commissioner's authority to issue temporary classifications is based in the fact that the legislature is not always in session and during those times there may be an extreme need for classifying data as not public. In those situations, the Commissioner's approval of an application will temporarily supersede the basic premise of Chapter 13 that only the legislature should classify data as not public. In this case, the Commissioner's approval of this application could keep all of the data described in the application not public until August 1, 2014. The only way the legislature could undo that result would be to take legislative action to clearly undo the Commissioner's decision.

The extreme need for the Commissioner to act is not present in a situation where the legislature is about to go into session and bills can be introduced to address the classification issue. This would include the opportunity for the legislature to act quickly if they deemed the underlying issues to be serious.

**2. Custom of long standing.**

Also, it has long been the custom and practice of Admin. to return applications such as this one to the applicant if the legislative session is imminent or in process. In this case, the session was about to commence and therefore, based on that custom and practice, the application should have been returned.

**3. No emergency.**

Temporary classifications of data under Section 13.06 were once called "emergency classifications". The idea that classifications should only be done by the Commissioner in emergencies continues to underlie why the statutory section exists.

License plate readers have been in use in Minneapolis, and elsewhere for quite some time, perhaps even years. However, the City felt no need to address the privacy issues presented by the use of these devices, and to deal with all of the alleged potential negative affects of their use as outlined in their application until the City received negative publicity about the implementation and use of these devices over the last several

months. The City would now have us believe that after all those months in which they disregarded all of the alleged bad affects of the use of these devices that suddenly there is a compelling need to classify data associated with that use as not public. The Commissioner should not, by acting positively on this application, reward that kind of behavior on the part of the City. Negative publicity, which we believe, is the real reason for this application should not be the basis for approval of the application.

**4. The Commissioner should use his authority to reject this application.**

This history of the license plate data issue in Minneapolis and elsewhere should also cause the Commissioner to reject this application based on his authority under Section 13.06 to reject applications that are submitted for purposes not consistent with that section. All of the alleged adverse affects of the implementation and use of license plate readers that the City has described in its application have existed from the very first day the readers went into operation. The City had every opportunity to deal with those affects through legislation or an application when operation began.

By rejecting this application, the Commissioner can send a powerful message that government agencies need to think through and deal with the data practices implications of this kind of technology before putting it to use.

**5. The Commissioner should reject this application because of the limits of his authority.**

The legislature has begun discussing this issue. Based on discussions with various legislators and published comments by them, it appears that a probable legislative fix to the issues associated license plate readers will include imposing a limited retention on how long these data may be maintained. Although the legislature can prescribe that kind of fix, the Commissioner has no such authority to do so under Chapter 13.

The Commissioner can only reject, approve or disapprove an application. If he were to approve the application, all of the data associated with his approval could, under the provisions of the Records Management Act, be kept forever. Approval of this application may be given statewide effect. Each jurisdiction would then be able to decide how long it would keep these kinds data.

Given the Commissioner's limited authority, he should disapprove or reject this application and let the legislature deal with the full contours and all of the issues associated with the collection use of this data.

**6. MnCOGI believes these data ought to be public.**

MnCOGI believes these data ought to remain public for two primary reasons. First, as been demonstrated by the news stories about use of these devices, the public nature of the data allows all of us to see how these devices are being used and, potentially, whether their use is being abused. Recent stories detailing wide abuse of motor vehicle and driver

license data demonstrate clearly that abuse of personal data by government and its employees may occur. Many of those stories have only been able to detail abuse because otherwise private data has been forced into the public arena by lawsuits and security breach notices. Keeping license plate reader data public will allow the public to see how law enforcement is using this data and whether those uses are appropriate.

Second, MnCOGI strongly believes that government should only be able to justify making data not public if government is able to clearly demonstrate a compelling government interest in making the data not public. In its application, the City provides a long list of possible adverse affects. However, they are all conjectural in nature. The City has not provided any documentation that even one of the alleged adverse affects has actually occurred.

In addition, the City has not explained, as it should, why it did not deal with those effects by coming to the legislature and making a case for a not public classification before it got into the business of collecting and creating the license plate data. How can the City justify a compelling government interest in December, 2012 when it appears not to have seen any compelling interest when it began using these devices several months or years ago.

#### **7. How will these data be classified?**

The application prepared by the City of Minneapolis seeks a classification of "not public" for the license plate reader data. "Not public" is actually not a classification of data under the Data Practices Act. "Not public" is a defined term that allows reference to all of the possible classifications of data under the Act including private, confidential, not public and protected not public. The Commissioner should not approve an application which does not specify the specific classification of the data to be covered by any approval by the Commissioner. Previous versions of applications for temporary classification used by Admin. always specified the specific classification sought by the applicant.

Use of the term "not public" raises the possibility that these data could be classified as confidential or protected nonpublic thereby depriving even data subject of access to this data.

### **SPECIFIC ISSUES WITH THIS APPLICATION**

MnCOGI believes there are a number of specific issues with this application that should lead to the Commissioner either disapproving or rejecting the application.

#### **1. Data Sharing.**

The application states that no data sharing is required of the data described in the application. However, in a later section, the application details a number of entities and systems with which the data are shared. These include entities such as the Canadian

Police Information Center. Sharing data with Canada clearly raises an issue of legal authority to do so under Chapter 13.

The application references an entity or system called BOLO that appears to be an acronym for "Be on the lookout". However the application does describe what BOLO is or does and why data is shared with it. Some months ago, a news story stated that some police agencies use a system to keep track of political figures and others. MnCOGI believes that the Commissioner should not be classifying as not public data that would feed any such system. Clearly, he should not classify data unless he learns what the "BOLO" system is and what it does.

## **2. Description of data to be classified.**

The data to be classified include location of the cameras. To actually function, it would appear that these devices are placed in locations, either fixed or on the backs of squad cars, where they are clearly identifiable and visible to the public. It defies common sense to classify location data as not public when the location is clearly evident. Approving this datum would also allow government to refuse to answer any questions as to whether or not a given piece of equipment at some location is or is not a license plate reader.

If a police agency decided to concentrate the location or use of these devices only in neighborhoods with significant poor or minority populations, classification of the device location and use data would defeat any attempts by the public to establish a discriminatory impact of their use.

The application seeks to classify as not public the "device number" of the reader itself. There is nothing in the application that would support classifying this fact as not public.

The application seeks to classify as not public the number of times a given vehicle was captured by the devices. This number, without any other reference, has no connection to any of the adverse affects argued by applicant. The classification of his number would prevent the public from learning whether or not certain areas and populations are being targeted for this kind of surveillance.

The applicant should have to explain how it defines the terms "violent gang and terrorist organizations" in describing how it uses this data. In the last several years, there have been frequent media reports describing how law enforcement has improperly collected and used information on members of alleged gang and "terrorist" organizations. The Commissioner should clearly understand the effect of approving this application on those types of activities. He cannot do so if those terms are not defined.

## **3. Applicant's basic argument is flawed for at least two reasons.**

a. The applicant is primarily arguing that the license plate reader ought to be classified as not public because the public is or may be using these data. (To reiterate, the applicant did not seem to be concerned about public use until that use generated publicity.) This

argument runs counter to the basic presumption of the Data Practices Act that all government data are public and can be used by anyone for any purpose.

There are literally thousands of elements and types of government data that are accessed and used by the public every day. These include things such as property tax information that some people may find sensitive or similar to license plate reader data. The mere fact that the public actually accesses and uses public government data is not a compelling reason to classify the data as not public.

b. The application makes it clear that the name of the owner of the vehicle scanned by the reader is not part of the data generated by the reader. In order for any of the adverse affects described by the application to occur, someone with evil intent or motive must get access to data held by the state Department of Public Safety in order to connect the vehicle to its current recorded owner. Release of the license plate reader data itself does not lead to any of the adverse affects described in the application,. Therefore, the compelling and negative workability arguments made by the applicant must fail.

#### **4. The Commissioner cannot understand the statewide effect of any approval.**

The Commissioner has determined to give statewide effect to his decision if he chooses to approve this application. The applicant did not request that sort of effect. To the best of our knowledge, the Commissioner does not know where and how many license plate readers are in use in Minnesota. He does not know if readers are used by organizations outside of law enforcement agencies. He should have full knowledge of the effect of his decision before approving this application.