



April 16, 2012

Carl Messineo
Law Offices Partnership for Civil Justice Fund
617 Florida Avenue, NW
Washington, DC 20001

Dear Mr. Messineo:

The Illinois Tollway is in receipt of your FOIA request for the below referenced materials regarding the Illinois Tollway's use of automated license plate recognition devices, license plate readers, mobile license plate recognition technology; video or cameras that link to a license plate readers system(s), or scanners (hereinafter collectively referred to as "tag readers"), and the collection, use, storage, and retention of retrieved data. Additionally, the Illinois Tollway is in receipt of your refusal to clarify the request and to narrow the scope of your request.

Please note that the Illinois Tollway has reached out to you by both phone and email to allow you the opportunity to clarify your request and/or narrow the scope of the request as required in Section 3(g) of the FOIA. As you not only refused to clarify and/or narrow the scope of your request, but also failed to respond to our phone calls, the Tollway will be forced to interpret your requests as we understand them. Below are your requests and our corresponding responses:

1. Deployment/Operation

All criteria, statements of policy and interpretations of policy, acts and rules, operating procedures, and/or protocols, and all administrative staff manuals and instruction to staff regarding the authorization to deploy and/or operation of tag readers.

RESPONSE: The Illinois Tollway does not have any documents or records responsive to this request.

For example, this request encompasses any and all materials addressing the following:

- a. Standards and qualifications for determining whether to authorize deployment and/or operate tag readers;

RESPONSE: This request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records responsive to this request.

- b. Standards and qualifications for determining where to deploy tag readers, including where to erect stationary or fixed tag readers;

RESPONSE: This request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records responsive to this request.

- c. Standard and qualifications for determining whether to remove or de-authorize the operation of tag readers at any fixed location.

RESPONSE: This request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records responsive to this request.

2. Retention Storage and Use of Data

All criteria, statements of policy and interpretations of policy, acts and rules, operating procedures, and/or protocols, and all administrative staff manuals and instructions to staff regarding the storage, retention, use, maintenance and/or dissemination of data collected through operation of tag readers, or that mandate or implement any destruction routines, retention schedules and/or protocols regarding data collected as a result of the operation of tag readers.

RESPONSE: This request is unclear in parts and, based upon our reading, the Illinois Tollway responds to your specific requests as outlined below. However, generally, your request for computer data information is denied because disclosure would compromise the Illinois Tollway's computer security and the integrity of its system. The FOIA provides that records or documents that relate to "administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section." 5 ILCS 140/7(1)(o). This exemption applies, in whole or in part, to paragraphs a, b, c, d and j. Additionally, the information requested may compromise the privacy of the information and thus is exempt under Section 7(1)(u) "information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act." 5 ILCS 140/7(1)(u).

For example, this request encompasses any and all materials addressing the following:

- a. Information describing what fields of data are collected;

RESPONSE: This is a request for a description, not a request for a record or a document. In addition, in reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the

Illinois Tollway does not have any documents or records types you have described that are responsive to this request.

- a) Whether computer storage of data is comprehensive; i.e., for all vehicles scanned, or selective (e.g., only for vehicles observed to be then in violation of the law);

RESPONSE: This request is in the form of a question and is not a request for a record or a document. In reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records types you described that are responsive to this request.

- b) The selective of audit trails to record and document access, use or dissemination of license plate reader data;

RESPONSE: This request is in the form of a request for information and is not a request for a record or a document. In reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records types you described that are responsive to this request. In addition, to the extent that the information requested represents functions for audit of transactions, those records are routinely utilized for employee audits and therefore would be exempt from disclosure under section 7(1)(m), “communication between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.” 5 ILCS 140/7(1)(m)

- c) Standards, qualification and criteria for determining whether and when to retain or dispose of or destroy information;

RESPONSE: The Illinois Tollway retains records pursuant to the State Records Act, 5 ILCS 160/1 *et seq.* and its record retention policy and schedule is based on such. The Illinois Tollway’s record retention schedule is attached.

- d) Method(s) of retention and disposal or destruction of information;

RESPONSE: In reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records types you described that are responsive to this request. See State Records Act above.

- e) Location(s) or Repository(ies) of information retained, including databases;

RESPONSE: In reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or record types that you have described that are responsive to this request. There are no specific documents specifying where these types of record/documents are to be stored.

- f) Duration of retention;

RESPONSE: Enclosed with this letter is a copy of the record retention document.

- g) Distribution and/or dissemination of information to other entities;

RESPONSE: Enclosed with this letter is a copy of the Tollway Privacy Policy, Toll Highway Act and Interagency Group Agreement.

- h) Privacy policies or guidelines regarding or encompassing retention, use or access to license plate reader data; and

RESPONSE: Enclosed with this letter is a copy of the Tollway Retention Policy and Tollway Privacy Policy, see above answers.

- i) Identification of the databases or data sources that comprise any “hot list” against which scanned plates are cross-checked.

RESPONSE: In reading this in conjunction with the above general document request under 2, this request is unclear and, based upon our reading, the Illinois Tollway does not have any documents or records types you described that are responsive to this request.

3. Stationary Locations

- Documents identifying the fixed locations of stationary tag readers. This request includes any tag readers that have been mounted on either stationary objects or on mobile objects, including but not limited to open tolling locations. This request is limited to only documents identifying locations of any and all stationary tag readers. It does not include every document that may reference tag readers.

RESPONSE: Enclosed with this letter is a copy of the responsive document. However, your categorical request for the location of each tag reader is denied as

being unduly burdensome. The Illinois has a large number of tolling plazas and lanes and the tag readers were installed as a part of each contract constructing, re-constructing and up-dating each toll plaza facility. As such, the Illinois Tollway would have to search hundreds of extremely large plans, specification and addendums to locate the location of the readers. The map provided shows where each plaza is, and each lane in a plaza has a tag reader. To require the Illinois Tollway to search and produce detailed plans for each toll plaza to show where each tag reader is located would require numerous hours of searching and would not provide any substantial gain over what has been disclosed, namely the location of the plaza and that each lane has a tag reader. Therefore, the statutory requirements for determining that this request is unduly burdensome appears to be satisfied, especially since you failed to narrow the request or even respond to the agency's request for clarification/narrowing. "Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body." 5 ILCS 140/3(g).

4. Statistics, Reports, or Studies

- Documents identifying and/or containing any statistics, reports, or studies regarding the efficiency and/or results of the operation of tag readers in Illinois.

RESPONSE: Attached is the only study the Illinois Tollway has in its possession. Proprietary information has been redacted. The report discloses confidential trade secrets that would place the vendor in a competitive disadvantage. "Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested." 5 ILCS 140/7(1)(g).

5. Terms of Access by Others

- Documents reflecting Memoranda of Understanding or other agreements or any terms and conditions by which non-Tollway entities may access license plate reader data (including municipal and/or state law enforcement, federal law enforcement, non-governmental agencies, non-polices department municipal agencies, private security or other corporations, or other groups or persons.)

RESPONSE: No responsive documents are available for your request.

Please note that Joelle McGinnis, Freedom of Information Officer, was responsible for the denials referenced above. You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your request for review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Respectfully,

Joelle McGinnis
Freedom of Information Officer