

May 16, 2022

Via electronic email

Deputy Bureau Chief Joshua Jones  
PAC  
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--- via email ---

Dear Deputy Bureau Chief Jones,

Re: Request for Review – 2022 PAC 71393

**Misrepresentation in DeKalb Chief Byrd's Affidavit**

**The general public will not be able to identify their undisclosed locations**

In Chief Byrd's affidavit, he states:

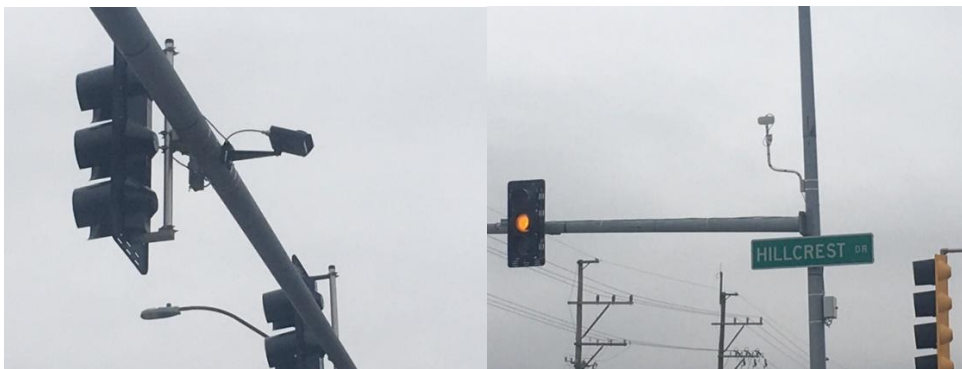
Due to the nature, size, configuration, and installation of the LPR cameras, it is reasonably expected that the general public will not be able to identify their undisclosed locations. For example, I had difficulty visually identifying the City's LPR cameras, even though I knew what the cameras looked like and where they were located.

I didn't find them hard to locate. I took some photographs to illustrate how easy the cameras are to spot. Unlike the chief, I have no police training on how to observe.

The image below is an LPR camera on a pole across the street from the Kishwaukee Country Club on Illinois Rt 23 (Sycamore Road) in DeKalb. The camera looks like a radar detector. The thing at the top (not in the middle) is a transmitter or something similar for the camera. It makes locating the cameras very easy.



Here are two photographs from the intersection of Hillcrest and Annie Glidden roads. The photograph on the left is the camera on a street light pole. The camera is located in the middle of the pole to capture both lanes of traffic. The photograph on the right shows the transmitter. Again, very easy to spot.



It is a misrepresentation to say that a reasonable person could not spot the LPR cameras, much less a person like the chief with police training.

As a general observation, I don't see how the cameras could be vandalized. Chief Byrd states in his affidavit that "third, individuals may be able to disable the LPR cameras or commit acts of vandalism which could impair the LPR's effectiveness." Two of the cameras are located high up a street pole alongside one of the busiest roads in DeKalb. The other ten cameras are in the middle of a lane or two lanes high up a traffic signal light pole that holds the traffic signal lights. I don't believe that many traffic

signal lights have been vandalized, so I don't see how the LPR cameras can be disabled or vandalized either.

### **The City's LPR cameras are installed on various undisclosed fixed locations throughout the City**

In Chief Byrd's affidavit, he states:

The City's LPR cameras are installed on various undisclosed fixed locations throughout the City  
....

The city shared the locations of six of the twelve cameras in Resolution 2021-093<sup>1</sup>. Attached is the file. In it, it says four LPR cameras will be installed at the intersection of Hillcrest and Annie Glidden Roads (the cameras are installed) and two LPR cameras at the intersection of Lucinda Ave and Annie Glidden Road (the cameras are installed to capture north and south traffic only).

### **The LPR cameras must be installed at certain targeted high-crime locations**

In Chief Byrd's affidavit, he states:

... which are strategically chosen by the City's Police Department to identify, prevent, or respond to potential attacks upon the City's population or systems, facilities, or installations. Due to the limited number of LPR cameras, the LPR cameras must be installed at certain targeted high-crime locations to most effectively identify, prevent, or respond to potential attacks upon the City's population or systems, facilities, or installations.

There are a number of incorrect assertions in the chief's statement. Are the cameras installed in high-crime areas?

Here is a screenshot from spotcrime.com. The location of Hillcrest Road and Annie Glidden Road is in a high-crime area. Lucinda and Annie Glidden is not a high-crime area. First Street and Hillcrest Road (4 LPR cameras) is not a high-crime area. The two cameras located on Sycamore road by the entrance of Kishwaukee County Club is not a high-crime area.

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<sup>1</sup> Page 5 in 7 Res 2021-093.pdf



resist “profiling” or scanning of drivers who are simply traveling through City streets for lawful work or pleasure. (Emphasis added.)

From the minutes of the February 1, 2022, City Of DeKalb Human Relations Commission meeting:

This item was moved up in the agenda. Chief Byrd shared that delivery of the License Plate Readers (LPRs) had been delayed by supply chain issues being seen nationwide, but he hoped installation would be underway at the end of the month.

Chief Byrd clarified for what purposes the LPRs will be used. He said there is no facial recognition technology in the devices, and that **they will only be used for official law enforcement investigations, including outstanding warrants, missing persons, and people and vehicles wanted in connection to a specific investigation.**

Chief Byrd described the operation of the system. The cameras read license plates, take photos of vehicles and recognize taillight configurations. Dispatchers are alerted when there is a match to a wanted vehicle, and officers are told to be on the look out for that vehicle. **Chief Byrd said the LPRs will not be used for moving, red light or speeding violations.**

Chair Gastiger said the HRC is concerned about the written policy that will guide the Police Department’s use of the LPRs. Chief Byrd said a policy is being drafted using existing policies from other jurisdictions, and there will be open access to the policy when it is completed.

Chair Gastiger said the technology will be beneficial, but people are still apprehensive. Chief Byrd reassured LPRs will not impact those who have not committed crimes. He said they will help solve crimes that officers do not see and can become a deterrent to crime.

Chief Byrd explained the policy will include definitions, data entry and the process for dispatchers when they receive an alert. Chair Gastiger said he would like the HRC to review the completed policy.

Mark Charvat, a member of the public, said there are benefits to LPRs if they are used properly but noted a written policy is not yet in place. He asked if other towns’ policies were being reviewed, who will have access to the LPR data, can it be used to track people and how long will it be stored. He also said he hoped the HRC and public will be able to see the policy before LCRs are in use.

Chief Byrd responded that policies from the Illinois State Police, Addison and Chicago have been reviewed. He said the data in the system is law-enforcement sensitive, such as LEADS and NCIC data, that cannot be shared with those outside law enforcement, and those who do face termination. He explained stolen vehicle information is removed upon arrest and people wanted on warrants are removed when arrested. He said many other departments keep data collected by the LPRs for 90 days, and it is still being considered how long the DeKalb Police Department will keep its data.

Mr. Gilbert asked if the databases used by the LPR system are statewide or national. Chief Byrd said every plate read goes through LEADS, the Illinois database, and NCIC, which is national. Mr.

Gilbert asked if the LPRs can distinguish between people since the person driving a vehicle in the system might not be the person wanted. Chief Byrd said it will not be known if the wanted person is driving until a traffic stop is made.

The LPR cameras will only be used for official law enforcement investigations.

Public Act 93-0422 (HB0954 *93rd General Assembly*) modified both FOIA and OMA. The public act added section 7(1)(II) (which is now 7(1)(v)) to FOIA and added the exception in OMA to talk about security arrangements for the public in closed sessions (modified section 2(c)(8) by adding “the public,”). I reviewed all the agendas for the meetings by the Dekalb City Council from 5/10/2021 thru 4/25/2022. Chief Bryd’s affidavit was submitted on May 3 to you, so if the city council discussed security arrangements by using LPR cameras, it would have been during this period. Also, the mayor and three council members were sworn into office on May 10, 2021. There has been no closed session using 5 ILCS 120/2(c)(8) – hence, no discussion of security procedures, etc.

Public Act 93-0422 was passed after 9/11. It was to address how to protect security arrangements for protecting the public against terrorist attacks against the community (public). Mr. Rose is trying to say that community means a single member from being robbed. Rather, it is meant to protect critical infrastructure and high-value targets from terrorist attacks. Here is the transcript from the 5/15/2003 Senate session regarding HB 954:

ACTING SECRETARY HARRY:

House Bill 954.

(Secretary reads title of bill) 3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR WELCH)

Senator Trotter.

SENATOR TROTTER:

Thank you very much, Mr. President, Members of the Senate. What we have in -- in Senate {sic} Bill 954, it amends the Open Meetings Act. It allows closed meetings to be held by public bodies, such as our utilities, regarding security procedures and the use of personnel and equipment to respond to an actual threat and potential danger to be closed. It also exempts specific items from inspection and copying such as the vulnerability and assets -- assessments, technical construction documents, for security reasons.

PRESIDING OFFICER: (SENATOR WELCH)

Is there any discussion? Senator Roskam.

SENATOR ROSKAM:

To the bill, Mr. President. I rise in support of it. It passed unanimously out of the Executive Committee, and urge its passage.

PRESIDING OFFICER: (SENATOR WELCH)

The question is, shall House Bill 954 pass. All those in favor, vote Aye. Opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 Members voting Yes, no Member voted No, and no Member is recorded voting Present. House Bill 954, having received the required constitutional majority, is -- declared passed.

As the above explanation from Senator Trotter shows, section 7(1)(v) is not about a robbery.

Mr. Rose cited *Sun-Times v. Chicago Transit Authority*, 2021 IL App (1<sup>st</sup>) 192028 to support the city's denial of the LPR camera locations. Unlike the CTA's position that the cameras were protecting critical infrastructure from terrorist attacks, the City of DeKalb provides no such record. The record in *Sun-Times v. Chicago Transit Authority*, Id., ¶¶ 15 -17 states:

In her affidavit, Bevan averred that, due to security concerns, the CTA does not authorize the public release of video footage from CTA's rail facility cameras in the interior of its stations, including the platform area.

Fagel, who works for a national consortium that trains state and local emergency responders, averred that, in preparing his affidavit, he rode the CTA, viewed the surveillance features on the platforms, and met with the CTA's security department to discuss its surveillance camera network. He also viewed the video footage at issue in this case. Based on his expertise and additional research into terrorism on mass transit systems, Fagel stated that terrorist organizations, including al Qaeda and the Islamic State, were willing to target mass transit systems to achieve mass casualties. This included the strategy of derailing trains and planting bombs in locations with little or no surveillance, no security perimeters to penetrate, and few, if any, armed guards to respond. Fagel stated that, while surveillance cameras "have some deterrent value when it comes to preventing terrorist attacks" on mass transit systems, they play "an important role" in "identify[ing] attackers" and in "responding to terrorist plots."

With respect to the CTA's rail platform cameras, Fagel stated that they were designed as a security measure to preserve critical infrastructure, and are used by CTA security personnel and local law enforcement to identify and respond to attacks. Fagel stated that releasing the videos would publicize currently unknown security information such as the cameras' individual and collective fields of view and blind spots. He also stated that public disclosure of this information "would minimize or bypass the benefits provided by the surveillance cameras" by enabling potential attackers "to evade these security devices when targeting passengers, planning attacks, or evading capture by law enforcement."

The court stated that:

Our *de novo* review of the record indicates that the CTA met that burden. Section 7(1)(v) did not require the CTA to prove with certainty that the disclosure of information regarding the cameras' blind spots would actually jeopardize its security measures. Rather, all that the CTA had to show was that it reasonably estimated that making this information public could risk making its security measures less effective.

The parties do not dispute that the CTA's facilities are a part of the state's critical transportation infrastructure and their destruction or contamination would constitute a clear and present danger to the health or safety of the riding public. Fagel, the CTA's homeland security expert, cited in his affidavit examples of terrorist attacks on mass transit systems, all of which resulted in casualties within the community attacked. Specifically, Fagel cited (1) the March 11, 2004, train bombing in Madrid, Spain, resulting in 191 fatalities and over 1500 injuries; (2) the July 7, 2005, train bombing in London, United Kingdom, resulting in 39 fatalities and 1000 injuries; (3) the 2010 Metro bombings in Moscow, Russia, resulting in 40 fatalities and 102 injuries; and (4) the March 22, 2016, bombings at the Maalbeek metro station in Brussels, Belgium, resulting in 16 fatalities and more than 100 injuries.

Although the Sun-Times' experts asserted that there was no evidence that a mass transit system's video surveillance ever prevented any terrorist plot or any kind of assault or attack, that was not the CTA's burden under section 7(1)(v), which also applies to security measures designed to identify or respond to potential attacks. Moreover, the plain language of section 7(1)(v) refers to "potential attacks," not actual attacks.

The CTA showed that the surveillance camera network inside its rail stations was "designed to identify, prevent, or respond to potential attacks" on its transit facilities. Specifically, the CTA explained that it began installing surveillance cameras inside its rail stations in 2002, in the aftermath of the September 11, 2001, terrorist attacks. The project was funded in part by the Department of Homeland Security through a grant program that was set up to help protect the public and the nation's critical transportation infrastructure against acts of terrorism and other large-scale events. The CTA also explained that the surveillance cameras inside its rail stations performed the dual functions of (1) recording video that can be retrieved on demand and shared with law enforcement authorities to investigate a crime and (2) providing live feeds to the CTA's security department and local law enforcement, which can be used to direct rescue personnel and provide real-time intelligence to responding law enforcement personnel.

The CTA sufficiently demonstrated that disclosure of its surveillance camera footage from the rail platform could reasonably be expected to jeopardize the effectiveness of its security measures. The CTA's expert, Fagel, who trains emergency responders, visited the CTA stations, viewed the surveillance features on the platforms, and reviewed the videos at issue in this case. He averred that the videos contained security information that was not currently public. Specifically, the videos revealed the quality, resolution, field of view, and blind spots of the CTA's surveillance cameras, and that information could enable individuals to evade these security devices when targeting passengers, planning attacks, or evading capture by law enforcement. *Sun-Times v. Chicago Transit Authority*, Id., ¶¶ 45 – 49.

The city of DeKalb failed to provide any reasonable explanation for what infrastructure was being protected. Furthermore, there is no critical infrastructure or high-value targets in the areas in which the LPR cameras are located.

### **City of Decatur disclosure of the locations of its LPR cameras**

Unfortunately, the City of DeKalb did not take the opportunity to reach out to the City of Decatur to learn the reasons they decided to forgo 5 ILCS 140/7(1)(v). I believe the City of DeKalb would have learned that the some/all of the reasons I listed were the reasons that the City of Decatur decided to release the locations of its LPR cameras – 7(1)(v) is not for everyday crime, but it is meant for large scale attacks on the community (terrorist attacks). A simple email or phone call by the City of DeKalb would have saved time and cost to the PAC office and the City of DeKalb. Instead, the City of DeKalb decided to have its chief of the police sign an affidavit that is not consistent with information provided to the public during public meetings.

### **Requested Remedy**

I would like the PAC to find that my request is not exempt and to order the city to release the location records.

Sincerely,

Mark Charvat