

RESOLUTION 11-01-2014

DIGEST

License Plate Recognition Data: Prohibition of Dissemination Other than to Law Enforcement
Adds Civil Code sections 1798.90.5 and 1798.90.51 to prohibit the retention, dissemination, or sale of automated license plate recognition system data and allows civil action for violations.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Civil Code sections 1798.90.5 and 1798.90.51 to prohibit the retention, dissemination, or sale of automated license plate recognition system data and allows civil action for violations. This resolution should be approved in principle because there is currently no regulation or limitation on the use of automated license plate recognition (“ALPR”) system data, and this resolution still allows for proper use of such data for law enforcement purposes.

The proponent states that currently, the only regulation of ALPR system data is for that obtained by the California Highway Patrol, under Vehicle Code section 2413, for purposes related to vehicle theft prevention and apprehension. Under that section, the Highway Patrol can maintain the data for no more than 60 days, unless it is being used for evidence or investigation of a felony.

This resolution adds Civil Code section 1798.90.5 to extend restrictions on the storage and dissemination of ALPR system data to all collectors of same, preclude the sale of such data at any time, and preclude the retention beyond sixty days except when it is being used as evidence or for investigation of a felony, or upon court order after notice, and that if kept more than a year, it shall only be available for law enforcement purposes, upon warrant or court order. The resolution also adds Civil Code section 1798.90.51 to provide for a civil action for consequential and incidental damages including costs and attorney fees.

The proponent states that this resolution is based on, but is more restrictive than, SB 893 (Hill) (2013-2014 Reg. Sess.), which was ordered to the inactive file. A salient feature of SB 893 was that, among other things, it would declare that ALPR system data is personal information under Civil Code section 1798.29, subdivision (g), which articulates the type of personal information that requires notification of the person in the event of a security breach, contains provisions that govern the gathering of such information, prohibits the retention of such information if the gatherer is a private entity, restricts the dissemination of such data by public agencies, and provides for civil damages of not less than \$2,500.00 plus punitive damages, attorney fees, and costs.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code sections 1798.90.5 and 1798.90.51, to read as follows:

§ 1798.90.5

(a) The following definitions shall apply for purposes of this title:

(1) “Automated license plate recognition system” or “ALPR system” means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(2) “Person” includes a law enforcement agency, government agency, private entity, or individual.

(b) A person that operates an ALPR system shall not sell ALPR data for any purpose.

(c) A person that operates an ALPR system shall not make ALPR data available to an agency that is not a law enforcement agency or an individual who is not a law enforcement officer. The data shall not be shared for any purpose other than providing for public safety, conducting criminal investigations, and ensuring compliance with the law.

(d) ALPR data shall not be retained for more than 60 days, except in circumstances when the data is being used as evidence or for investigation of a felony or such retention is ordered by a court for good cause after notice is given to the person whose data is sought to be retained.

(e) ALPR data that has been retained for more than one year may be accessed only for law enforcement purposes, pursuant to a warrant or other court order.

§ 1798.90.51.

An individual whose information is sold or disclosed in violation of this title may bring a civil action and shall be entitled to recover any and all consequential and incidental damages, including all costs and attorney’s fees.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Existing law authorizes the Department of the California Highway Patrol to retain license plate data captured by license plate recognition (LPR) technology, also referred to as an automated license plate recognition (ALPR) system, for not more than 60 days unless the data is being used as evidence or for the investigation of felonies. The department is prohibited from selling the data or from making the data available to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer. The Highway Patrol is allowed to use LPR data for the purpose of locating vehicles or persons reasonably suspected of being involved in the commission of a public offense, and the department is required to monitor the internal use of the data to prevent unauthorized use and to submit to the Legislature, as a part of the annual automobile theft report, information on the department’s LPR practices and usage. Current law only regulates ALPR data collected by the Department of the California Highway Patrol. Many other persons and agencies have the ability to collect license plate data. There are no effective restrictions on the use of the license plate data collected by local law enforcement and other governmental and private agencies.

The Solution: This resolution prohibits disclosure of ALPR data to any agency or individual other than a law enforcement agency or a law enforcement officer for a law enforcement purpose. It imposes restrictions similar to those now imposed on the Highway Patrol on persons and entities that operate an ALPR system by prohibiting the sale of ALPR data and prohibiting the sharing of the data, except with a law enforcement agency or officer. This resolution provides that ALPR data shall not be retained for more than 60 days unless it is being used as evidence or in a felony investigation or unless retention of the data is ordered by a court after the affected person is given notice. ALPR data retained for more than one year may be accessed only for law enforcement purposes, pursuant to a warrant or other court order. It authorizes an individual whose information is sold or disclosed in violation of these provisions to bring a civil action and would entitle the individual to recover any and all consequential and incidental damages, including all costs and attorney's fees.

LEGISLATIVE HISTORY

This resolution is based on, but is more restrictive than, SB 893, (Hill), presently pending in the legislature.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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