

Privacy Commissioner slams provincial surveillance program

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Documents suggest BC Solicitors General and the RCMP have been misleading the public for years.



PHOTO: PETE ROCKWELL

“I WANT THAT NON-HIT DATA. I make no bones about it. What would I do with it? I don’t know what I would do with it. But if I need it, I’d like to have it.”—Victoria Police Chief Jamie Graham

There’s nothing, in my view, to be alarmed about,” said Victoria Police Chief Jamie Graham. He was speaking at February’s Reboot Privacy and Security Conference in Victoria, to 200 privacy experts, academics, and government and corporate executives from around North America, including Alberta Privacy Commissioner Jill Clayton and BC Privacy Commissioner Elizabeth Denham.

Graham was on a panel with Christopher Parsons, a UVic PhD candidate in political science and surveillance studies. Parsons was presenting findings from research done by him, me and tech expert and civil rights advocate Kevin McArthur into Automatic Licence Plate Recognition (findings first revealed in February’s *FOCUS*, “Hidden Surveillance”).

Automatic Licence Plate Recognition (ALPR) involves equipping police cruisers with cameras and software that can read thousands of licence plates per hour and compare those plates to crime “hot lists.” The program operates as a joint effort between the RCMP, BC government and local BC police forces, ostensibly to primarily catch stolen vehicles, unlicensed drivers, and prohibited drivers.

However, in some other countries, ALPR captures data about all cars on the road, which helps create comprehensive intelligence profiles about innocent people’s behaviours. ALPR has then been used, for example, to identify individuals with “suspicious travel tendencies” and intercept citizens headed to protests. And during our research, our team found disturbing evidence that ALPR has already been used here, and is intended in the near future to again be used, for tracking and recording the movements of all citizens. (Retention of ALPR data about most innocent citizens has been temporarily suspended after the Office of the Privacy Commissioner of Canada expressed concerns.)

After eight months of digging, our research team had managed to ascertain this and some other facts about the ALPR program—though it only took minutes for Graham, at the conference, to recast or contradict many of them. We have documents indicating that Victoria police have purchased an ALPR system—but Graham said, “We borrow the Mounties’ car.” Sources and documents explained to us that updated hot lists are put into that cruiser daily, whereas Graham said weekly.

The BC Privacy Commissioner’s office told us they’d been “briefed a number of times” about the ALPR program, while Graham described that as ongoing discussions with the Commissioner’s office about ALPR data retention: “We’re in the middle of kind of working that out...”

Graham added that he wanted to see open discussions about ALPR between police and concerned citizens and “be up front, here’s what we want, here’s what we’re doing, let’s work together...” This, even though VicPD refused to provide anyone to talk with *Focus* about the ALPR program. To top it off, during the Q&A, I pointed to several such inconsistencies and asked a question, and Graham took the opportunity to describe my *Focus* article as “inaccurate” and engage in some back and forth with me. In reply to my question as to why he wanted to keep the ALPR data, he then said, “If what we’re trying to achieve and what we’re trying to search and locate require judicial authority, not your okay but judicial, we get it. If we don’t, we’ll axe it. Our standard is what the courts say, not by a marginal journalist.” This comment was met with a chorus of disapproving “ooo’s. Graham later said he was being “facetious.”

For the record, *Focus* has not been contacted by VicPD or the RCMP with corrections to any supposed inaccuracies in our article about ALPR. But we invite—indeed encourage—any corrections or clarifications that the authorities would like to provide.

“It’s symptomatic of the trend we’ve been finding, that we get documents and then we have an interview with someone and we hear a different story,” observes Parsons afterwards. “It’s deeply concerning that we can point to a document, and then we’re told the document is inaccurate, misleading or out of date. But a lot of times what people say is not official, either. It’s frustrating. It actually challenges a cornerstone of democracy: your right to know what your government is up to and why.”

In any case, Graham gave general reassurance to the conference audience. “Right now, there is a big fear that there’s this database where all the non-hit data [records of the movements of cars belonging to innocent people] ...is retained by police for some nefarious

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purpose," he said. "That is not true." Nevertheless, Graham then explained, like the RCMP has as well, that such a database is essentially what he wants to build. "I want that non-hit data. I make no bones about it. What would I do with it? I don't know what I would do with it. But if I need it, I'd like to have it."

"Chief Graham professes there is no nefarious purpose," comments McArthur, "but even the most basic documentation on the program, like the RCMP Privacy Impact Assessment, has been designated as 'particularly sensitive, Protected B', and pages were redacted [removed] when it was released to us."

And indeed, startling documents newly obtained by *Focus* show the Office of the Privacy Commissioner of Canada (OPC) has expressed even more serious concerns than we have, and also reveal that the BC government and RCMP seem to have been misleading the public since day one.

It began in November of 2006. A BC government press release announced the ALPR program, and stated "the federal privacy commissioner has reviewed the technology." Soon, the *Richmond Review*, *Burnaby News Leader*, *Chilliwack Progress* and other news outlets covered the story, reporting that, according to then-Solicitor General John Les, "the system was approved by the federal privacy commissioner." In mid-2009, when ALPR expanded to more BC police forces and RCMP detachments, the *Victoria Times Colonist* and *Nanaimo Daily News* reported that RCMP Sgt Warren Nelson told them, "Both federal and provincial privacy commissioners have approved the system[.]"

However, the BC Office of the Information and Privacy Commissioner has never officially reviewed the ALPR program. And confidential correspondence from the Office of the Privacy Commissioner of Canada to the RCMP, obtained through an access to information request, contradicts these government and RCMP claims.

The federal Privacy Commissioner first received a copy of a "Preliminary Privacy Impact Assessment" about the RCMP's ALPR program in 2005. However, the OPC was

struggling with staff shortages and never reviewed the document. In 2007, the OPC finally indicated readiness, and asked the RCMP for an up-to-date ALPR privacy impact assessment. But that updated version didn't arrive until two years later. The Office of the Privacy Commissioner of Canada finally conducted and issued its first review of the RCMP's ALPR program on July 15, 2009. But by that time, the ALPR program had already spread to numerous police forces and areas around BC, and the BC government and RCMP had been telling the public for three years that the federal Privacy Commissioner had both "reviewed" and "approved" the program. And as recently as December of 2011, RCMP officers leading the ALPR program were still making such claims.

"Permission was obtained from both the federal and provincial privacy commissioners to use [ALPR] as a pilot project [in 2006]," Sgt Nelson told *Focus*.

"Generally, [the Office of the Privacy Commissioner of Canada has] been very supportive," said RCMP Superintendent Mike Diack.

Yet in fact, the July 2009 review shows Steven Morgan, Director General of the Audit & Review Branch of the Office of the Privacy Commissioner of Canada, describing the RCMP's ALPR program as "a generalized and ubiquitous form of surveillance" with "real and substantial" privacy risks, and he repeatedly questions the entire program's very legality.

For example, the RCMP has long claimed licence plate numbers are not personal information, and so they need not abide by most privacy laws when tracking Canadians with ALPR. But Morgan writes, "Licence plate numbers and images of individuals captured by ALPR equipped cruisers would in fact qualify under the [Privacy] Act as personal information."

Morgan further expresses concern that the ALPR program has no clear lines of governance and accountability within the RCMP, and no plan to ensure program changes are legal prior to being implemented. This situation, he states, contravenes directives issued

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by Treasury Board (Treasury Board is responsible for ensuring federal government programs comply with Canadian privacy laws). “[W]e request that the RCMP explicitly identify those individuals responsible for ensuring compliance with applicable policies and legislation for the ALPR program,” writes Morgan.

Morgan also challenges the RCMP’s right to gather so much information about citizens for no clearly defined reasons, adding, “We therefore request that the RCMP provide explicit reference to legal authorities (both federal and provincial) under which the ALPR program is being conducted.”

Morgan questions how the RCMP will manage ALPR errors. The RCMP’s own studies show 8-10 percent of plates are misread. This could translate into thousands of false records daily from the Victoria area alone identifying people’s cars in places where they haven’t been. Yet these false records would still be stored automatically in RCMP databases. Citing subsection 6(2) of the *Privacy Act*, Morgan writes, “[W]e ask the RCMP to provide our office with details of the measures in place to ensure that records...are accurate.”

Morgan adds that the RCMP has not provided any procedures for people to access or correct information about themselves in the database, even though such access and correction procedures are requirements under privacy law.

And notable in light of the difficulties our research team has had obtaining information, Morgan describes “unease” in the Commissioner’s office “over the lack of RCMP communication to the public on this initiative,” and states, “The public has a right to know about the ALPR program and its purpose.”

If all this isn’t disturbing enough, the most startling comments emerge in relation to an aspect of the ALPR program which has never been publicly revealed before—aspects possibly discussed on the two redacted pages in the Privacy Impact Assessment obtained by *Focus*.

Morgan notes with concern that the RCMP’s Privacy Impact Assessment discusses “the collection of a series of additional data elements—race, ethnic origin, gender, blood type, financial transactions etc—which do not clearly fit within the purview of the ALPR program.”

What does collecting information on our blood types and financial transactions have to do with catching unlicensed drivers?

“Wow,” says BC Civil Liberties Association policy director Micheal Vonn, reading and

repeating these “data elements” aloud. “That is dazzling in terms of its overbreadth...Shocking on so many different levels, it’s hard to know where to begin.”

Is this evidence that police are planning to use the ALPR database as a foundation for a much more expansive repository of diverse intelligence information?

Vonn, a lawyer, is more circumspect: “This is further information to show that the program is not being used for what the public is being told.”

Where would they even be getting information about our blood types or financial transactions?

“What they’re planning to tap into, I can’t tell you,” says Vonn. But she points to the Liberals’ recent privacy legislation changes and notes, “I can tell you the government of British Columbia is actively attempting to create huge data linkages between all kinds of databases that exist within government programs.”

Vonn isn’t sure what agendas are driving the ALPR “overbreadth,” but points out that police, somewhat understandably, always want as much information as they can get their hands on. Consequently, she says, it’s government’s responsibility to ensure this “voracious appetite” is properly balanced against the privacy rights of law-abiding citizens.

“What the government is not doing in this case, it would appear, is appropriately regulating this, so that we can get the right balance,” says Vonn. “When we allow the police to decide what the balance is, it’s police one hundred, citizens zero. We would have barcodes on our foreheads.”

I provided the OPC report to federal Conservative Tony Clement, President of the Treasury Board, and Liberal Shirley Bond, BC Minister of Justice, and asked how they’d bring the ALPR program into compliance with the law. The Treasury Board stated their responsibility “does not include an enforcement role.” The BC Justice Ministry issued no reply.

The OPC’s Morgan summarizes concerns with an overarching recommendation: “To the extent that ALPR’s program leaders are unfamiliar with the requirements of the [*Privacy Act*]...we would strongly recommend that the RCMP engage its internal privacy experts and legal counsel in assessing the organization’s obligations for privacy protection.”

Vonn says that’s as close to declaring a program flatly illegal as the Privacy

Commissioner’s office would ever get in such a review. This is because the OPC must adjudicate complaints from the public about government programs, and so cannot appear prejudiced. “The advice of ‘please review’ is as strongly worded as you can get without prejudging the issue,” says Vonn. “Which is why it is very, very important to take the recommendations seriously, because they do indicate serious problems.”

However, following this rebuke, the RCMP and OPC held a conference call in January, 2010, which Morgan later summarized in a letter. “[W]e note that the RCMP asserts that...” begins Morgan, and what follows is a point-form list of virtually every major concern the OPC had expressed, framed in the form of a dismissal from the RCMP: The ALPR program does indeed have adequate safeguards and controls, asserts the RCMP. Everything is indeed being done “in accordance with applicable laws.” There is indeed proper governance and accountability in place. And so on.

“This is clearly the RCMP telling the federal Privacy Commissioner that it doesn’t want to do what it’s being requested to do,” interprets Vonn. “[The RCMP] have not implemented the changes. They have not addressed the concerns.”

Yet with that, the OPC parked its file. Their office has little authority to do anything more unless someone complains about the ALPR program. But how, asks Vonn, do we complain about a surveillance program about which we can learn almost nothing? So Parsons, McArthur and I have decided that precisely that question itself will be the starting point for a letter to our federal and provincial privacy commissioners.

Rob Wipond has been a freelance writer and investigative journalist for over two decades. Last year he was a finalist in the Western Magazine Awards for his *Focus* column, and previously won for business writing.

