

Summary

The use of stored vehicle registration data in investigations The Dutch Act on 'the Recording and storage of vehicle registration data by the police' during the first year

The Dutch Act on the 'Recording and storage of number plate data by the police' (*wet 'Vastleggen en bewaren kentekengegevens door de politie'*) entered into force on 1 January 2019. Based on the new Section 126jj of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*) (hereinafter referred to as '126jj'), the police may record and store the number plate data of passing vehicles using designated cameras for a period of 28 days. The data may be inspected during that period for the purpose of investigating a crime or apprehending persons at large. The Act contains an evaluation and sunset clause. The power will be in force for three years unless decided otherwise by Royal Decree. Based on the evaluation, it will be determined whether the power will be maintained. At the request of the Minister of Justice and Security, the evaluation will be conducted by the WODC (Research and Documentation Centre). This monitoring report describes various parties' experiences using the new power during the first year in which the Act entered into force. A further review of the findings will follow after the Act has been in operation for two years in an evaluation of legislation that will be published in 2021.

Question

The central research question in this monitoring report is as follows:

In what way are number plates that have been stored on the basis of the Dutch Act on the 'Recording and storage of vehicle registration data by the police' (*wet 'Vastleggen en bewaren kentekengegevens door de politie'*) used in criminal investigations and what role do the data play in criminal investigations?

The central research question will be answered on the basis of the following sub-questions:

- How many number plates are recorded on camera?
- How many requests for vehicle registration data are submitted?
- For what types of crimes are requests for vehicle registration data submitted?
- How does the implementation process of storing, requesting and providing vehicle registration numbers proceed in practice?
- To what extent were there bottlenecks in the implementation process?
- What kinds of measures were taken following the privacy impact assessment and how are they used in practice?
- To what extent are the measures taken adequate for preventing the risks identified and to what extent do residual risks occur?
- For what purposes are requests for vehicle registration data submitted?
- What role does the use of vehicle registration data play in criminal investigations?
- How does the new Act relate to the existing Automatic Number Plate Recognition (ANPR) powers and the related procedures?

Research methods

In this study, information was collected through interviews, a literature review and desk research. The literature review was primarily based on earlier studies on the use of automatic number plate recognition (ANPR) in the Netherlands.

All 126jj requests are stored in the Argus system, which also contains all ANPR data under 126jj. The data for the first year of the act were analysed and included in the report. For the purpose of this study, interviews were conducted with police officers and officers of the Netherlands Public Prosecution Service at national and regional level. A total of forty six officers were interviewed. To better understand the manner in which 126jj is used in investigations, ten cases were selected and further analysed. The course of the criminal investigation and the manner in which 126jj was used were examined in these cases.

Privacy Impact Assessment

A Privacy Impact Assessment (PIA) was conducted prior to the entry of the law to identify possible privacy risks of the bill. The PIA focuses on the different phases in the 126jj process and the actors involved. This were the following: (i) collecting 126jj data, (ii) storing 126jj data, (iii) consulting and using 126jj data, and (iv) destroying 126jj data. The PIA describes which risks can occur during the different phases. The PIA also includes measures that can reduce the likelihood and / or impact of these risks. This includes measures regarding the security of 126jj data, the storage period and rules with which the cameras must comply. The evaluation will further examine the effect of these measures in practice.

Earlier existing ANPR powers and applications

ANPR has been used for some time to compare the number plates of passing vehicles with number plates on a reference list. Reference lists contain the number plates of vehicles wanted by the police. Examples include stolen vehicles, individuals at large or individuals with an outstanding fine. Various reference lists are used, often linked to a specific theme, such as a list of stolen vehicles and a list of vehicles used for mobile banditry. Lists may also be linked to a specific criminal investigation. The reference lists are used at both national level and at unit or district level. The comparison of number plates of passing vehicles against reference lists is the most frequently used ANPR application.

Another ANPR application is the storage of all number plate data. The storage of all number plate data for a certain period, enables traffic flows to be studied or analysed at a later point in time. In principle it was not possible to store all number plate data temporarily before the introduction of 126jj. However, there are a number of exceptions. With the permission of the public prosecutor, number plates in a specific area and during a specific period may be recorded and analysed based on a clearly delineated investigation plan. A variation hereof is the use of profiles. This involves identifying actions that are consistent with committing specific offences based on number plate data.

Emergency logging is a special application in which all number plate data is stored in situations where there is a very serious, acute and real emergency and / or threat to

law and order. When not in use, the system used for emergency logging stores all the available number plate data for a period of three hours. When the emergency logging is used, the available three hours and all future number plate data is stored. Emergency logging is only used to eliminate a real acute threat. The data is subsequently destroyed. In principle, the data cannot be used for investigative purposes.

Lastly, there are various commercial parties who manage ANPR cameras for traffic management purposes. These cameras are mainly located alongside motorways but also on N-roads or back roads, depending on the traffic flows. The police can demand that these parties hand over the number plate data.

Camera plan

An overview of the ANPR cameras used for 126jj is published in the Government Gazette each year. The police draw up a separate written document stating their motivations for each camera used. In early 2020, the police had approximately 1,580 ANPR cameras at their disposal, of which 1,324 were labelled as 126jj cameras. Approximately 300 ANPR locations in total were designated as 126jj. A location often contains several lanes and directions of travel, and is therefore often equipped with multiple cameras. During the initial period, there were differences between the police units regarding the number of available ANPR cameras that were labelled as 126jj. Some police units seemed reluctant to register cameras whereas other police units have registered almost all ANPR cameras within their own unit. Some of the border cameras were missing in the first camera plan, because there was a lack of clarity about whether the police or Royal Netherlands Marechaussee (KMar) had ownership. As a result, part of the border cameras could not be used during the first year for 126jj purposes. As of the beginning of 2020 most of the available ANPR cameras have been registered as 126jj within the police units.

In the first year, an average of 4.3 million passages were recorded per day, half of which consisted of a unique number plate. This means that every vehicle recorded passed an average of two 126jj ANPR cameras.

Implementation phase of 126jj

The first year was an introductory year which was accompanied with start-up problems. A large number of the parties involved were caught off guard by the introduction of the new power. One of the reasons was that during the preparation phase no agreement had been reached on where ownership of the new power would be vested in the police organisation. As result, the roll-out of 126jj proceeded in a rather ad-hoc manner, particularly within the police units. A number of police units consequently incurred a delay in training people in their own unit to carry out ANPR requests. These police units were unable to carry out 126jj enquiries when the Act entered into force because the investigating officers who were designated to make these enquiries had not been trained on time. Nor were any official forms available for processing an application when the Act entered into force. These problems have now largely been resolved. Finally, during the implementation phase, it was not clear how the privacy audit should be organised. The police are required to conduct a privacy audit each year to assess whether the provisions of the Police Data Act (*Wet politiegegevens*) have been adhered to. The privacy audit could not be performed on time. The first privacy audit will be conducted by the police in 2020.

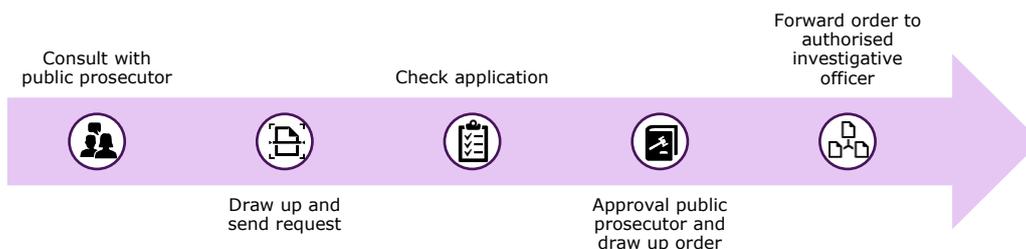
Implementation

When the Act was introduced, it was decided to delegate the execution of the power to the police units. Under Section 126jj, stored ANPR data may only be consulted by an investigative officer who has been authorised by the Minister of Justice and Security. In January 2020, a total of 126 officers were authorised. Authorised investigative officers may not be involved in the investigation for which they are conducting the enquiry. The process for consulting ANPR data under 126jj can be subdivided into applying for a 126jj request and carrying out a 126jj request (conducting the actual enquiry).

Applying for a 126jj request

The process of applying for a 126jj request is shown in Figure 1.

Figure S1 Process description of the 126jj application



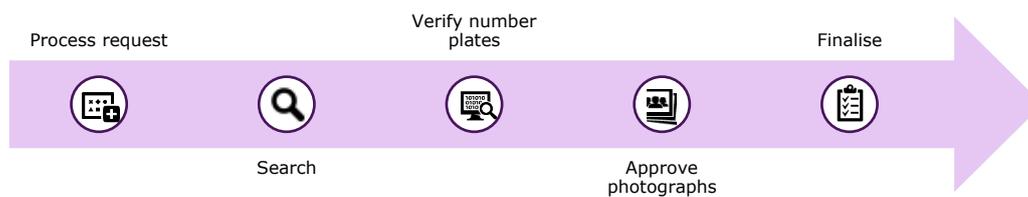
Prior to a 126jj request, the police consult with the public prosecutor handling the case on whether the use of 126jj is desirable. Requests can be made for crimes for which pre-trial detention is allowed, as described in Section 67(1) of the Dutch Code of Criminal Procedure. These crimes generally carry a four-year or longer prison sentence. In addition, the data may also be used for the arrest of a suspect at large or a convicted person as referred to in Section 564 of the Dutch Code of Criminal Procedure. In general, 126jj is usually used for offences of a more serious nature. In the light of these serious offences, 126jj is regarded as a relatively light power. Compared to other investigative powers it is viewed as a relatively light power as well.

A request is submitted to the shared Special Investigative Powers division (*gemeenschappelijke BOB-kamers*, GBKs). The GBKs are a partnership between the Netherlands Public Prosecution Service and the police, and they coordinate the processing of applications for using special investigative powers. GBK staff check whether all the information has been submitted in the correct manner and then draw up an order. The order is submitted to the public prosecutor for assessment. The public prosecutor weighs the proportionality and subsidiarity before approving the use of 126jj. For many cases this seems to be a formality, as there has been a prior consultation about the potential use of 126jj. When the order has been signed, it is sent to the authorised investigative officer.

Carrying out a 126jj request

The process of carrying out a 126jj request is shown in Figure 2.

Figure S2 Process description of the 126jj enquiry in Argus



The authorised investigative officer receives requests for making enquiries in Argus. Upon receipt of a written order, the authorised investigative officer performs a further check to determine whether the correct data has been provided and also assesses whether the application is feasible.

A total of 1,119 requests were submitted in 2019, of which, 991 requests were processed. 128 requests were rejected. The reason to reject a request was in most cases that the request were not feasible. The law provides for the possibility of issuing a verbal order in the case of urgent necessity. It is notable that over a quarter of all requests were issued on the basis of a verbal order. Depending on the scope of the order, several search enquiries can be carried out within one 126jj request. A total of 1,539 search enquiries were carried out. Several requests may be submitted within one investigation. Only one 126jj request was submitted for almost 73% of the investigations, followed by two or three requests in 20% of the investigations. Four or more requests were submitted in approximately 6% of the investigations.

When the request has been processed, a search query can be performed. The authorised investigative officer can search according to number plate, country code, location and time period. In over half of all search enquiries, the search related to a specific number plate. The search enquiry is limited to 28 days, which some of the respondents view as a restriction. The extent to which this is viewed as a restriction mainly seems to depend on the type of crime. In general, the more serious or complex a case becomes, the greater the need for a longer storage period. In approximately 40% of the cases, the search enquiry involved a specific location at a certain location and time without a known number plate. To complete the search enquiry, the authorised investigative officer is shown the number of results produced by the search query. The number of search results may be so large that the authorised officer may decide to discontinue the search enquiry. Authorised investigative officers make their own judgement about what is still feasible.

The authorised officer is shown a cut-out photograph of each number plate and indicates per number plate whether the system has read the number plate correctly. If the search enquiry does not relate to a certain number plate, but focuses on a certain time and place, for instance, the number plates do not need to be verified. A point of interest in this regard

is that the current system has not been designed for this purpose. The system always requires number plates to be checked before they are provided, even though this is not a legal requirement. As a result, the authorised investigative officer either has to spend a lot of time checking all the results or blindly approve all the results. The latter poses a risk because the number plate data approved in this enquiry no longer need to be approved for any next enquiry, even though the data has actually not been checked and may therefore be incorrect.

After the number plates have been verified, the photographs may, if necessary, be approved. This is only necessary if the photographs have also been requested in the request. In this step individuals and non-public locations are rendered unrecognisable (blurred). This process has proved to be extremely time-consuming in practice and therefore some requests cannot be complied with. To save time in search enquiries that produce a large number of results only the number plates recorded on camera are provided without an overview image. This way the police does not have to blur individuals or non-public locations on the photographs. During the first year, many respondents were surprised by the fact that individuals on the photographs were blurred. Many found this to be a restriction. As the photographs are only blurred at a later stage, this has also posed dilemmas in investigations. Some cases were of such a serious nature that the police and the Public Prosecution Service attempted to obtain the original photographs through other channels. In one case, the Public Prosecution Service considered it proportional to demand an unblurred photograph in view of the severity of the case. As of yet there has been no court ruling in this case. The blurring of photographs will be considered more extensively in the evaluation.

After the photographs have been approved, the authorised investigative officers are shown a summary of their search enquiry. In order to share the search results with the applicant, the authorised investigative officers can download a zip file containing the results. They can then share the zip file containing the results by email with the applicant.

Types of crimes

As previously described, 126jj can be used for crimes for which pre-trial detention is permitted, as described in Article 67 paragraph 1 DCCP. The data may also be used for the arrest of a fugitive suspect or convicted person as referred to in Article 564 DCCP. Technical limitations prohibit identifying the underlying crimes of the 126jj requests within Argus. However, four police units have kept an overview of the underlying offenses of the 126jj requests processed. The 126jj requests these units processed represent approximately 21% of the total number of 126jj requests. Based on the findings of the four police units, four types of offenses were most prominent. These were theft (18.5%), hard drug-related offenses (18.5%), offenses related to murder and manslaughter (18.5%) and finally burglaries (9.5%). Theft (with violence) includes street robbery, vehicle theft and shoplifting. Hard drugs related offenses include the possession, manufacturing and trade of hard drugs. Burglaries concern mostly residential burglaries.

Added value of 126jj in investigations

The experiences in the first year have shown that the new power can often yield relevant leads for criminal investigations. This investigative power is quickly considered at the start of an investigation and is often used to secure data. The public prosecutors we spoke to stated that they regard 126jj as a relatively light special investigative power and therefore 126jj can be accessed or deployed quickly. For serious crimes, the power is frequently used in addition to other investigative powers. The data generated often provides supporting information that can guide the investigation and can be of value to the evidence. The power can also support the use of other special investigative powers, such as deploying an observation team. The combination of investigative methods often leads to new information, based on which following steps in the investigation can be taken.

As combinations of complementary investigative methods are often used in investigations, it is often difficult to assess the contribution of individual powers to the investigation and prosecution process. It is difficult, if not impossible, to determine whether comparable results would have been achieved without using 126jj enquiries in the investigations examined. However, the use of 126jj – to the extent this can be verified – has accelerated the investigation process in some cases compared to the situation prior to the introduction of 126jj. Based on this first monitoring year, however, it is too early to draw conclusions on the added value of 126jj in investigations. This will be further examined during the evaluation of the legislation.