



Jeff Landry
Attorney General

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

July 26, 2023
OPINION 23-0073

Percy Knight
Acting Chief of Police
City of Bogalusa
214 Arkansas Ave.
Bogalusa, LA 70427

71-1-B MUNICIPALITIES – Home Rule Charter

La. R.S. 33:362
La. R.S. 44:3

La. R.S. 33:423

The Mayor does not have the authority to install GPS devices on police department vehicles. The Mayor does not have the authority to install key loggers or spyware on police department computers.

Dear Chief Knight:

Our office received your request for an opinion concerning whether the Mayor of Bogalusa has the authority to install GPS tracking devices on police department vehicles. Additionally, you ask whether the Mayor can place spyware such as key logger software on police department computers.

The City of Bogalusa is governed by the Bogalusa City Charter (“Charter”), a home rule charter adopted pursuant to La. Const. art. VI, § 5. The general authority of the Mayor and the Chief of Police is set forth in the Charter:

Section 3-01. - Executive authority.

The mayor shall be the chief executive officer of the city and shall exercise general executive and administrative authority over all departments, offices and agencies of the city, except as otherwise provided by this charter.

....

Section 4-05. - Police department.

A. The head of the police department shall be the police chief who shall be appointed by the mayor, subject to confirmation by the council in accordance with applicable state law.

B. The police chief shall direct and be responsible for the preservation of public peace and order; prevention of crime; apprehension of criminals; assistance to the courts and other law enforcement officials; and the enforcement of the laws of the state and the ordinances of the council.

The powers and duties of the Mayor are enumerated in Section 3-07 of the Charter and include the power to “direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by this charter.” Additionally, Section 4-01 of the Charter provides that “all departments, offices, and agencies shall be

under the direction and supervision of the mayor, except as otherwise provided by this charter.” Section 4-05 of the Charter reserves to the Chief of Police the responsibility and preservation of the public peace and order, prevention of crime, apprehension of criminals, assistance to the courts and other law enforcement officials, and the enforcement of state laws and council ordinances.

The Mayor’s authority is similar to the authority of a mayor in a Lawrason Act municipality with an appointed chief of police. Both the Bogalusa mayor and the mayor in a Lawrason Act municipality are the chief executive officer of the municipality and have the authority to supervise and direct the administration and operation of the police department.¹ Louisiana Revised Statute 33:423 sets forth the duties of the chief of police in a Lawrason Act municipality, which include the general responsibility for law enforcement and the enforcement of ordinances and state laws. Both the appointed chief of police in Bogalusa and the appointed chief of police in a Lawrason Act municipality have the duty of general law enforcement, i.e., to preserve peace and order, apprehend criminals, and enforce ordinances and state laws.² Because the powers and duties granted by the Charter to the mayor and chief of police are substantially similar to the duties of a mayor and appointed chief of police in a Lawrason Act municipality, we find our previous opinions on the authority of an appointed chief of police in a Lawrason Act municipality are instructive.

In La. Atty. Gen. Op. No. 01-327, this office was asked whether the mayor in a Lawrason Act municipality with an appointed chief of police could institute policies and procedures to be followed by police department personnel. We noted that the mayor had the authority to supervise and direct the administration of the police department and could:

devise and place into effect the policies and procedures to be followed by the police department personnel including the chief, but this must not be in conflict with the ordinances established by the Board of Aldermen for the duties and responsibilities of the chief, or his decisions in the exercise of his inherent power of general law enforcement of state and municipal laws.

This means that even though the mayor has administrative and supervisory authority over the police department, he does not have the authority to implement policies and procedures in the police department that interfere with the chief of police’s general responsibility for law enforcement or the enforcement of ordinances and state laws.

In La. Atty. Gen. Op. No. 16-0188, our office addressed whether the mayor could review communications sent to and from the police department in a municipality with an appointed chief of police. We affirmed the mayor’s authority over administrative matters but again recognized that an appointed chief of police retains certain inherent authority and power as the chief law enforcement officer. The opinion concluded that “because a mayor’s authority over an appointed police chief pertains to administrative matters and

¹ La. R.S. 33:362(B).

² La. R.S. 33:423(A) and Section 4-05 of the Charter.

not the department's law enforcement functions, . . . an appointed chief's investigative records are not subject to a mayor's review."

In La. Atty. Gen. Op. No. 20-0142, our office was asked whether the governing authority of a Lawrason Act municipality could restrict the use of police units to "working or conducting official town business." The anticipated effect of the restriction was that police units could not be taken home by on call officers. We concluded that an ordinance that prohibited the Chief of Police from allowing his off duty officers from having their vehicles at their private residences would be valid except in those instances where the Chief of Police authorizes use to and from work for those officers "on call" status. Our office reaffirmed that the mayor's authority to supervise and direct the administration and operation of the police department must not be in conflict with the decisions of the chief in the exercise of his inherent power of general law enforcement.

The general responsibility of law enforcement and the enforcement of ordinances and state laws is reserved to the Bogalusa Chief of Police by the Charter.³ Our opinions have been clear that a mayor may not institute policies and procedures that interfere with the inherent power of general law enforcement.⁴ With these legal principals, we now turn to the question of whether the Mayor has the authority to install GPS tracking devices on police department vehicles.

This office previously opined that a mayor and/or council may not install GPS devices on police department vehicles in a municipality with an elected chief of police.⁵ As explained below, the concerns expressed in these opinions are also applicable where a home rule charter has reserved to an appointed chief of police the general responsibility for law enforcement.

The placement of GPS devices on police department vehicles inevitably exposes the presence and movements of police officers to persons outside of the police department. Disclosing such records divulges critical information regarding routine patrols, investigations and surveillance, consequently endangering ongoing operations. Disclosing records that contain location data of police department vehicles also places the privacy and safety of police officers, confidential informants, witnesses, and victims in jeopardy by revealing location data where police activity is taking place. We recognize that the Mayor of Bogalusa has supervision and administrative authority over the police department to the extent that it does not conflict with the responsibilities reserved to the Chief of Police. Certain records could be disclosed to the Mayor if the disclosure of those records does not interfere with the Chief of Police's responsibility of general law enforcement. We believe such a situation would be rare but could include disclosure as part of disciplinary proceedings, the investigation of a particular officer, or certain personnel issues. However, it is our opinion that the real-time data generated by a GPS device on a police department vehicle compromises the sensitive nature of law

³ Section 4-05(B) of the Charter.

⁴ La. Atty. Gen. Op. Nos. 20-0142, 16-0188, 01-327, and 83-11.

⁵ La. Atty. Gen. Op. Nos. 20-0086 and 14-0035.

enforcement operations and infringes on the Chief of Police's responsibility of law enforcement.⁶ Accordingly, the Mayor of Bogalusa may not require the Chief of Police to place GPS devices on police department vehicles.

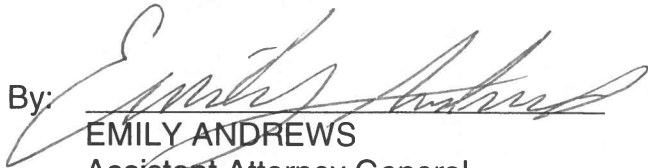
Next, you ask whether the Mayor holds the legal authority to place spyware such as key logger software on police department computers. Key logger software is designed to record which keys are pressed on a computer keyboard. This software reveals passwords and encryption keys allowing security measures to be bypassed.⁷

Police department computers contain confidential information such as draft reports, ongoing investigation files, juvenile records, draft arrest warrants, and confidential task force reports from the United State Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Police department computers also include confidential information such as arrest records, dates of birth, social security numbers, and home addresses of private citizens. This information is directly related to the Chief of Police's responsibility of law enforcement. As our office previously observed in La. Atty. Gen. Op. No. 16-0188, "[t]he mayor's authority over an appointed police chief pertains to administrative matters and not the department's law enforcement functions." Therefore, it is our opinion that the Mayor of Bogalusa does not have the authority to place key logger software or other spyware on police department computers.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

JEFF LANDRY
ATTORNEY GENERAL

By: 

EMILY ANDREWS
Assistant Attorney General

⁶ Section 4-05(B) of the Charter.

⁷ U.S. DEPARTMENT OF COMMERCE, Computer Security Resource Center, https://csrc.nist.gov/glossary/term/key_logger#:~:text=A%20program%20designed%20to%20record,2 (last visited July 13, 2023).