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8 Attorneys for Respondent
9 COUNTY OF LOS ANGELES (erroneously sued as LOS ANGELES COUNTY SHERIFF'S
10 DEPARTMENT)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES — CENTRAL DISTRICT**

13 AMERICAN CIVIL LIBERTIES UNION) CASE NO. BS143004
14 FOUNDATION OF SOUTHERN) [Assigned to the Hon. Joanne O'Donnell, Dept. 86]
15 CALIFORNIA and ELECTRONIC)
16 FRONTIER FOUNDATION,)

17 Petitioners,

18 vs.

19 COUNTY OF LOS ANGELES, and the LOS)
20 ANGELES COUNTY SHERIFF'S)
21 DEPARTMENT, and the CITY OF LOS)
22 ANGELES, and the LOS ANGELES)
23 POLICE DEPARTMENT,)

24 Respondents.)

25 **MEMORANDUM OF POINTS AND**
26 **AUTHORITIES IN SUPPORT OF COUNTY**
27 **OF LOS ANGELES' OPPOSITION TO**
28 **PETITION FOR WRIT OF MANDAMUS**

DATE: March 21, 2014
TIME: 9:30 a.m.
DEPT: 86
BEFORE: Hon. Joanne O'Donnell

Petition Filed: 05/06/13

Trial Date: None

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners are not entitled to the disclosure of ALPR data generated by the County of Los
4 Angeles Sheriff's Department (the "Department") during the course of investigating crimes.
5 Records of investigation of crimes are absolutely exempt from the disclosure requirements of the
6 California Public Records Act ("CPRA"), and the Department cannot be required to produce an
7 index of these materials as Petitioners' request. (Govt. Code §6254(f); *Haynie v. Superior Court*
8 (2001) 26 Cal.4th 1061, 1068-1070.)

9 Furthermore, even if the court finds that ALPR data are not exempt from disclosure under
10 section 6254(f), case law and statutory authority nonetheless confirms that they constitute official
11 information obtained during a law enforcement investigation and are therefore confidential. The
12 public interest in investigating crimes such as vehicle theft, child abduction and murder far
13 outweighs any interest the public may have in disclosure of these confidential materials.

14 Finally, the information contained in ALPR data – which includes license plate numbers and
15 location information over time – is likely to lead to the disclosure of personal identifying
16 information that is protected by statute, which includes the home addresses of vehicle owners. The
17 Department's refusal to produce ALPR data is justified because the public interest in investigating
18 crime and protecting confidential information of vehicle owners clearly outweighs the public
19 interest in disclosure of this confidential information.

20 Petitioners' stated purpose in seeking this information – to assess how the Department uses
21 ALPR technology – has already been achieved by the Department's production of policies,
22 procedures, training materials and practices that govern the Department's use of ALPR technology,
23 establish the limitations placed upon use and sharing of ALPR data, and disclose the Department's
24 guidelines for retention of ALPR data. The Department has fully complied with Petitioners'
25 requests for these materials, rendering Petitioners' request for an index of withheld materials moot.
26 Petitioners' further argument – that the Department's production must be incomplete because it
27 does not include memoranda and e-mails – is not before this Court because Petitioners' did not
28 request such documents. The Petition should be denied.

1 **II. STATEMENT OF FACTS**

2 ALPR technology is a computer-based system that utilizes special cameras to capture a
3 color image as well as an infrared image of a license plate. The infrared image is converted into a
4 text file using Optical Character Recognition (“OCR”) technology. The text file is automatically
5 compared against an “informational data file” commonly referred to as a “hot list.” If a match is
6 found, the user is notified of the “hit” by an audible alert and an associated notation on the user’s
7 computer screen. (Gaw Decl., ¶3.)

8 The Department uses ALPR technology to investigate specific crimes that involve motor
9 vehicles, including but not limited to stolen motor vehicles, Amber alerts that identify a specific
10 motor vehicle, warrants that relate to the owner of a specific motor vehicle, and license plates of
11 interest that relate to a specific investigation being conducted by Department investigatory
12 personnel. A recent example includes the identification and arrest of three individuals suspected of
13 the murder of Lamondre Miles on September 4, 2013. (Gaw Decl., ¶4; see also Melissa MacBride,
14 “Burning Castaic Body IDed; not missing Laguna Niguel College student,” *KABC-TV Los Angeles*
15 (September 11, 2013), <http://abclocal.go.com/kabc/story?id=9245141>.)

16 The investigatory records that are generated by ALPR units are referred to as plate scan
17 data. Plate scan data collected from ALPR units is transmitted to an ALPR server, which resides
18 within the Department’s confidential Sheriff’s Data Network (“SDN”). Plate scan information is
19 retained for a minimum period of two years. The Department would prefer to retain plate scan
20 information indefinitely but is limited by storage considerations. In addition to the software
21 applications that are used to run the ALPR server, the ALPR server also houses the “informational
22 data file” as well as the ALPR plate scans. (Gaw Decl., ¶5.)

23 Plate scan data may be queried for use in subsequent law enforcement investigations.
24 Access to plate scan data is restricted to approved law enforcement personnel within the
25 Department and within other jurisdictions that the Department shares data with. Access to plate
26 scan data is for law enforcement purposes only. Any other use of plate scan data is strictly
27 forbidden. The use of plate scan data by Department law enforcement personnel is governed by
28 Manual of Policies and Procedures sections 3-07/210.00, 3-07/220.00, and 3-07/220.20, which

1 outlines permissible uses of Department computer resources, prohibited uses of Department
2 computer resources, and penalties for violation of these policies. All Department personnel with
3 access to the SDN are required to execute a User Acknowledgment of Electronic Communications
4 Policy confirming their knowledge of and agreement to abide by Department policies and
5 procedures related to the use of the SDN. (Gaw Decl., ¶6.)

6 Subject to the Manual of Policies and Procedures sections identified in Paragraph 6 of the
7 Declaration of John Gaw, the Department maintains the following policies, procedures and
8 practices regarding the use of ALPR technology:

- 9 · Century Station Order #72 – Advanced Surveillance and Protection (ASAP), dated May
10 10, 2008. This Station Order sets forth Department policies and procedures regarding
11 the use of Advanced Surveillance and Protection technologies, including ALPR
12 technologies. (Gaw Decl., ¶7, Exh. “A.”)
- 13 · Field Operations Directive 09-04, Automated License Plate Recognition (ALPR)
14 System, dated August 17, 2009. This Field Operations Directive sets forth Department
15 policies and procedures regarding the use of ALPR technology. (Gaw Decl., ¶7, Exh.
16 “B.”)
- 17 · Automated License Plate Recognition (ALPR) System, dated September 5, 2012. This
18 document sets forth Department policies and procedures regarding the use of ALPR
19 technology. (Gaw Decl., ¶7, Exh. “C.”)
- 20 · Advanced Surveillance and Protection – Automatic License Plate Recognition. This is a
21 PowerPoint presentation which is used as a training aid for the use of ALPR technology.
22 The Department does not maintain user manuals for the use of ALPR technology
23 because the ALPR interfaces are intuitive and do not require extensive training. (Gaw
24 Decl., ¶7, Exh. “D.”)

25 Individual stations and units deploy ALPR technology subject to these policies, procedures
26 and practices. (Gaw Decl., ¶8.) The Department produced these materials in response to
27 Petitioners’ CPRA requests (Bibring Decl., Exhs. A and B), which were limited to the following
28 categories of information:

- 1 · “All policies, procedures, and practices governing use by the department of...ALPRs.”
- 2 · “All policies, procedures, training, and practices governing and/or limiting the purposes
- 3 for which information obtained through the use of...ALPRs may be used by the
- 4 department or shared with other (federal, state or local) government agencies or non-
- 5 governmental entities.”
- 6 · “All data policies relating to the maintenance and retention of information obtained
- 7 through...ALPRs, including but not limited to policies detailing how records of such
- 8 information are kept, databases in which they are placed, limitations on who may access
- 9 the records and for what purposes, and circumstances under which they are deleted.”

10 (Verified Petition for Writ of Mandate, Exh. G, page 1.)

11 **III. DISCUSSION**

12 **A. ALPR Data Are Records Of Investigation That Are Exempt From The**
13 **CPRA’s Disclosure Requirements.**

14 The public’s right to disclosure of public records is not absolute. (*City of San Jose v.*
15 *Superior Court* (1999) 74 Cal.App.4th 1008, 1017.) ALPR data are generated to investigate
16 specific crimes that involve motor vehicles. (Gaw Decl., ¶4.) As such they are exempt from
17 disclosure under the CPRA because they are records of the County’s investigation of crimes:

18 [N]othing in this chapter shall be construed to require disclosure
19 of...[r]ecords of complaints to, or investigations conducted by, or records
20 of intelligence information or security procedures of...any state or local
21 police agency....

22 (Govt. Code §6254(f)) The exemption is absolute for records that are generated to document an
23 investigation, and it continues to apply even after the investigation is concluded. (*Haynie v.*
24 *Superior Court* (2001) 26 Cal.4th 1061, 1069-1070; *Williams v. Superior Court* (1993) 5 Cal.4th
25 337, 361-362.) This authority confirms that the County’s ALPR data is exempt from the CPRA’s
26 disclosure requirements.

27 The *Haynie* case illustrates the strong protection that extends to records of investigations.
28 *Haynie* was detained by the Los Angeles County Sheriff’s Department and subsequently released

1 with no charges filed. He then filed a citizen's complaint and submitted a public records request to
2 obtain the records that were generated to document his detention. The County refused to produce
3 the records and also refused to produce an index of the records withheld. In response, Haynie filed
4 a petition for writ of mandate to compel disclosure of the records. Much like Petitioners here,
5 Haynie argued that the records were not exempt from disclosure because the prospect of
6 enforcement was not definite and concrete, and argued that he was entitled to production of an
7 index of all documents withheld. (*Haynie v. Superior Court, supra*, 26 Cal.4th at 1068.)

8 The California Supreme Court disagreed and held that the County's investigation records
9 were absolutely exempt from disclosure under the PLRA. In doing so the court explained the
10 difference between records that are merely compiled in an investigatory file, and records that are
11 generated as part of the investigation:

12 ...[W]e said in *Williams* [*v. Superior* (1993) 5 Cal.4th 337] that "it now
13 appears to be well established that 'information in public files [becomes]
14 exempt as "investigatory" material only when the prospect of enforcement
15 proceedings becomes definite and concrete.'" (*Id.* at p. 356.) Such a
16 qualification is necessary to prevent an agency from attempting to "shield
17 a record from public disclosure, *regardless of its nature*, simply by placing
18 it in a file labelled investigatory." (*Id.* at p. 355, italics added.)

19 However, neither this court nor any court Haynie has identified has
20 extended this qualification to section 6254(f)'s exemption for "[r]ecords
21 of...investigations...." The case law, in fact, is to the contrary. In
22 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32
23 Cal.3d 440 (*ACLU*), for example, we explained that the "concrete and
24 definite" qualification to the exemption in section 6254(f) "relates only to
25 information which is not itself exempt from compelled disclosure, but
26 claims exemption only as part of an investigatory file. Information
27 independently exempt, such as 'intelligence information' in the present
28 case, is not subject to the requirement that it relate to a concrete and

1 definite prospect of enforcement proceedings.” (*ACLU, supra*, at p. 449,
2 fn. 10.) In *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645
3 (*Black Panther Party*), the Court of Appeal explained that in *Uribe* [*v.*
4 *Howie* (1971) 19 Cal.App.3d 194], “the record in question was not a
5 complaint but a routine report in a public file. It could gain exemption not
6 because of its content but because of the use to which it was put, that is,
7 when and if it became part of an investigatory file. Here, by their very
8 content, the documents are independently entitled to exemption as ‘records
9 of complaints’: their exemption is not dependent upon the creation of an
10 investigatory file.” (*Black Panther Party, supra*, at p. 654.)

11 What is true for records of complaints (*Black Panther Party*) and
12 intelligence information (*ACLU*) is true as well for records of
13 investigations. The latter, no less than the former, are exempt on their
14 face, whether or not they are ever included in an investigatory file.
15 Indeed, we alluded to this in *Williams*, when we noted that “a document in
16 the file may have extraordinary significance to the investigation even
17 though it does not on its face purport to be an investigatory record *and,*
18 *thus, have an independent claim to exempt status.*” (*Williams, supra*, 5
19 Cal.4th at p. 356, italics added.) Limiting the section 6254(f) exemption
20 only to records of investigations where the likelihood of enforcement has
21 ripened into something concrete and definite would expose to the public
22 the very sensitive stages of determining whether a crime has been
23 committed or who has committed it.

24 (*Haynie v. Superior Court, supra*, 26 Cal.4th at 1069-1070.)

25 *Haynie* is directly on point and controlling, because ALPR data are no different than the
26 investigatory materials that were generated when deputies investigated and detained Haynie. ALPR
27 data are generated to investigate crimes involving motor vehicles. (Gaw Decl., ¶4.) That means that
28 they are absolutely exempt from production, whether the investigation leads to a criminal

1 prosecution or not. This is no different than investigation records in *Haynie*, which remained
2 exempt even after the County decided not to press charges. Petitioners are not entitled to compel
3 production of ALPR data.

4 Petitioners have also argued that, even if they are not entitled to production of ALPR data,
5 they are nonetheless entitled to the information contained in the ALPR data. That is also incorrect.
6 While section 6254(f) does contain an exception that requires public agencies to disclose the
7 information contained in investigation records, the exception only applies to victims of crime:
8 "...the victims of an incident, or an authorized representative thereof, an insurance carrier against
9 which a claim has been or might be made, and any person suffering bodily injury or property
10 damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny,
11 robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section
12 13951 [a misdemeanor or felony]...." Petitioners do not claim to be victims of crime and are not
13 entitled to the exception. (See *Williams v. Superior Court, supra*, 5 Cal.4th 337 [upholding sheriff
14 department's refusal to produce investigation records to newspaper and refusal to produce an index
15 of exempt records].)

16 **B. Even If The Court Determines That ALPR Data Are Not Exempt From**
17 **Disclosure, The Public Interest In Confidentiality of ALPR Data Far Outweighs**
18 **The Petitioners' Interest In Disclosure.**

19 Even if ALPR data are not absolutely exempt from disclosure under section 6254(f)'s
20 exemption for records of investigations, they are nonetheless part of the investigation files that the
21 County compiles regarding its investigation of crimes involving motor vehicles. Government Code
22 section 6254(k) exempts privileged documents from the disclosure requirements of the CPRA.
23 This includes official information that is acquired in confidence by a public employee. (Evid. Code
24 §1040(a).) The motives and needs of the requesting party in seeking disclosure are irrelevant and
25 cannot be considered. (Govt. Code §6257.5; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601,
26 616.) The identity of the requester is also irrelevant, and it is well established that a newspaper or
27 other media organization has no greater right of access to public records than the general public.
28 (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476.) Thus, Petitioners are entitled to no

1 greater deference by this Court than any other member of the public.

2 The contents of police investigation files are confidential: “Evidence gathered by police as
3 part of an ongoing criminal investigation is by its nature confidential.” (*County of Orange v.*
4 *Superior Court* (2000) 79 Cal.App.4th 759, 764.) “It is not only where a witness requests that his
5 statement be kept in confidence, but in all cases of crime investigation that the record and reports
6 are privileged.” (*People v. Otte* (1989) 214 Cal.App.3d 1522, 1532, quoting *Jessup v. Superior*
7 *Court* (1957) 151 Cal.App.2d 102, 108.) The Information Practices Act, Civil Code section 1798 et
8 seq., specifically protects information that is “compiled for the purpose of a criminal investigation
9 of suspected criminal activities, including reports of informants and investigators, and associated
10 with an identifiable individual.” (Civil Code §1798.40(b).) Penal Code section 11107, which
11 requires law enforcement agencies to submit crime data reports to the Attorney General, similarly
12 recognizes the confidential nature of criminal investigations. That statute includes the proviso that
13 the “Attorney General may also require that the report shall indicate whether or not the submitting
14 agency considers the information to be confidential because it was compiled for the purpose of a
15 criminal investigation or suspected criminal activities.” These statutes are consistent with
16 Government Code section 6254(f), which provides that investigatory files compiled by law
17 enforcement agencies are exempt from disclosure. (*Williams v. Superior Court, supra*, 5 Cal.4th
18 337.) These authorities confirm that ALPR data are confidential documents that fall within the
19 privilege for official information under Evidence Code section 1040(a).

20 Official information is protected from disclosure where the public interest in maintaining
21 confidentiality clearly outweighs the public interest in disclosure. (*Black Panther Party v. John*
22 *Kehoe* (1974) 42 Cal.App.3d 645, 657.) To make this determination, courts evaluate whether
23 disclosure would serve the CPRA’s legislative purpose of shedding light on an agency’s
24 performance of its statutory duties. (*City of San Jose v. Superior Court, supra*, 74 Cal.App.4th at
25 1019.) This in turn must be compared to the public interest in confidentiality of the records in
26 question. (*Id.* at 1018.) Case law confirms that the public interest in disclosure of investigatory
27 materials is clearly outweighed by the public interest in investigation of crime. (*County of Orange*
28 *v. Superior Court, supra*, 79 Cal.App.4th 759, 767 [public interest in prosecution of homicide

1 clearly outweighed suspect's interest in contents of investigative file]; *Matter of David W.* (1976)
2 62 Cal.App.3d 840, 847 [public interest in investigation of car theft outweighed minor's interest in
3 disclosure of confidential vehicle identification number data].)

4 ALPR data are official information that is generated to investigate crimes involving motor
5 vehicles, child abduction and murder. (Gaw Decl., ¶4.) The public interest in the investigation and
6 prosecution of these crimes clearly outweighs the public interest in the disclosure of ALPR data.
7 (*County of Orange v. Superior Court, supra*, 79 Cal.App.4th at 767; *Matter of David W., supra*, 62
8 Cal.App.3d at 847.) Furthermore, the production of ALPR data is likely to lead to the disclosure of
9 personal identifying information that is protected by statute, such as the home address of a vehicle
10 owner. (Veh. Code §1808.21.) While ALPR data does not itself contain the home address of a
11 vehicle owner, license plate numbers are likely to lead to this information through the use of
12 databases containing reverse lookup capabilities, such as LexisNexis and Westlaw. This likelihood,
13 combined with the individuals' movement history over time as contained in the ALPR data,
14 provides additional justification for the County's refusal to produce ALPR data.

15 C. **The County Has Fully Disclosed All Policies, Procedures, Practices and**
16 **Training Documents Related To The Use Of ALPR Technology.**

17 With the exception of ALPR data, the County has fully complied with Petitioners' CPRA
18 request. (Gaw Decl., ¶¶ 6-8.) Petitioners requested three categories of documents that have been
19 addressed in their moving papers:

- 20 · "All policies, procedures, and practices governing use by the department of...ALPRs."
21 · "All policies, procedures, training, and practices governing and/or limiting the purposes
22 for which information obtained through the use of...ALPRs may be used by the
23 department or shared with other (federal, state or local) government agencies or non-
24 governmental entities."
25 · "All data policies relating to the maintenance and retention of information obtained
26 through...ALPRs, including but not limited to policies detailing how records of such
27 information are kept, databases in which they are placed, limitations on who may access
28 the records and for what purposes, and circumstances under which they are deleted."


1 (Verified Petition for Writ of Mandate, Exh. G, page 1.) The County produced these materials
2 (Bibring Decl., Exhs. A and B) and has confirmed that there are no other policies, procedures,
3 training or practices that govern the County's use of ALPR data. (Gaw Decl., ¶¶ 6-8.) Petitioners'
4 request for an index of withheld documents is thus moot, and furthermore does not apply to ALPR
5 data in any event, which are absolutely exempt from disclosure because they are records of law
6 enforcement investigations. (*Haynie v. Superior Court, supra*, 26 Cal.4th at 1067 [upholding sheriff
7 department's refusal to produce investigation records to newspaper and refusal to produce an index
8 of exempt records].)

9 **IV. CONCLUSION**

10 Petitioners' request for the production of ALPR data should be denied. ALPR data are
11 exempt from the disclosure requirements of the CPRA because they are records of investigation. In
12 the alternative, ALPR data constitute official information related to a criminal investigation, and the
13 public interest in the investigation and prosecution of crimes far outweighs Petitioners' interest in
14 disclosure of this confidential information. Finally, Petitioners' request for an index of withheld
15 documents is moot because the Department has produced all policies, procedures, training manuals
16 and practices related to ALPR technology, and furthermore does not apply to ALPR data, which are
17 completely exempt from production.

18
19 DATED: February 21, 2014

COLLINS COLLINS MUIR + STEWART LLP

20
21 By: 
22 JAMES C. JARDIN
23 TOMAS A. GUTERRES
24 ERIC C. BROWN
25 Attorneys for Respondent
26 COUNTY OF LOS ANGELES
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PROOF OF SERVICE

(CCP §§ 1013(a) and 2015.5; FRCP 5)

State of California,)
) ss.
County of Los Angeles)

I am employed in the County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 1100 El Centro Street, South Pasadena, California 91030.

On this date, I served the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COUNTY OF LOS ANGELES' OPPOSITION TO PETITION FOR WRIT OF MANDAMUS** on the interested parties in this action by placing same in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

- (BY MAIL)** - I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in South Pasadena, California to be served on the parties as indicated on the attached service list. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at South Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY CERTIFIED MAIL)** - I caused such envelope(s) with postage thereon fully prepaid via Certified Mail Return Receipt Requested to be placed in the United States Mail in South Pasadena, California.
- BY EXPRESS MAIL OR ANOTHER METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY**
- (BY ELECTRONIC FILING AND/OR SERVICE)** - I served a true copy, with all exhibits, electronically on designated recipients listed on the attached Service List on: _____ (Date) at _____ (Time)
- FEDERAL EXPRESS** - I caused the envelope to be delivered to an authorized courier or driver authorized to receive documents with delivery fees provided for.
- (BY FACSIMILE)** - I caused the above-described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (626) 243-1111 indicated all pages were transmitted.
- (BY PERSONAL SERVICE)** - I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s).

Executed on **February 21, 2014** at South Pasadena, California.

- (STATE)** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL)** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Antonia Mota

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AMERICAN CIVIL LIBERTIES UNION FOUNDATION, et al. v. COUNTY OF LOS ANGELES, et al.

Case No. BS143004

Our File No. 18623

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