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MICHAEL N. FEUER, City Attorney
CARLOS DE LA GUERRA, Managing Assistant City Attorney
DEBRA L. GONZALES, Supervising Assistant City Attorney
HEATHER L. AUBRY, Deputy City Attorney (SBN 169923)
200 North Main Street, City Hall East, Room 800
Los Angeles, California 90012
Tel: (213) 978-8393; Fax: (213) 978-8787

NO FEE-GOV'T CODE 6103

Attorneys for Respondents,
CITY OF LOS ANGELES AND LOS ANGELES POLICE DEPARTMENT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

AMERICAN CIVIL LIBERTIES UNION)
FOUNDATION OF SOUTHERN CALIFORNIA)
and ELECTRONIC FRONTIER FOUNDATION,)

CASE NO. BS 143004

[Judge Joanne O'Donnell]

Petitioners,

vs.

**RESPONDENT LOS ANGELES POLICE
DEPARTMENT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PETITION FOR WRIT
OF MANDATE; DECLARATION OF
DANIEL GOMEZ IN SUPPORT THEREOF**

COUNTY OF LOS ANGELES, and the LOS)
ANGELES COUNTY SHERIFF'S)
DEPARTMENT, and the CITY OF LOS)
ANGELES, and the LOS ANGELES POLICE)
DEPARTMENT,)

Hearing Date: March 21, 2014

Time: 9:30 a.m.

Department: 86

Respondents.

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION 1

I. ALPR RECORDS ARE INVESTIGATORY AND THEREFORE EXEMPT FROM DISCLOSURE UNDER SECTION 6254(f).....2

A. The subject ALPR data is exempt in its entirety because none of the information which must be disclosed under (f)(1) or (f)(2) is applicable.6

II. ALPR DATA IS EXEMPT UNDER SECTION 6254(k) BECAUSE DISCLOSURE WOULD INFRINGE ON THE PRIVACY RIGHTS OF THOSE TO WHOM THE DATA RELATES.....7

III. UNDER THE BALANCING TEST OF SECTION 6255, THE PUBLIC INTEREST SERVED BY DISCLOSURE IS CLEARLY OUTWEIGHED BY THE PUBLIC INTEREST SERVED BY NON-DISCLOSURE..... 11

IV. LAPD FULLY COMPLIED WITH ITS RESPONSIBILITIES UNDER THE CPRA . AND IS NOT REQUIRED TO CREATE AN INDEX. 13

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440, 453, fn. 13..... 4, 12

Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645 4

BRV, Inc. v. Superior Court (2006) 143 Cal.App.4th 742, 751 2

City of San Jose v. Superior Court (1999) 74 Cal.App.4th 1008, 018)..... 12

Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, 1282 2

County of Los Angeles v. Superior Court (1993) 18 Cal.App. 4th 588, 595-601.” 6

County of Santa Clara v. Superior Court (2009) 170 Cal.App.4th 1301, 1321-1322. 10

Haynie v. Superior Court (2001) 26 Cal. 4th 1061 3, 4, 5, 6

U.S. Dept. of Justice v. Reporters Committee (1989) 489 U.S. 749, 780..... 9

United States DOJ v. Reporters Comm. For Freedom of Press (1989) 489 U.S. 749, 763-764..... 9

Uribe v. Howie (1971) 19 Cal.App. 3d 194..... 3

Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157 9

Williams v. Superior Court (1993) 5 Cal.4th 337..... 4, 6, 7

Other Authorities

86 Ops.Cal.Atty.Gen. 132, 137 (2003)..... 6, 10

Constitutional Provisions

California Constitution, Article 1, section 1 7

Codes

Gov. Code §6250 *et seq.*..... 1, 8

Gov. Code §6254 2, 11

1 Gov. Code §6254(f)..... 1, 3, 4, 7, 11
2 Gov. Code §6254(k)..... 2, 7, 10
3 Gov. Code §6255..... 2, 11, 13
4 Gov. Code §6255.5..... 10

- 5
- 6
- 7
- 8
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- 11
- 12
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1 Respondents CITY OF LOS ANGELES and LOS ANGELES POLICE DEPARTMENT, hereby
2 submit the instant Opposition to Petitioners' Memorandum of Points and Authorities in Support of
3 Petition for Writ of Mandamus.

4 INTRODUCTION

5 In this action, Petitioners allege that the Los Angeles Police Department ("LAPD" or
6 "Department") violated the California Public Records Act (Gov. Code §6250 *et seq.*, "CPRA") by
7 failing to disclose certain records related to the Department's use of Automated License Plate
8 Recognition technology ("ALPR") in response to two CPRA requests.

9 The first request, dated August 30, 2012, was from Petitioner Electronic Frontier Foundation
10 ("EFF") and sought two categories of records: "1. all ALPR data collected or generated between 12:01
11 AM on August 12, 2012 and 11:59 PM on August 19, 2014. This data should include, at a minimum,
12 the license plate number, date, time, and location information for each license plate recorded; 2. any
13 policies, guidelines, training manuals and/or instructions on the use of ALPR technology and the use
14 and retention of ALPR data, including records on where the data is stored, how long it is stored, who
15 has access to the data, and how they access the data.." (Petition for Writ of Mandate ("Petition"),
16 Exhibit "A.") The Department produced four documents, consisting of 24 pages, responsive to the
17 second category of requested records.

18 The second CPRA request, dated September 18, 2012, was made by Petitioner American Civil
19 Liberties Union Foundation of Southern California ("ACLU") and requested seven (7) categories of
20 records related to "GPS Tracking Devices and/or ALPRs," including "all records related to the
21 acquisition, purchase, and deployment" (category 1) and "all policies, procedures, and practices
22 governing use by the department of GPS Tracking Devices and/or ALPRs" (category 3). (Petition,
23 Exhibit "L.") The Department produced 455 pages of documents in response to ACLU's request, as
24 detailed in a response letter and attached invoice. (Petition, Exhibit "M.")

25 Particularly at issue in this action is EFF's request for one week's worth of ALPR data, the first
26 of its two categories of requested records. The Department readily concedes that it did not turn over any
27 records in this category. That is because ALPR data is clearly exempt from disclosure under the CPRA.
28 It falls squarely within the Act's exemption for investigatory records (§6254(f)). ALPR data also falls

1 under the exemption for records that are exempt from disclosure under federal or state law (§6254(k))
2 and the “catchall” exemption of section 6255.

3 How ALPR technology basically works is explained by LAPD’s subject matter expert, Sergeant
4 Daniel Gomez. (Declaration of Daniel Gomez, “Gomez Dec.”) ALPR systems “use character
5 recognition software, coupled with hardware, to interpret” license plates, capture their images, and
6 compare the data against “known license plate lists” to “determine whether a vehicle may be stolen or
7 otherwise associated with a crime.” (Gomez Dec., ¶2, ¶6.) Captured data, which also includes “date,
8 time, longitude and latitude, and information identifying the source of the number
9 capture,” is stored to a storage device. ALPR is an “extremely valuable investigative tool” and has been
10 instrumental in solving numerous crimes. (Gomez Dec. ¶5.) Because of its fundamentally investigative
11 purpose and nature, it is apparent that the CPRA exemption for investigatory records held by law
12 enforcement is entirely appropriate for ALPR data.

13 LAPD is fully aware that the premise of the CPRA is that “access to information concerning the
14 conduct of the people’s business is a fundamental and necessary right of every person in this state”
15 (§6250) and “all public records are subject to disclosure unless the Public Records Act expressly
16 provides otherwise.” *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 751.) However, “the
17 right of access to public records under the CPRA is not absolute.” *Copley Press, Inc. v. Superior Court*
18 (2006) 39 Cal.4th 1272, 1282. The CPRA “states a number of exemptions that permit government
19 agencies to refuse to disclose certain public records.” *Id.* The Department is confident that the
20 exemptions found in sections 6254(f), 6254(k) and 6255 apply in this case and that, in all respects, it has
21 fully complied with its responsibilities under the California Public Records Act.

22 **I. ALPR RECORDS ARE INVESTIGATORY AND THEREFORE EXEMPT FROM**
23 **DISCLOSURE UNDER SECTION 6254(f).**

24 Government Code section 6254 sets forth numerous categories of records that are exempt from
25 the disclosure requirements of the CPRA. One of those categories, found in subdivision (f), exempts law
26 enforcement investigatory records from disclosure. The statute provides, in pertinent part:

27 ...[N]othing in this chapter shall be construed to require disclosure of records that are any of the
28 following:...(f) Records of complaints to, or investigations conducted by, or records of

1 intelligence information or security procedures of, the office of the Attorney General and the
2 Department of Justice, and any state or local police agency, or any investigatory or security files
3 compiled by any other state or local police agency, or any investigatory or security files
4 compiled by any other state or local agency for correctional, law enforcement, or licensing
5 purposes. . . .

6 The ALPR data sought in this case— electronic records consisting of vehicles’ license plates, and
7 the date, time and location those license plates were captured by the Department’s ALPR cameras –
8 constitute “records of . . . investigations conducted by . . . any local police agency” which fall squarely under
9 this statutory exemption. This conclusion is inescapable based not only on a plain reading of the term
10 “investigation”--“the action of investigating something or someone; formal or systematic examination
11 or research”¹ – and the Declaration of Daniel Gomez explaining the fundamentally investigative nature
12 of ALPR data (Gomez Dec., ¶5), but also based on controlling case law which clarifies the broad scope
13 of the exemption afforded to investigatory records under section 6254(f).

14 In *Haynie v. Superior Court* (2001) 26 Cal. 4th 1061, the California Supreme Court held that the
15 Court of Appeal erred in directing the Los Angeles County Sheriff’s Department (LASD) to disclose
16 records, pursuant to a CPRA request, concerning the traffic stop and detention of the requestor. The
17 Court concluded that the LASD had properly asserted section 6254(f) in refusing to turn over records
18 related to the incident, which did not result in criminal charges, and further held that the CPRA did not
19 require the agency to prepare an inventory of potentially responsive documents.

20 In finding subdivision (f) applicable, the Court expressly rejected Haynie’s argument – also
21 advanced by Petitioners here (Memorandum, page 8, lines 21-22 and page 9, lines 7-8) – that
22 investigatory records may be withheld “under section 6254(f) only when the prospect of enforcement
23 proceedings is ‘concrete and definite..’” *Haynie*, 26 Cal.4th at 1068. *Haynie* clarified that the “concrete
24 and definite” prospect of enforcement standard, initially articulated in *Uribe v. Howie* (1971) 19
25 Cal.App. 3d 194, only applies to subdivision (f)’s exemption for “investigatory . . . files” – not to its
26 exemption for “records of . . . investigations,” which are exempt in their own right, regardless of whether
27 they are contained in an agency file. *Id.* at 1069-1070. The Court explained the reason for this
28 distinction: “Such a qualification is necessary to prevent an agency from attempting to ‘shield a record

¹ Oxford University Press, 2014 (www.oxforddictionaries.com)

1 from public disclosure, regardless of its nature, simply by placing it in a file labeled “investigatory.”
2 ([*Williams v. Superior Court* (1993) 5 Cal.4th 337] at p. 355, italics added.) [P] However, neither this
3 court nor any court Haynie has identified has extended this qualification to section 6254(f)'s exemption
4 for “[r]ecords of . . . investigations” The case law, in fact, is to the contrary.” *Id.* at 1069. The
5 *Haynie* Court then went on to discuss prior decisional authority which also held that records
6 “independently entitled to exemption” under section 6254(f) are not subject to the “concrete and
7 definite” prospect of enforcement standard applicable to records whose claimed exempt status stems
8 solely from their inclusion in an investigatory file.² “Limiting the section 6254(f) exemption only to
9 records of investigations where the likelihood of enforcement has ripened into something concrete and
10 definite would expose to the public the very sensitive investigative stages of determining whether a
11 crime has been committed or who has committed it.” *Id.* at 1070.

12 Releasing the subject ALPR data held by the Department would likewise “expose to the public
13 the very sensitive investigative stages of determining whether a crime has been committed.” All ALPR
14 data is investigatory –regardless of whether a license plate scan results in an immediate “hit” because,
15 for instance, the vehicle may be stolen, the subject of an “Amber Alert,” or operated by an individual
16 with an outstanding arrest warrant. (Gomez Dec., ¶5) ALPR data also has investigative use long after
17 the initial scanning process, as demonstrated by its instrumentality in helping LAPD solve a variety of
18 serious crimes. (Gomez Dec., ¶5) The very process of checking license plates against various law
19 enforcement lists, whether done manually by the officer or automatically through ALPR technology, is
20 intrinsically investigatory – to determine whether a crime may have been committed. The mere fact that
21 ALPR data is routinely gathered and may not--initially or ever – be associated with a specific crime is
22 not determinative of its investigative nature. In *Haynie*, the Supreme Court expressly disapproved of
23 such an analytical approach:

24 The Court of Appeal, in ordering disclosure, reasoned that the citizen report of several men with
25 guns entering a vehicle did not ‘necessarily’ describe a crime and that the stop itself was a
26 ‘routine police inquiry’ based on mere suspicion of criminal conduct. These factors are of no

27 ² Specifically, the Court noted that in *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal. 3d 440,
28 they concluded “intelligence information” is independently exempt under section 6254(f), and thus “not subject to the
requirement that it relate to a concrete and definite prospect of enforcement proceedings.” Similarly, in *Black Panther
Party v. Kehoe* (1974) 42 Cal.App.3d 645, “records of complaints” were deemed entitled to exemption under subdivision
(f) by their very nature, regardless of whether they were contained in an investigatory file. *Haynie, supra*, at 1069.

1 significance under the statute. In exempting ‘[r]ecords of complaints to, or investigations
2 conducted by’ law enforcement agencies, section 6254(f) does not distinguish between
3 investigations to determine if a crime has been or is about to be committed and those that are
undertaken once criminal conduct is apparent.

4 (*Haynie, supra*, at 1070, fn 6.) Likewise, here, Petitioners misapprehend section 6254(f), apparently
5 believing it only applies when “enforcement proceedings are concrete and definite” (discussed above) or
6 to “ongoing criminal investigations.” (Memorandum, page 9, lines 7-10.) These standards are simply
7 nowhere to be found in section 6254(f) and have been soundly rejected by the California Supreme
8 Court: “[Haynie] offers no principled basis for determining which investigations are sufficiently
9 lengthy or important to be accorded the status of ‘investigations’ within the meaning of section 6254(f)-
10 -nor any way to predict, at the outset, what might result in a lengthy or important investigation. One
11 ‘third-rate burglary attempt,’ for example, ultimately toppled a president.” *Haynie, supra*, at 1070.

12 Moreover, Petitioners incorrectly assert, apparently based on mere conjecture, that the subject
13 ALPR data is not connected to any “potential investigation” and that “any value in retaining records
14 after a vehicle has been compared with databases and found not to be wanted is ‘for purposes related to
15 crime prevention and public safety’ *Haynie*, 26 Cal.4th at 1071.” (Memorandum, page 8, line 20 and
16 page 9, lines 10-12.) These remarkably broad assertions are belied by the Department’s subject matter
17 expert regarding ALPR. In fact, ALPR data is itself investigatory and is also routinely connected to
18 separate criminal investigations by officers using the ALPR system. (Gomez Dec., ¶ 5.) Petitioners’
19 implication that *Haynie* somehow supports characterizing ALPR data as being “for purposes related to
20 crime prevention and public safety,” as opposed to investigatory purposes, is likewise meritless. This
21 particular partial quote from *Haynie* was in the context of the Court noting that, although “routine” and
22 “everyday” police work falls within the ambit of section 6254(f), “we do not mean to shield everything
23 law enforcement officers do from disclosure. Often, officers make inquiries of citizens for purposes
24 related to crime prevention and public safety that are unrelated to either civil or criminal investigations.”
25 *Haynie, supra*, at 1071. The Department’s use of ALPR to run license plate checks and for other
26 investigatory purposes is markedly distinguishable from an officer making an inquiry of a citizen for a
27 purpose “unrelated to...criminal investigations.” On the contrary, the Department’s use of ALPR is
28 directly related to criminal investigations, which is precisely why ALPR data is exempt under section

1 6254(f).³

2 *Haynie* is the most recent California Supreme Court decision interpreting section 6254(f) and it
3 governs the applicability of the exemption in the instant case. Petitioners' misplaced reliance on the
4 "concrete and definite" *Uribe* standard, posited in a 1971 Court of Appeal decision involving pesticide
5 spray reports contained in an agricultural commissioner's files, is unavailing. As stated in another state
6 Supreme Court decision interpreting the exemption, subdivision (f) "articulates a broad exemption from
7 disclosure for law enforcement investigatory records." *Williams v. Superior Court* (1993) 5 Cal.4th 337,
8 349. *Haynie* unequivocally reaffirmed this interpretation of the exemption as it relates to investigatory
9 records of a law enforcement agency. Under *Haynie*, and for the other reasons explained above, the
10 ALPR data sought by Petitioners is exempt from disclosure under section 6254(f).

11 A. The subject ALPR data is exempt in its entirety because none of the information which
12 must be disclosed under (f)(1) or (f)(2) is applicable.

13 While records of law enforcement investigations are confidential and exempt in their entirety from
14 disclosure under the CPRA, the Legislature established clearly delineated categories of information
15 from investigatory records--not the records themselves--which must be "made public."⁴ However, these
16 categories of information are not contained within the subject ALPR data.

17 "Subdivision (f) concludes with two subparts that require law enforcement agencies to provide
18 certain information about arrests and arrestees (§6254, subd. (f)(1)) and about complaints and requests
19 for assistance (*id.*, subd. (f)(2))." *Williams, supra*, 5 Cal.4th at 349. (Emphasis added.) ALPR data
20 includes no information about arrests falling under (f)(1). This disclosure requirement "is limited to
21 contemporaneous information relating to persons currently within the judicial system. *County of Los*
22 *Angeles v. Superior Court* (1993) 18 Cal.App. 4th 588, 595-601." 86 Ops. Cal. Atty. Gen. 132, page 9,
23 fn 4. (2003). Nor does the ALPR data contain information regarding complaints/requests for assistance.
24 As Petitioners acknowledge, ALPR data consists of four fields of information: license plates, dates,

25 ³ The fact that ALPR technology may also enhance crime prevention and public safety hardly diminishes its
26 fundamentally investigatory character.

27 ⁴ Subdivision (f) also specifies information from investigatory records, including the names and addresses of involved
28 persons and witnesses and the date, time and location of the incident, which shall be disclosed "to the victims of the
incident...an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or
property damage or loss as a result of the incident... unless the disclosure would endanger the safety of a witness...or
unless disclosure would endanger the successful completion of the investigation..." Clearly, Petitioners do not fall within
the ambit of those statutorily entitled to disclosure of the specified information.

1 times and locations. Thus, none of the information specified in (f)(1) and (f)(2) can be extracted from
2 the data.

3 Petitioners deceptively state “Section 6254(f) ‘require[s] the disclosure of information derived from
4 the records” even if the records themselves remain subject to the exemption” (Memorandum, page 8,
5 lines 16-17, quoting *Williams, supra*, 5 Cal.4th at 353) without ever mentioning that only arrest and
6 complaint information must be disclosed, per the statute itself. This is a glaringly material omission,
7 insofar as ALPR data contains neither category of information. Only these categories are subject to
8 mandatory disclosure, based on a plain reading of the statutory language.

9 In rejecting the Court of Appeal’s attempt to limit the investigatory exemption by interpreting
10 subdivision (f) as applying only when federal Freedom of Information Act criteria were met, the
11 *Williams* court observed: “The most obvious and important objection to the Court of Appeal’s
12 interpretation of subdivision (f) is that it finds no support in the statutory language...In drafting
13 subdivision (f) the Legislature expressly imposed several precise limitations on the confidentiality of
14 law enforcement investigatory records. Clearly the Legislature was capable of articulating additional
15 limitations if that is what it wanted to do.” *Id.* at 350. Based on the “precise limitations on the
16 confidentiality of law enforcement investigatory records” contained in (f)(1) and (f)(2), no information
17 from ALPR investigatory records must be disclosed. Therefore, ALPR data—and the information
18 contained therein – are exempt in their entirety under section 6254(f).

19 **II. ALPR DATA IS EXEMPT UNDER SECTION 6254(k) BECAUSE DISCLOSURE**
20 **WOULD INFRINGE ON THE PRIVACY RIGHTS OF THOSE TO WHOM THE**
21 **DATA RELATES.**

22 Based on the foregoing, this Court needs look no further than section 6254(f) in resolving this
23 matter in favor of Respondents. That said, there are additional grounds for concluding that ALPR data is
24 exempt from disclosure to the public. One of those additional grounds is section 6254(k).

25 Section 6254(k) exempts from disclosure “[r]ecords, the disclosure of which is exempted or
26 prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence
27 Code relating to privilege.” Under both federal and state law, individuals enjoy a right to privacy. This
28 right is enshrined in the California Constitution, Article 1, section 1, which gives each citizen an

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1 “inalienable right” to pursue and obtain privacy.

2 The CPRA itself explicitly recognizes the importance of privacy: “In enacting this chapter [the
3 CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to
4 information concerning the conduct of the people’s business is a fundamental and necessary right of
5 every person in this state.” §6250. (Emphasis added.) Thus, even in declaring the right to access
6 information “concerning the conduct of the people’s business,” the Legislature acknowledges the
7 individual right to privacy. The release of ALPR data would infringe on this right.

8 In disclosing ALPR data, the Department would be releasing records detailing the precise
9 locations of vehicles bearing particular license plate numbers on specified dates and times. Even if
10 Petitioners have no intention of publishing this data, in whole or in part, should they receive it⁵, the
11 privacy implications of disclosure are substantial. Members of the public would be justifiably concerned
12 about LAPD releasing information regarding the specific locations of their vehicles on specific dates
13 and times—information acquired and maintained strictly for investigatory purposes – to anyone, given
14 that this information can be used to, for instance, draw inferences about an individual’s driving patterns
15 and past whereabouts.

16 In fact, Petitioners not only acknowledge, but emphasize, that significant privacy interests are at
17 stake: “Petitioners recognize that motorists have privacy interests in location information contained in
18 ALPR data, see supra, Section II.A...” (Memorandum; page 11, fn 26.) “...Petitioners recognize that
19 license plate data yields location information that...raises significant privacy interests.” (Memorandum;
20 page 7, lines 10-12.) “While ALPR technology can be a powerful tool, without proper safeguards, the
21 technology can also harm individual privacy and civil liberties.” (Memorandum; page 3, lines 7-8). One
22 such “safeguard” would certainly be refraining from releasing ALPR data to the public.⁶

23 “According to Webster’s initial definition, information may be classified as ‘private’ if it is
24 intended for or restricted to the use of a particular person or group or class of persons: not freely
25 available to the public.” *United States DOJ v. Reporters Comm. For Freedom of Press* (1989) 489 U.S.

26 ⁵ This is by no means a given. As noted in this section, public agencies cannot inquire regarding requestors’ motives in
27 seeking records under the CPRA.

28 ⁶ As for the various potential scenarios posited by Petitioners in Section II.A of their Memorandum (ALPRs scanning
vehicles at protests, houses of worship, etc.), this argument is not only grossly speculative, but it underscores the
inconsistency of their position: Privacy rights are violated when the police have ALPR data from or near such locations,
but not when this data is released to Petitioners or other members of the public? It strains logic.

1 749, 763-764. While the Supreme Court was considering privacy in the context of rap-sheet
2 information and FOIA, not the CPRA, was at issue, its analysis is instructive:

3 Granted, in many contexts the fact that information is not freely available is no reason to exempt
4 that information from a statute generally requiring its dissemination. But the issue here is
5 whether the compilation of otherwise hard-to-obtain information alters the privacy interest
6 implicated by disclosure of that information. Plainly there is a vast difference between the public
7 records that might be found after a diligent search of courthouse files, county archives, and local
8 police stations throughout the country and a computerized summary located in a single
9 clearinghouse of information.

10 *Id.* at 764. Here, unlike in *United States DOJ*, there is a statute which exempts the computerized
11 data at issue: section 6254(f). But, even in the absence of a statute expressly exempting rap-sheet
12 information from disclosure to the public pursuant to a FOIA request, the Supreme Court upheld non-
13 disclosure on privacy grounds. This key privacy ruling was followed in *Westbrook v. County of Los*
14 *Angeles* (1994) 27 Cal.App.4th 157, a case also concerning public access to law enforcement records,
15 wherein the court summarized *United States DOJ* as follows: “The United States Supreme Court has
16 concluded that a third party's request for law enforcement records of a private citizen ‘can reasonably be
17 expected to invade that citizen's privacy, and that when the request seeks no “official information” about
18 a Government agency, but merely records that the Government happens to be storing, the invasion of
19 privacy is “unwarranted.” (*U.S. Dept. of Justice v. Reporters Committee* (1989) 489 U.S. 749, 780.”
20 *Westbrook, supra*, 27 Cal.App.4th at 166. [Internal quotations omitted.] The *Westbrook* court further
21 noted: “One of the motivations for the amendment to the state Constitution, adding privacy to the list of
22 inalienable rights, was concern over ‘the ability to control circulation of personal information.’ The
23 argument in favor of the amendment, printed in the state's election brochure, noted, *inter alia*, that ‘[t]he
24 proliferation of government and business records over which we have no control limits our ability to
25 control our personal lives. Often we do not know that these records even exist and we are certainly
26 unable to determine who has access to them.’” *Id.* The requested dissemination of ALPR data in this
27 case raises these very real privacy concerns.

28 The privacy implications of releasing ALPR data are heightened by fact that such data can be
narrowed by license plate number. (Gomez Dec., ¶7) Thus, should a member of the public request, for
instance, “any and all ALPR data concerning license plate number [x] from 2010 to the present,” LAPD
would be able to retrieve any such data, as officers routinely do in utilizing the ALPR database in

1 connection with criminal investigations. But privacy concerns loom large. Such a request could be made
2 by an individual seeking information concerning the whereabouts or driving patterns of his ex-spouse; a
3 stalker looking for clues regarding where to find the object of her obsession; a criminal defendant
4 looking for the prosecutor who convicted him. All these people would need to make such a request
5 would be a license plate number. Or a requestor could simply submit a request for all ALPR data in a
6 particular time frame, as EFF did here, or for a specific location, and take the time to search the data for
7 particular license plate numbers “of interest.”

8 “Disclosure to one member of the public would constitute a waiver of the exemption [citation],
9 requiring disclosure to any other person who requests a copy.” 86 Ops.Cal.Atty.Gen. 132, 137 (2003),
10 citing §6254.5 [additional citations omitted].” *County of Santa Clara v. Superior Court* (2009) 170
11 Cal.App.4th 1301, 1321-1322. Moreover, it is settled law that the motive of the requestor cannot be
12 considered. “[T]he motive of the particular requester is irrelevant; the question instead is whether
13 disclosure serves the public interest. ‘The Public Records Act does not differentiate among those who
14 seek access to public information.’ [Citations omitted.]” *Id.* at 1324. Thus, if this Court determines that
15 ALPR data is not exempt and must be disclosed to Petitioners, this determination would effectively
16 require the release of ALPR data to other members of the public whose requests may be focused on a
17 particular vehicle or location.⁷ The Department would be powerless to refuse subsequent requests based
18 on concerns--however justified--about who is seeking the data and why.

19 Petitioners claim “Respondents have only asserted the ‘confidentiality’ of the records; they
20 notably fail to assert the privacy interests of the vehicles’ drivers whose information has been captured.”
21 (Memorandum; page 7, lines 8-10.) Petitioners fail to recognize that, in citing section 6254(k) as a
22 statutory basis for non-disclosure of ALPR data, the LAPD is not only asserting vehicle owners’ privacy
23 interests. It is recognizing that those interests are grounded in federal and state law, particularly the
24 California Constitution. Maintaining the confidentiality of ALPR data is critical not only in relation to
25 criminal investigations, but in relation to protecting individual citizens’ privacy interests and safety as

26 _____
27 ⁷ Whether court-ordered disclosure to Petitioners would constitute a “waiver of the exemptions specified in Sections 6254
28 . . .” as to other requestors under section 6254.5 is really a technicality. While there’s an argument that section 6254.5
would not apply because of the exception for disclosures “(b) [m]ade through other legal proceedings or otherwise
required by law,” as a practical matter, should this Court order disclosure, LAPD would be compelled to disclose ALPR
data to other requestors as well.

1 well.

2
3 **III. UNDER THE BALANCING TEST OF SECTION 6255, THE PUBLIC INTEREST**
4 **SERVED BY DISCLOSURE IS CLEARLY OUTWEIGHED BY THE PUBLIC**
5 **INTEREST SERVED BY NON-DISCLOSURE.**

6 Section 6255, known as the “catchall exception” to the disclosure requirements of the CPRA,
7 provides: “The agency shall justify withholding any records by demonstrating that the record in
8 question is exempt under express provisions of this chapter or that on the facts of the particular case the
9 public interest served by not making the record public clearly outweighs the public interest served by
10 disclosure of the record.”

11 Here, LAPD has demonstrated that ALPR data “is exempt under express provisions” of the
12 CPRA because it falls under the investigatory records exemption of section 6254(f). Hence, there is no
13 need to conduct a “balancing test” under section 6255 to determine whether, on the facts of this
14 particular case, the public interest served by non-disclosure clearly outweighs the public interest served
15 by disclosure. Nonetheless, should the Court reach this test, LAPD can certainly meet the requisite
16 burden.

17 The public interest served by not making ALPR data public is detailed above. The disclosure of
18 numerous license plate numbers and the precise time(s) and location(s) vehicles bearing these license
19 plates were scanned by ALPR devices would infringe on the personal privacy rights and possibly
20 jeopardize the safety of those vehicles’ owners. The public also has a strong interest in ensuring that
21 police investigations are not compromised by the public release of investigatory information, other than
22 that specifically required to be disclosed under subdivisions (f)(1) and (f)(2) of section 6254. Contrary
23 to Petitioners’ assertion that “there is no proof that releasing ALPR data has the potential to tip off a
24 criminal to whether her or she is under investigation and to what the government knows,”
25 (Memorandum; page 11, lines 3-5) both common sense and law enforcement expertise dictate
26 otherwise. Gomez Dec., ¶7.. Obviously, a criminal who is able to review ALPR data would be able to
27 determine whether the police have evidence regarding the location of his or her vehicle relative to the
28 time and location of the crime.

On the other side of the scale, the public interest allegedly served by disclosure of ALPR data is

1 relatively weak and largely speculative. Petitioners' state: "The intrusive nature of ALPRs and their
2 potential for abuse creates a strong public interest in disclosure of data that would help shed light on
3 how police are actually using the technology. The actual data would reveal whether police agencies are
4 spreading ALPRs throughout their jurisdictions or focusing collection of millions of data points on a
5 few locations or communities, raising concerns about the detailed picture painted of those individuals'
6 movements." (Memorandum; page 6, lines 11-14.)

7 This argument is problematic for at least two reasons. First, the "potential for abuse"
8 (presumably by law enforcement) is a highly speculative basis for claiming a public interest in releasing
9 ALPR data, particularly when Petitioners acknowledge this data implicates serious privacy interests.
10 Regardless of Petitioners' suspicions about improper motives or actions by police officers in utilizing
11 ALPR technology, such speculation does not constitute a strong public interest in disclosure of raw
12 ALPR data. Second, the disclosure of thousands of ALPR scans would reveal very little, if anything,
13 about such "potential abuse" in any event. As Petitioners are well aware, ALPR devices "automatically"
14 and "indiscriminately" scan the license plates of all vehicles within range. (Memorandum; page 9, lines
15 8-9) They do not selectively scan only plates affixed to vehicles driven by Muslims, gays, those on their
16 way to political demonstrations, or others whom Petitioners insinuate Respondents seek to "target."
17 Patrol cars, which most of LAPD's ALPR units are affixed to, are necessarily "spread throughout
18 [LAPD's] jurisdiction:" the City of Los Angeles. Detecting "abuse" in these automated and
19 indiscriminate scans would be like searching for a needle in a haystack. In sum, disclosure would not
20 "contribute significantly to public understanding of government activities" (*City of San Jose v. Superior*
21 *Court* (1999) 74 Cal.App.4th 1008, 018) and is not "necessary to allow the public to determine whether
22 public officials have properly exercised their duties by refraining from the arbitrary exercise of official
23 power." (*Id.* at 1020.)

24 Not only does the balancing test clearly weigh in favor of non-disclosure of ALPR data, "the
25 burden of segregating exempt from non-exempt materials...remains one of the considerations which the
26 court can take into account in determining whether the public interest favors disclosure under section
27 6255." *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453, fn. 13.
28 Again: all ALPR data is exempt from disclosure under section 6254(f). But Petitioners' invitation for

1 this Court to direct LAPD to segregate ALPR data “involved in actual investigations” from other ALPR
2 data, and disclose the latter, must be addressed.

3 Petitioners state: “Because the records sought here do not include those involved in actual
4 investigations, it will not be unduly burdensome for Respondents to separate exempt materials from
5 nonexempt materials.” (Memorandum; page 12, lines 8-10.) This artificial distinction between “actual”
6 investigatory ALPR data (which Petitioners concede would be exempt) and all “other” ALPR data
7 (which would not be exempt under Petitioners’ theory) is predicated on Petitioners’ failure to
8 understand that the initial automated scanning process is itself investigatory. Not only is this distinction
9 fundamentally flawed, it is unworkable.

10 At any given moment a detective may enter a query into the ALPR system and determine that a
11 “hit” resulting from this query - a particular scan - is useful in a criminal investigation he or she is
12 conducting. Thus, “nonexempt” material would suddenly become “exempt,” based on Petitioners’
13 definition of “actual” investigatory records. Segregation of records in such a fluid computerized
14 environment, particularly one in which the categories of exempt and nonexempt materials are constantly
15 subject to change and actually changing, is virtually impossible. (Gomez Dec., ¶8.) Segregation of data
16 would be “unduly burdensome” in the extreme.

17 Under the “catchall” exemption of section 6255, the public interest clearly weighs heavily
18 against disclosure and in favor of non-disclosure.

19
20 **IV. LAPD FULLY COMPLIED WITH ITS RESPONSIBILITIES UNDER THE**
21 **CPRA AND IS NOT REQUIRED TO CREATE AN INDEX.**

22 Petitioners vaguely suggest that, even apart from the ALPR data, LAPD somehow failed to
23 properly respond to their CPRA requests for other ALPR-related records. This is patently false, as
24 demonstrated by the Department’s clear responsive correspondence and the over 450 pages of ALPR-
25 related documents which were specifically identified and provided to Petitioners. While acknowledging
26 LAPD’s production of 31 documents to the ACLU, Petitioners claim “most were not responsive.”
27 (Memorandum; page 13, line 15.) This is inaccurate and, frankly, mystifying. In fact, the “at least 22
28 involv[ing] the logistics of acquiring ALPRs (requests for proposals, invoices, or purchase orders) or

1 company user manuals” and others that “involved the practices or policies on use or operation of
2 ALPRs” were exactly what ACLU had requested in its September 18, 2012 CPRA request. The
3 provision of these documents also further undermines Petitioners’ argument that the disclosure of ALPR
4 data is necessary because the public is “without access to information about how ALPR technology is
5 being used.” (Memorandum; page 4, lines 15-16.) Many of the documents provided by LAPD to ACLU,
6 by Petitioners’ own admission, relate to the use of ALPR technology.

7 The only specific allegation against LAPD regarding supposedly withheld documents is
8 erroneous on its face. “LAPD notably failed to include some documents describing ‘practices’ using
9 ALPR data--for example, LAPD’s production omitted a report describing the use of Palantir Law
10 Enforcement, a platform for integrating databases, by one LAPD division to integrate ALPR tracking
11 with other investigative tools.” (Memorandum; page 13, lines 18-21.) The footnote to the sentence
12 readily reveals its inaccuracy (in addition to its mistaken use of the term “tracking”): The referenced
13 transmittal document is from March 13, 2013—almost six months after Petitioners’ CPRA requests.

14 Finally, there is absolutely no binding authority for the proposition that Respondents should be
15 required to create and produce an index. In fact, Petitioners acknowledge that the CPRA imposes no
16 such requirement. (Memorandum; page 14, lines 6-7.) Nor has any case law. Moreover, LAPD’s
17 responses to both Petitioners’ CPRA requests clearly set forth the documents that were being produced
18 and asserted applicable CPRA exemptions as to those that were not being produced.

19 CONCLUSION

20 For the foregoing reasons, Respondents City of Los Angeles and LAPD submit that the instant
21 Petition is without merit and should be denied in its entirety.

22
23 Dated: February 21, 2014

MICHAEL N. FEUER, City Attorney
CARLOS DE LA GUERRA, Managing Assistant City Attorney
DEBRA GONZALES, Supervising Assistant City Attorney

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26 By: 
HEATHER AUBRY
Deputy City Attorney

**DECLARATION OF
DANIEL GOMEZ**

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DECLARATION OF DANIEL GOMEZ

I, DANIEL GOMEZ, declare as follows:

1. I am a Sergeant II with the Los Angeles Police Department ("LAPD"), currently assigned as the Assistant Officer in Charge ("AOIC"), Tactical Technology Section ("TTS"), Information Technology Bureau. I have over 20 years of service with the LAPD, the last eight of which have been with the Tactical Technology Section. In my capacity as AOIC of the TTS, I supervise all TTS activities, which includes testing, procuring, managing, and deploying license plate recognition ("LPR") technology. I was also certified in December of 2009 by Motorola, Inc. and PIPS Technology regarding best practices and techniques as it applies to the Motorola MW810 with PIPS Slate Digital camera ALPR vehicle installation. I also have presented to various groups and organizations as a subject matter expert regarding LPR. Prior to that I worked as a field supervisor for two years, where I first began researching LPR for the Department and deployed the technology.

2. License Plate Recognition systems use character recognition software, coupled with hardware to interpret number data optimized to recognize fonts common with license plate numbers. These systems can be either fixed position cameras and/or mobile cameras typically mounted on vehicles. The LPR system captures still images of the source of the numbers and uses an algorithm to interpret the data as well as store the data to a storage device. This data can be compared against known license plate lists for comparative analysis. The captured data also typically contains metadata such as date, time, longitude and latitude, and information identifying the source of the number capture.

3. I have reviewed the records produced by the Department in response to the public records Act requests of ACLU and EFF. These records include numerous documents which reflect how the technology works and the Department's procurement of ALPR technology, and policies governing retention.

4. The Los Angeles Police Department first started testing LPR technology in 2004. As of this declaration, LAPD has 242 LPR equipped vehicles distributed throughout all LAPD police stations and in several specialized sections. There are also 32 fixed position LPR cameras in Southeast Area and Hollenbeck Area.

1 5. LPR is an extremely valuable investigative tool. It has been instrumental in detecting and
2 solving numerous crimes and for critical infrastructure protection. For instance, the data captured by the
3 LAPD mobile LPR system was used in identifying a vehicle that was present at the scene of a robbery
4 where a gun was used. This data allowed investigators to use other departmental resources and
5 investigative techniques to ascertain that the vehicle license plate was directly involved with the
6 robbery. In another case, a fixed camera in Southeast Area captured a vehicle license plate that was later
7 determined by the investigation was directly involved in a homicide. LPR's immediate investigative use
8 is its ability to almost immediately identify vehicles that are stolen, wanted and vehicles associated with
9 an "AMBER Alert."

10 6. Without the aid of LPR, an officer must observe a license plate and either manually enter
11 the number into a mobile data computer inside the patrol car or use the radio system to communicate to
12 the LAPD dispatch to determine whether the vehicle may be stolen or otherwise associated with a crime.
13 With LPR, this determination is made almost instantly for all vehicles in the immediate vicinity of the
14 patrol car. Further, the LPR system is designed with a fixed focal length and reads only numbers. This
15 is especially significant as it relates to vehicles equipped with the mobile LPR since the system does not
16 use any other criteria, such as personal identifiable information for capturing data, only the presence of
17 numbers.

18 7. If LAPD were required to turn over raw LPR data, the value of LPR as an investigative
19 tool would be severely compromised. For instance, a criminal or potential criminal would be able to
20 request all LPR data associated with the license plate of his or her vehicle, thereby learning whether
21 LAPD has evidence regarding his or her whereabouts on a particular date and time or near a particular
22 location. This could also result in the potential destruction of evidence.

23 In addition, the requesting individual could use the data to try and identify patterns of a particular
24 vehicle. Unlike law enforcement that uses additional departmental resources to validate captured LPR
25 information, a private person would be basing their assumptions solely on the data created by the LPR
26 system. Furthermore, the LAPD queries the stored LPR data based for the specific purpose of furthering
27 an investigation.

1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, the undersigned, declare that I am employed in the County of Los Angeles. I am over the
4 age of 18 and not a party to this action or proceeding. My business address is Los Angeles City
5 Attorney's Office, Public Safety General Counsel Division, 200 North Main Street, 800 City Hall
6 East, Los Angeles, CA. 90012.

7 On October 10, 2013, I served the document(s) entitled **RESPONDENT LOS ANGELES**
8 **POLICE DEPARTMENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN**
9 **OPPOSITION TO PETITION FOR WRIT OF MANDATE; DECLARATION OF DANIEL**
10 **GOMEZ IN SUPPORT THEREOF** on all interested parties in this action by transmitting true
11 copies thereof addressed as follows:

12 Peter Bibring, Esq.
13 ACLU FOUNDATION OF SOUTHERN
14 CALIFORNIA
15 1313 West Eight Street
16 Los Angeles, CA 90017
17 Tel. (213) 977-9500; Fax (213) 977-5299
18 pbibring@aclu-sc.org; ysalahi@aclu-sc.org

19 Tomas a. Guterres, Esq.
20 Eric C. Brown, Esq.
21 COLLINS COLLINS MUIR & STEWART LLP
22 1100 El Centro Street
23 South Pasadena, CA 91030
24 Tel. (626) 243-1100; Fax (626) 243-1111

25 Jennifer Lynch, Esq.
26 ELECTRONIC FRONTIER FOUNDATION
27 815 Eddy Street
28 San Francisco, CA 94109
Tel. (415) 436-9333; Fax (415) 436-9993
jlynch@eff.org

1 [X] **BY MAIL:** I am readily familiar with the practice of the Los Angeles City Attorney's Office
2 for collection and processing of correspondence for mailing with the United States Postal
3 Service. In the ordinary course of business, correspondence is deposited with the United
4 States Postal Service the same day it is placed for collection and mailing. On the date
5 referenced above, I placed a true copy of the above document(s) in a sealed envelope and
6 placed it for collection in the proper place in our office at Los Angeles, California.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct.

9 Dated: February 21, 2014

10 
11 PATRICIA GUERRA, Declarant