2d. Civ. No. _____

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

_____

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

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,
Respondent,

COUNTY OF LOS ANGELES, and the LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and the CITY OF LOS ANGELES, and the LOS ANGELES POLICE DEPARTMENT,
Real Parties in Interest.

_____

From the Superior Court for the County of Los Angeles
The Honorable James C. Chalfant
Case No. BS143004

_____

VERIFIED PETITION FOR WRIT OF MANDATE TO ENFORCE CALIFORNIA PUBLIC RECORDS ACT PURSUANT TO GOVERNMENT CODE § 6259(C)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners know of no entity of person that requires disclosure under subsections (1) or (2) of Rule 8.208(e).

Respectfully submitted,

Dated: October 14, 2014

Peter Bibring
Counsel for Petitioners

INTRODUCTION

This writ to enforce Petitioners' right to public records under the California Constitution and the California Public Records Act presents two issues of first impression: first, whether license plate and location data gathered indiscriminately on nearly every driver in Los Angeles may be considered a "record of an investigation" under the law enforcement exemption to the Public Records Act, Gov't Code §6254(f), and second, whether under the catchall exemption, Gov't Code §6255(a), the public interest in protecting license plate data as an investigative tool clearly outweighs the strong public interest in understanding the scope of the privacy impact from the collection of license plate and location information and identifying potential abuses.

Amid growing concern over the government's use of surveillance technology to collect massive amounts of data on the lives of ordinary Americans, Petitioners sent requests under the Public Records Act ("PRA"), Government Code §§ 6250 *et seq.,* to the Los Angeles Police Department ("LAPD") and the Los Angeles Sheriff's Department ("LASD"), agencies of Real Parties in Interest City and County of Los Angeles (the "City" and "County" respectively), seeking information on one such technology: Automatic License Plate Readers ("ALPRs").

ALPRs are computer-controlled camera systems—generally mounted on police cars or fixed objects such as light poles—that automatically capture an image of every license plate that comes into view. ALPRs can detect when a license plate enters the camera's field, capture an image of the car and its surroundings (including the plate), and convert the image of the license plate into alphanumeric data—in effect "reading" the

plate. ALPRs record data on each plate they scan, including not only the plate number but also the precise time, date and place it was encountered. The ALPR data can be compared against a list of plates for wanted vehicles, and the accumulated data can be searched by police in future investigations to identify past movements of drivers. One ALPR camera is capable of logging thousands of plates per hour. Over time, the accumulated location data create a history of drivers' movements that can provide private details on residents' lives. *See United States v. Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J. concurring) (noting that data about vehicle location can reveal "a wealth of detail about [a person's] familial, political, professional, religious, and sexual associations").

LASD and LAPD operate an extensive network of ALPRs. Each week, they collect license plate and location information on vehicles nearly 3 million times. Together, these two agencies maintain databases that likely contain data associated with roughly *half a billion* license plate scans—an average of about 66 hits for each of the approximately 7.6 million vehicles registered in Los Angeles County. LAPD maintain this data for five years; LASD has a minimum retention period of two years but would like to keep the data "indefinitely." The two agencies share this data with each other and with more than twenty other police departments in Los Angeles County.

In order to understand and educate the public on the risks to privacy posed by ALPRs in Los Angeles, Petitioners sought documents related to ALPR use by LAPD and LASD, including one week's worth of data collected by LAPD and LASD's ALPRs between August 12 and August

19, 2012.[1] It is this data—which would allow the public to better understand the privacy impacts posed by ALPRs, and which the parties agree constitutes a "public record"—that is at issue in this Petition.

After LAPD and LASD withheld the single week of ALPR data under Government Code §§ 6254(f) and 6255(a),[2] Petitioners filed a petition for writ of mandate with Respondent Superior Court seeking to enforce the requests. The Superior Court held a hearing on the petition, agreed with the City and County's positions and upheld their decisions to withhold the records.

The Superior Court's decision denies public access to crucial information about the scope of suspicionless gathering of location data by police and should be overturned for several reasons.

First, under the PRA, orders supporting non-disclosure are reviewable only by writ, not by direct appeal. *See* Gov't Code § 6259(c). Petitioner therefore has no other adequate remedy at law. *Powers v. City of Richmond*, 10 Cal. 4th 85, 113-114 (1995). Moreover, as our Supreme Court emphasized in upholding the constitutionality of this provision, the lack of a direct appeal right means that "an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner." *Id*. at 114.

Writ review is necessary to provide guidance on important and novel

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[1] Petitioners also sought documents on the policies, practices, procedures, training, and instructions on how ALPRs should be used by the departments; how the information obtained through the devices could be used or shared; and how the data collected with such devices was retained, protected and purged. Those requests are not at issue in this Petition.

[2] While Real Parties in Interest claimed other exemptions, these are the only ones on which Respondent court based its order.

questions under the Public Records Act and the constitutional right to information about how our government is spending taxpayer money. *See* Cal. Const. Art. I, § 3(b); *see, also, e.g., Cnty of Santa Clara v. Super. Ct.*, 170 Cal. App. 4th 1301, 1308 (2009) (granting writ review in PRA case on "weighty questions of first impression"). The trial court's rulings hold important implications not only for ALPR data, but for other kinds of data gathered by police without suspicion of or regard to any particular crime—from public security cameras to police body cameras.

Second, the trial court's ruling that ALPR data are "records of . . . investigations" under § 6254(f) rests on a fundamental misunderstanding of how ALPR technology operates and is not supported by substantial evidence in the record. Contrary to the trial court's opinion, ALPR data is not "targeted" but is gathered indiscriminately from any vehicle that comes within range of the devices. Based largely on this misunderstanding, the trial court concluded that ALPR data constitutes "records of . . . investigations," a result that improperly expands the scope of material that may be considered an investigative record beyond precedent as established in *Haynie v. Superior Court,* 26 Cal. 4th 1061, 1071 (2001), and *Williams v. Super. Ct.*, 5 Cal. 4th 337, 346 (1993), and amounts to the untenable conclusion that all cars on the streets of Los Angeles are constantly under investigation by LAPD and LASD.

Third, in applying the catch-all exemption under Government Code § 6255(a), the trial court relied on conclusory assertions and speculation, rather than evidence, in concluding that the strong public interest in disclosure of ALPR data was "clearly outweigh[ed]" by the public interest in nondisclosure. Instead, the record shows the interest in disclosure of the records—necessary to understand ALPR systems' impact on privacy and to

identify potential law enforcement abuse—is far stronger than the concern that disclosure would undermine law enforcement by revealing police "patrol patterns" and allowing "criminals" to discover what ALPR data police had collected on their vehicles.

Appellate guidance on these novel and important issues under the PRA is necessary to clarify the contours of the public's right to access government information.

ISSUES FOR REVIEW

1. Whether the Superior Court erred in holding that the records of ALPR data collected by police—including at least each license plate scanned and the time, date and place it was scanned—are exempt from disclosure under the PRA as "records of . . . investigations" conducted by a local police agency under Gov't Code § 6254(f).

2. Whether the Superior Court erred in holding that the ALPR data collected by police are exempt from disclosure under the PRA's catchall provision, Gov't Code § 6255, because the public interest in maintaining police confidentiality of criminal investigations and the privacy of vehicle drivers "clearly outweighs" the public interest in understanding the scope of and privacy impact from police use of ALPR technology.

VERIFIED PETITION FOR WRIT OF MANDAMUS AND/OR OTHER EXTRAORDINARY RELIEF

I. Jurisdiction and Timeliness of Petition

1. This Court has jurisdiction over this matter pursuant to Government Code Section 6259(c), which provides that a Superior Court's order denying access to documents under the Public Records Act is "immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." This action was filed in Los Angeles Superior Court as a petition for writ of mandate to enforce several requests for records under the California Public Records Act, Government Code §§ 6250 *et seq*., pursuant to that section and Code of Civil Procedure §§ 1085 *et seq*. The trial court entered an order holding the requested records exempt from disclosure under Government Code §§ 6254(f) and 6255.

2. The statutory right to file a petition is in lieu of an appeal, but trial court orders "shall be reviewable on their merits" through the writ process. *Times Mirror Co. v. Super. Ct.*, 53 Cal. 3d 1325, 1336 (1991). The California Supreme Court has made clear that in Public Records Act cases, "when writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." *Powers*, 10 Cal. 4th 113-14.

3. This Petition is timely. Under Government Code § 6259(c), a petition must be filed 20 days after service of the Superior Court's written order or within an additional 20 days if the trial court finds good cause

allows. If notice is served by mail, "the period within which to file the petition shall be increased by five days." Gov't Code § 6259 (c). The Superior Court served its order by mail on August 27, 2014. On October 3, 2014, pursuant to Petitioners' *ex parte* application, Respondent found good cause existed to increase the time period for filing a petition with this Court, extending the deadline to and including October 14, 2014. Minute Order, Ex. 13.

II. Parties

4. Petitioner Electronic Frontier Foundation (EFF) is a petitioner in the action before the Superior Court. EFF is a not-for-profit corporation established under the laws of the Commonwealth of Massachusetts, with offices in San Francisco, California and Washington, D.C. As a donor-supported membership organization, EFF has worked for more than 20 years to inform policymakers and the general public about civil liberties issues related to technology and to protect civil liberties, privacy, consumer interests, and innovation in new technologies. In support of its mission, EFF uses state and federal transparency laws to obtain and disseminate information to the public concerning government activities. EFF reports on and publishes records it receives in response to public records requests on its website, www.eff.org; in its online newsletter, the *EFFector* (in publication since 1990, currently with more than 179,000 subscribers); and through white papers, partnerships with news media, books, speaking engagements and amicus briefs at all levels of state and federal court. As such, EFF is beneficially interested in the outcome of these proceedings and in Real Parties in Interests' performance of their legal duties.

5. Petitioner ACLU of Southern California ("ACLU SoCal") is a petitioner in the action before the Superior Court. ACLU SoCal is a non-

profit organization under the laws of the state of California, and is an affiliate of the American Civil Liberties Union, a national organization of 500,000 members dedicated to the principles of liberty and equality embodied in both the United States and California constitutions and our nations' civil rights law. Both ACLU SoCal and ACLU have long been concerned about the impact of new technologies on the constitutional protections for privacy. *See, e.g.*, *United States v. Jones*, 132 S. Ct. 945 (2012) (amicus curiae in case holding that police officers' warrantless placement of GPS device on car to track its location violated Fourth Amendment); and *City of Ontario v. Quon*, 560 U.S. 746 (2010) (amicus curiae in case addressing police officers' expectation of privacy in messages on department-issued pagers). As part of its advocacy, ACLU SoCal routinely uses public records laws to gather information about the policies and practices of local, state, and federal governments, in order to compile information for publication in reports published in hard copy and distributed electronically through ACLU SoCal's website, in amicus briefs, and through the media. As such, ACLU SoCal is beneficially interested in the outcome of these proceedings and in Real Parties in Interests' performance of their legal duties.

6. Respondent Superior Court of the State of California for the County of Los Angeles is a duly constituted court, exercising judicial functions in connection with the litigation described above. On August 27, 2014, the Honorable James Chalfant, presiding in Respondent Court, issued an order denying in its entirety access to the records at issue. A true and correct copy of the Superior Court's August 27 Order is attached hereto as Exhibit 1.

7. Real Party in Interest County of Los Angeles is a local public agency within the meaning of Government Code § 6252(d) and is a Respondent in the PRA proceeding in the Superior Court. The Los Angeles Sheriff's Department is a department of the County.

8. Real Party in Interest City of Los Angeles is a local public agency within the meaning of Government Code § 6252(d) and is a Respondent in the PRA proceeding in the Superior Court. The Los Angeles Police Department is a department of the City.

III. Procedural History

A. Petitioners' PRA Requests to LAPD and LASD

9. On August 30 and September 4, 2012, Petitioner EFF sent substantially identical PRA requests to LAPD and LASD seeking records related to those agencies' use of ALPRs, including "all ALPR data collected or generated between 12:01 AM on August 12, 2012 and 11:59 PM on August 19, 2012, including, at a minimum, the license plate number, date, time, and location information for each license plate recorded." *See* Ex. 3 at 90-92, 119-121 (PRA requests).

10. Petitioner EFF's PRA requests to LAPD and LASD also sought "any policies, guidelines, training manuals and/or instructions on the use of ALPR technology and the use and retention of ALPR data, including records on where the data is stored, how long it is stored, who has access to the data, and how they access the data." *Id.*

11. On September 5, 2012, LASD responded to EFF's request by letter. It refused to produce the ALPR data generated between August 12 and August 19, 2012, asserting the records were exempt pursuant to Government Code §§ 6254(f),(k) and 6255(a) because they were

"investigatory or security files" and because "[t]he public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." LASD also asserted the records were exempt pursuant to Evidence Code §1040(b)(2) and stated that "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." *See* Ex. 3 at 123-124 (LASD letter to EFF dated September 5, 2012).

12. By this same letter, LASD agreed to produce records responsive to the second part of EFF's request. On October 15, 2012, LASD produced the following records: "Los Angeles County Sheriff's Department, Field Operations Direction 09-04 - Automated License Plate Recognition (ALPR) System," *see* Ex. 8 at 237-241; and "Department Policies and Guidelines," *see* Ex. 8 at 242-248. LASD also produced a CD that contained a PowerPoint presentation titled "ASAP: Advanced Surveillance and Protection" that discussed the Department's ALPR program. *See* Ex. 8 at 249-293.

13. On September 14, 2012, the LAPD responded to EFF's request by letter. It refused to produce the ALPR data generated between August 12 and August 19, 2012, stating that the "database and the data contained therein are exempt from disclosure because it contains official information." LAPD cited Government Code § 6254(k) and Evidence Code § 1040. LAPD also cited Government Code § 6255 and asserted that it needed "to retain confidentiality of the report." Finally, LAPD claimed the records were either investigatory records or part of an investigative file and therefore exempt under Government Code § 6254(f). *See* Ex. 3 at 115-117 (LAPD letter to EFF dated September 14, 2012).

14. In its letter of September 14, LAPD agreed to produce some records, including the "PIPS Technology Automatic License Plate Recognition Vehicle User Guide," the "PIPS Technology Quick Start Guide," and copies of the City of Los Angeles's records retention policies.

15. On September 18, 2012, Petitioner ACLU SoCal sent requests under the PRA to both LASD and LAPD seeking records relating to ALPRs, including policies, practices, and procedures related to the use of ALPRs. These request are set forth at Exibit 3 at 150-153, 167-170.

16. LAPD responded to ACLU SoCal's request on October 31, 2012, agreeing to provide a variety of records. A true and correct copy of LAPD's response is attached as Exhibit 3 at 172-178. Out of 31 documents LAPD produced to the ACLU, at least 22 involve the logistics of acquiring ALPRs (requests for proposals, invoices, or purchase orders) or are company user manuals. *See* Bibring Dec., Ex. 8 at 220-221. A true and correct copy of the documents LAPD produced, other than those two categories, is attached as Exhibit 8 at 299-383. LAPD produced the records on October 16, 2012.

17. On October 15, 2012, LASD responded to the ACLU's letter, producing the following documents: "Field Operations Directive 09-04 – Automated License Plate recognition System;" "Department Policies and Guidelines;" and "Century Station Order #72 – Advanced Surveillance and Protection." A copy of LASD's letter is attached as Ex. 8 at 226-227. A true and correct copy of the documents LASD produced in response to the ACLU's request is attached as Exhibit 8 at 228-240.

B. Proceedings Below

18. Petitioners filed this action as a verified petition for writ of mandate to enforce their public records requests in Los Angeles Superior Court on May 6, 2013. A true and correct copy of the petition and all exhibits is attached hereto as Exhibit 3. A true and correct copy of the verification is attached hereto as Exhibit 4.

19. The City filed an answer to the verified petition on June 14, 2012, a true and correct copy of which is attached hereto as Exhibit 5.

20. The County filed an answer to the verified petition on June 13, 2014, a true and correct copy of which is attached hereto as Exhibit 6.

21. Petitioners filed a memorandum of points and authorities in support of their petition on January 24, 2014, a true and correct copy of which is attached as Exhibit 7. Petitioners also filed the declaration of Peter Bibring in support of their memorandum, a true and correct copy of which (with supporting exhibits) is attached as Exhibit 8.

22. The City filed a memorandum in opposition to Petitioner's petition, along with a supporting declaration from LAPD Sgt. Dan Gomez, on February 21, 2014, a true and correct copy of which is attached as Exhibit 9.

23. The County filed a memorandum in opposition to Petitioner's petition on February 21, 2014, a true and correct copy of which is attached as Exhibit 10. The County concurrently filed a declaration of Sgt. John Gaw in support of its opposition, with several exhibits, a true and correct copy of which is attached as Exhibit 11.

24. Petitioners filed a reply memorandum of points and authorities in support of their petition on March 7, 2014, a true and correct copy of which is attached as Exhibit 12.

25. The Superior Court held a trial on Petitioners' writ petition on August 21, 2014. A true and correct copy of the official transcript of that proceeding is attached as Exhibit 2.

26. On August 27, 2014, the Superior Court entered an order supporting the decision of the LASD and LAPD to withhold the ALPR data. A true and correct copy of the August 27 Order is attached as Exhibit 1.

27. The court served written notice of the August 27 Order by first class mail on the day it was filed.

28. On October 3, 2014, upon Petitioners' *ex parte* application, the trial court granted an additional 20 days to file this Petition, pursuant to Government Code § 6259(c). A true and correct copy of the minute order granting the application is attached as Exhibit 13.

29. Petitioners now file this Petition for Writ of Mandamus seeking review of the trial court's August 27 order.

IV. Absence of Other Remedies:

30. Petitioners have no plain, speedy and adequate remedy, other than the relief sought in this Petition. Orders denying disclosure of public records, under the Public Records Act, are not appealable but reviewable only by petition for the issuance of an extraordinary writ. Gov't Code 6259 (c); *Powers*, 10 Cal. 4th at 114.

V. Evidence & Authenticity of Exhibits

31. The exhibits accompanying this Petition, filed concurrently under separate cover and entitled Exhibits in Support of the Verified Petition for Writ of Mandate to Enforce California Public Records Act, are true and correct copies of the original documents they purport to be. All

exhibits are incorporated herein by reference as if fully set forth in this Petition.

VI. Prayer for Relief

Petitioners therefore pray that this Court grant relief as follows:

1) Issue a peremptory writ of mandamus, or other appropriate relief, directing the Superior Court to set aside its August 27 Order and any judgment in favor of the City and County of Los Angeles and enter orders and judgment as appropriate in favor of Petitioners, consistent with the decision of this Court, holding that the ALPR data sought by Petitioners is not exempt from disclosure under the PRA and directing Real Parties in Interest to disclose the requested ALPR data.

2) Grant Petitioners their costs and fees on appeal pursuant to Government Code § 6259(d).

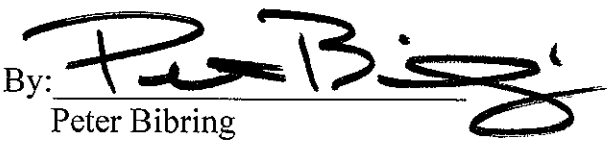
3) Grant such other relief as is proper and just.

Dated: October 14, 2014

Respectfully submitted,

Jennifer Lynch
ELECTRONIC FRONTIER FOUNDATION

Peter Bibring
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA

By: 
Peter Bibring

Attorneys for Petitioners

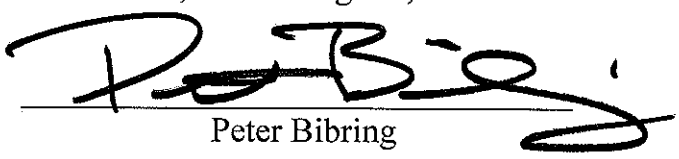
VERIFICATION

I, Peter Bibring, do hereby declare:

I am a Senior Staff Attorney and the Director of Police Practices for the American Civil Liberties Union Foundation of Southern California, one of the Petitioners in this action. I have read the pleading and have personal knowledge of the matters asserted therein and on that ground allege that the matters stated therein are true.

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

Executed this 14th day of October 2014, in Los Angeles, California.



Peter Bibring

MEMORANDUM OF POINTS AND AUTHORITIES

I. Standard of Review

By providing explicitly for review by writ procedure in Government Code § 6259 (a), the Legislature has made clear that writ review is "not confined to acts in excess of jurisdiction" but rather "that trial court orders under the Act shall be reviewable on their merits." *Times Mirror Co.*, 53 Cal. 3d at 1336. In reviewing a trial court's order under the PRA, an appellate court "conduct[s] an independent review of the trial court's ruling." *Id.*; *see also State Bd. of Equalization v. Super. Ct.*, 10 Cal. App. 4th 1177, 1185 (1992) (reading *Times Mirror* rule as equating scope of review by writ with scope of review on appeal). "[F]actual findings made by the trial court will be upheld if based on substantial evidence." *Times Mirror*, 53 Cal. 3d at 1336.

For purposes of balancing interests for and against disclosure under § 6255, a court of appeals "accept[s] the trial court's express and implied factual determinations if supported by the record, but [undertakes] the weighing process anew." *Cnty. of Santa Clara*, 170 Cal. App. 4th at 1323. Under the PRA, while the reviewing court "accept[s] the trial court's express and implied factual determinations if supported by the record," it undertakes "the weighing process anew." *L.A. Unified Sch. Dist. v. Super. Ct.*, 228 Cal. App. 4th 222, 237 (2014); *see also Michaelis, Montanari & Johnson v. Super. Ct.*, 38 Cal. 4th 1065, 1072 (2006) ("[A] reviewing court should weigh the competing public interest factors de novo…."); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 651 (1986) (reviewing court "must conduct an independent review of the trial court's statutory balancing analysis").

II. The Threats to Privacy and Free Speech Posed by ALPR Tracking Call for Public Scrutiny Informed by the Records at Issue

Automated License Plate Readers consist of high-speed cameras placed on structures or mounted to patrol cars and accompanying software that automatically photograph and record every passing vehicle's license plate in the immediate vicinity. Order, Ex. 1 at 6; Gomez Decl., Ex. 9 at 410; Transcript, Ex. 2 at 35 (ALPR camera is on all the time); City Brief, Ex. 9 at 405 ("As Petitioners are well aware, ALPR devices 'automatically' and 'indiscriminately' scan the license plates of all vehicles within range"). The system immediately extracts the key data from the photograph—the plate number and time, date and location where it was captured. Gomez Dec;., Ex. 9 at 409. The photograph often captures not just the license plate but also the vehicle and its occupants.[3] The photograph and data can be shared with other agencies and retained for years or indefinitely, depending on individual agency policy.[4] Agencies have created massive databases of license plate data that record the travels of millions of drivers in an area.[5]

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[3] *See* Ex. 8 at 256 (system "provides an overview photograph of the vehicle and its license plate"); Ali Winston, "License plate readers tracking cars," *SFGate* (June 25, 2013) available at http://www.sfgate.com/bayarea/article/License-plate-readers-tracking-cars-4622476.php (license plate image clearly showed man and his daughters stepping out of vehicle in their driveway).

[4] LASD retains ALPR data for two years, although the department "would prefer to retain data indefinitely." Gaw Dec., Ex. 11 at 427. LAPD's retention period is five years. Ex. 2 at 68.

[5] *See* Ex. 8 at 272-274 (training describing sharing of ALPR data between 26 agencies in Los Angeles County); *see also* David J. Roberts & Meghann Casanova, International Association of Chiefs of Police, *Automated License Plate Recognition Systems: Policy and Operational Guidance for Law Enforcement*, 24 (2012), *available at* https://www.aclu.org/files/FilesPDFs/ALPR/federal/NHTSA/15948-16075DOJ-IACP%20report.pdf (last visited Oct. 13, 2014); ACLU, *You*

According to a 2012 *LA Weekly* article, LASD and LAPD "are two of the biggest gatherers of automatic license plate recognition information," and, as of two years ago, "have logged more than 160 million data points," constituting "some 22 scans for every one of the 7,014,131 vehicles registered in L.A. County."[6] At the hearing below, the City indicated that LAPD currently collects approximately 1.2 million license plate reads per week, while the County collects between 1.7 and 1.8 million —a total of approximately 3 million scans per week tracking the specific locations of Los Angeles drivers. Transcript, Ex. 2 at 48-49. At that rate, the 160 million plate scans in LAPD and LASD's databases would have grown to roughly *half a billion* by the time this brief is filed—an average of more than 66 plate scans for each vehicle registered in Los Angeles County.[7] LAPD and LASD also share data with each other and with other agencies, so that, for example, LASD can query license plate data from 26 other police agencies in Los Angeles County and is working to expand its reach

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Are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements, 21-22 (July 2013), https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf (last visited Oct. 13, 2014).

[6] Jon Campbell, *License Plate Recognition Logs Our Lives Long Before We Sin*, LA WEEKLY (June 21, 2012), *avl. at* http://www.laweekly.com/2012-06-21/news/license-plate-recognition-tracks-los-angeles (last visited Oct. 11, 2014).

[7] According to the DMV, 7,609,517 vehicles were registered in Los Angeles County in 2013. Department of Motor Vehicles, Estimated Vehicles Registered By County For The Period Of January 1 Through December 31, 2013, available at http://apps.dmv.ca.gov/about/profile/est_fees_pd_by_county.pdf (last visited Oct. 4, 2014).

to Riverside and San Bernardino Counties.[8]

Police use ALPR data in two ways. First, ALPR data can be compared with "hot lists" of vehicles associated with a crime or reported as stolen. Departments, and even individual units, can also create their own "hot lists" so that ALPR users will be alerted whenever a "vehicle of interest" is located. Gaw Dec., Ex. 11 at 427. Officers can also enter individual plates into their ALPR system to be searched for during that shift.[9] Second, police can use the accumulated database of ALPR data in future investigations as a record of the locations and movements of Los Angeles drivers, allowing officers to search through the database for past locations of vehicles of interest or to identify which vehicles were scanned in a particular location at a particular time.

Police use of ALPRs has exploded in recent years. A September 2009 survey reported that out of 305 randomly selected police departments nationwide, 70 (or 23%) used ALPRs.[10] A 2011 Police Executive Research Forum survey of more than 70 of its member police departments showed that 71% used ALPR technology and 85% expected to acquire or increase use in the next five years.[11]

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[8] Ex. 8 at 231 (Sgt. Gaw Letter); Ex. 8 at 272-74 (LASD PowerPoint); *see also* Roberts & Casanova, *supra* note 5, at 24; *You Are Being Tracked*, *supra* note 5, at 19, 22.

[9] *See* Ex. 8-A at 231 (Sgt. Gaw Letter)..

[10] Roberts & Casanova, *supra* note 5, at 19-20.

[11] Police Executive Research Forum, *How are Innovations in Technologies Transforming Policing?*, 1-2 (Jan. 2012), available at http://www.policeforum.org/assets/docs/Critical_Issues_Series/how%20are%20innovations%20in%20technology%20transforming%20policing%202012.pdf (last visited Oct. 13, 2014).

While ALPR technology can be a powerful tool, without proper safeguards, the technology can also harm individual privacy and civil liberties. A network of readers enables police to collect extensive location data on an individual, without his knowledge and without any level of suspicion. ALPRs can be used to scan and record vehicles at a lawful protest or house of worship; track all movement in and out of an area;[12] gather information about certain neighborhoods[13] or organizations;[14] or place political activists on hot lists so that their movements trigger alerts.[15] The Supreme Court has noted the sensitive nature of location data and the fact that it can reveal "a wealth of detail about [a person's] familial, political, professional, religious, and sexual associations." *See Jones*, 132 S. Ct. 955 (Sotomayor, J., concurring); *id.* at 958 (Alito, J., concurring) (concluding that defendant had a reasonable expectation of privacy from monitoring of his location by GPS tracker). Taken in the aggregate, ALPR data can create a revealing history of a person's movements, associations, and habits.

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[12] Cyrus Farivar, *Rich California town considers license plate readers for entire city limits*, ARS TECHNICA (Mar. 5, 2013), available at http://arstechnica.com/ tech-policy/2013/03/rich-california-town-considers-license-plate-readers-for-entire-city-limits/ (last visited Oct. 13, 2014).
[13] *See* Paul Lewis, *CCTV aimed at Muslim areas in Birmingham to be dismantled*, THE GUARDIAN (Oct. 25, 2010), available at http://www.guardian.co.uk/uk/2010/oct/25/birmingham-cctv-muslim-areas-surveillance (last visited Oct. 13, 2014).
[14] *See* Adam Goldman & Matt Apuzzo, *With cameras, informants, NYPD eyed mosques*, ASSOCIATED PRESS (Feb. 23, 2012), available at http://www.ap.org/Content/AP-In-The-News/2012/Newark-mayor-seeks-probe-of-NYPD-Muslim-spying (last visited Oct. 13, 2014).
[15] Richard Bilton, *Camera grid to log number plates*, BBC (May 22, 2009), available at http://news.bbc.co.uk/2/hi/programmes/whos_watching _you/8064333.stm (last visited Oct. 13, 2014).

Indeed, this has already occurred. In August 2012, the Minneapolis *Star Tribune* published a map displaying the 41 locations where license plate readers had recorded the Minneapolis mayor's car in the preceding year.[16] And this data is ripe for abuse; in 1998, a police officer "pleaded guilty to extortion after looking up the plates of vehicles near a gay bar and blackmailing the vehicle owners."[17]

Police tracking of the public's movements can have a significant chilling effect on civil liberties and speech protected by the First Amendment and the California Constitution. The International Association of Chiefs of Police has cautioned that ALPR technology "risk[s]… that individuals will become more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they consider themselves under constant surveillance."[18] And, indeed, communities that have faced excessive police surveillance that has included ALPR tracking have experienced fear of political activism, expressing religious observance and exercising other basic constitutional rights.[19]

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[16] Eric Roper, *City cameras track anyone, even Minneapolis Mayor Rybak*, MINNEAPOLIS STAR TRIBUNE (Aug. 17, 2012) http://www.startribune.com /local/minneapolis/166494646.html (last visited Oct. 13, 2014).

[17] Julia Angwin & Jennifer Valentino-DeVries, *New Tracking Frontier: Your License Plates*, WALL ST. J. (Sept. 29, 2012), available at http://online.wsj.com/news/articles/SB10000872396390443995604578004 723603576296 (last visited Oct. 13, 2014).

[18] International Association of Chiefs of Police, *Privacy impact assessment report for the utilization of license plate readers*, 13 (Sept. 2009) http://www.theiacp.org/Portals/0/pdfs/LPR_Privacy_Impact_Assessment.p df (last visited Oct. 13, 2014).

[19] *See generally* Creating Law Enforcement Accountability & Responsibility (CLEAR) Project, CUNY School of Law, *Mapping Muslims: NYPD Spying and its Impact on American Muslims* (March 11, 2013) available at http://www.law.cuny.edu/academics/clinics/ immigration/clear/Mapping-Muslims.pdf (last visited Oct. 13, 2014).

These very real risks to privacy and civil liberties require public understanding of how police departments use ALPRs. Many jurisdictions trying to implement ALPRs have struggled to strike the right balance between effectiveness of the technology and safeguards against misuse.[20] In Minneapolis, the *Star Tribune* story about ALPRs led to a public debate on data retention policies.[21] Similarly, the Boston Police Department "indefinitely suspended" its ALPR use after data released to the *Boston Globe* led to questions about the scope of data collected, the privacy invasion involved, and the department's ability to safeguard data.[22] Without public access to information about how the technology is being used, the members of the public whose whereabouts are being recorded cannot know if their rights are being infringed nor challenge policies that inadequately protect their privacy.

For these reasons, Petitioners filed PRA requests with LAPD and LASD seeking access to a week's worth of ALPR data and now seek to enforce those requests before this Court.

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[20] *See* Police Executive Research Forum, *supra* note 11, at 33-36; ACLU, *supra* note 5, at 23-24.

[21] Eric Roper, *Minnesota House passes protections on vehicle tracking, data misuse*, MINNEAPOLIS STAR TRIBUNE (May 17, 2013), available at http://www.startribune.com/politics/statelocal/207965541.html (last visited Oct. 13, 2014).

[22] Shawn Musgrave, *Boston Police halt license scanning program*, BOSTON GLOBE (Dec. 14, 2013), available at http://www.bostonglobe.com/metro/2013/12/14/boston-police-suspend-use-high-tech-licence-plate-readers-amid-privacy-concerns/B2hy9UIzC7KzebnGyQ0JNM/story.html (last visited Oct. 13, 2014).

ARGUMENT

III. The Public Records Act Favors Broad Disclosure of Records

The California Constitution guarantees the public's "right of access to information concerning the conduct of the people's business," Cal. Const., art. I, § 3(b)(1), and the PRA recognizes this as a "fundamental and necessary right of every person." Gov't Code § 6250. The PRA defines "public record" broadly so as to include "every conceivable kind of record that is involved in the governmental process." *Versaci v. Super. Ct.*, 127 Cal. App. 4th 805, 813 (citation omitted) (2005); *see also* Gov't Code § 6252(e). It also mandates that "all public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Super. Ct.*, 5 Cal. 4th 337, 346 (1993). Californians' interest in government transparency is so strong that in 2004, "voters passed an initiative measure that added to the state Constitution a provision directing the courts to broadly construe statutes that grant public access to government information and to narrowly construe statutes that limit such access." *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 68, (2014) (citing Cal. Const., art. I, § 3, subd. (b)(2)).

The government bears the burden of demonstrating that the records at issue are exempt. *Comm'n on Peace Officer Standards & Training* ("*POST*") *v. Super. Ct.*, 42 Cal. 4th 278, 299 (2007). The public interest in transparency and "ensuring accountability is particularly strong where the discretion invested in a government official is unfettered" and where "the degree of subjectivity involved in exercising the discretion cries out for public scrutiny." *CBS, Inc. v. Block*, 42 Cal. 3d 646, 655 (1986).

IV. The Superior Court Erred In Holding the Data Exempt as Investigative Records Under Government Code § 6254(f)

The Superior Court held that ALPR data may be withheld as a record of an investigation under Government Code § 6254(f). This holding is in error for two reasons. First, the Superior Court's determination that ALPR data constitutes an investigative record because ALPR data collection is generally targeted demonstrates a fundamental misunderstanding of how the technology operates and of Petitioners' purpose in seeking these records. Second, based in part on its misunderstanding of the technology, the Superior Court held that ALPR data—collected indiscriminately on all Los Angeles drivers—constitutes "records of . . . investigations" under § 6254(f). This holding means that all vehicles on the streets of Los Angeles are constantly under investigation, a conclusion that simply does not fit with common understanding of the term "investigation," and which inappropriately expands the scope of § 6254(f) beyond all precedent.

A. <u>The Superior Court Erred in Finding ALPR Data Collection is Targeted and in Basing Its Ruling on this Fundamental Misunderstanding of the Technology</u>

Despite the wealth of evidence in the record showing that ALPRs collect data automatically and indiscriminately, as well as City of Los Angeles's concession as to this point,[23] Respondent court determined that "ALPR data generated by mobile cameras . . . is not the indiscriminate

[23] City of Los Angeles stated in its brief in opposition to the original petition for writ of mandate, "As Petitioners are well aware, ALPR devices 'automatically' and 'indiscriminately' scan the license plates of all vehicles within range. They do not selectively scan only plates affixed to vehicles driven by Muslims, gays, those on their way to political demonstrations, or others whom Petitioners insinuate Respondents seek to 'target.'").

recording of license plates" because "the data is the collection of plate information gathered in specific areas and locations as conducted by the mobile officer as directed by his or her superiors." Ex. 1 at 13. The court further held that ALPR data collection is "non-random" because the officer in the squad car decides "what vehicle plates will be photographed." Ex. 1 at 16, 12.

The Superior Court's misunderstanding of how ALPR technology operates lacks substantial evidence and led to a fundamental flaw in its application of Government Code §6254(f) to the records at issue.

The City acknowledged in its briefing below that "ALPR devices 'automatically' and 'indiscriminately' scan the license plates of all vehicles within range." Ex. 9 at 405. Indeed, that is the "automated" nature of Automated License Plate Readers: Officers turn on the ALPR systems mounted to their squad cars at the beginning of each shift and turn them off at the end of the shift. ALPR Instructions, Ex. 8 at 299, 301. During this entire time, ALPR systems remain on. Transcript, Ex. 2 at 35. While on, they capture plate data constantly, recording all plates that come into view as officers go about their normal patrols. *See* Gomez Decl., Ex. 9 at 410 (ALPR plate analysis is "made almost instantly for all vehicles in the immediate vicinity of the patrol car"). [24] While, as the court noted, the officers may "make the decision of where [they] will go" (Order, Ex. 1 at 12)—whether they are handling calls for service, driving to lunch, or

[24] *See also* PIPS Technology User-Guide, Automatic License Plate Recognition Vehicles, 2 ("While driving the cameras and software will automatically read license plates.") available at https://www.eff.org/files/filenode/20120914_alpr_ lapd_pips_user-guide.pdf.

driving back into the police vehicle parking lot—there is no evidence that they make any decisions as to "what vehicle plates will be photographed" *Id*. There is also no evidence that either the officer or his superiors give any special instructions to the system to gather particular plates or to focus on plates in particular areas. Petitioners' PRA requests specifically sought any policies, training or instructions on how ALPRs should be used or deployed, and LASD and LAPD provided no documents suggesting that officers are encouraged to use ALPR-mounted vehicles to gather plates in a particular way, or to do anything other than go about their jobs in an ordinary fashion, with the ALPR collecting license plate data as they go.

Similarly, there is no evidence in the record to suggest that ALPRs mounted to poles at fixed locations throughout the City and County are turned on or off in response to any particular direction from an officer or her superiors, that they may be focused on particular plates rather than others, or that they may be maneuvered remotely. The only evidence in the record states that these cameras "have a continuous connection to the ALPR server." Ex. 8 at 238. Therefore, it does not appear that fixed ALPRs are any more targeted to locate or identify particular plates or vehicles than mobile units.

The Superior Court clearly relied on its misunderstanding of the technology in finding the data exempt under 6254(f). The Court noted that, if ALPRs recorded plates indiscriminately, "ALPR data might not constitute a record of investigation." Order, Ex. 1 at 13-14: "it is less clear that ALPR data from fixed point and random mobile car patrol cameras are records of investigation . . ."; *Id.* at 16 ("the court held ALPR data to be a record of investigation based in part on the non-random nature with which

it is collected."). For this reason, alone, this Court should reverse the trial court's order.

However, the Superior Court also mistakenly reasoned that Petitioners' arguments for seeking the data proved it was collected through a targeted investigation and was therefore an investigative record. Petitioners argued that the data could, among other uses, reveal if officers were scanning license plates primarily in certain neighborhoods, showing that some communities, ethnic groups or religious groups were disproportionately burdened by ALPR use. The court believed that "identifying the patrol patters of LASD and LAPD is the very reason why Petitioners want the ALPR data," *Id.* at 14, and concluded that the data was properly exempt as a record of an investigation *because* Petitioners wanted to know if law enforcement had conducted "targeted surveillance of automobiles in particular locations or neighborhoods which potentially is an abuse." *Id.* at 13.

This reasoning is defective for several reasons. First, to the extent Petitioners' reasons for seeking the data are even relevant, Petitioners seek the data to understand the nature and extent of the intrusion of ALPRs on Los Angeles residents for a variety of reasons, including to understand the overall privacy threat posed by ALPRs, and what the range of intrusion is (whether some vehicles are scanned hundreds of times and others not at all).[25] Second, as set forth above, neither the City nor the County introduced

[25] Petitioners reasons for seeking the data should have no bearing on whether the data is an investigative record. In parsing the reasons for Petitioners' request for records and using its own interpretation of these reasons to justify withholding the records, the trial court also appears to violate Government Code § 6257.5, which states: "This chapter does not allow limitations on access to a public record based upon the purpose for

evidence showing that they use ALPR systems to target particular individuals, and Petitioners' PRA requests have, as yet, revealed no documents indicating such use of ALPRs. Finally, even if supervisors do direct officers to use ALPRs to collect data in some areas, that does not constitute an "investigation" if the collection is directed neither at any particular crime nor at any particular person, but is simply an attempt to amass data in a particular community for use in future investigations. In the absence of any evidence to show that law enforcement uses ALPRs in a targeted fashion as part of particular investigations, the trial court's assumption that they might do so is an inappropriate ground to hold the data are "records…of investigations" under § 6254(f).

Finally, while the Superior Court noted that "[s]ome ALPR data is gathered less discriminately," for example, through ALPRs fixed to light poles or other stationary objects, it wrongly asserted that Petitioners were not interested in that "random plate information." Order, Ex. 1 at 13. Petitioners stated in their requests, in their papers, and at the hearing that they were interested in *all* plate information gathered over the course of one week in 2012 by *all* police ALPRs—whether from fixed locations or mobile units—to understand and demonstrate the extent of intrusion and location tracking involved in police use of ALPRs. *See* Transcript, Ex. 2 at 51:17-21 (making clear Petitioners sought fixed-reader data as well as mobile data).

Because the Superior Court's misunderstandings are wholly unsupported by the evidence, are factually incorrect, and form the basis for

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which the record is being requested, if the record is otherwise subject to disclosure."

the court's holding that the data is exempt as an investigative record under Government Code § 6254(f), this Court should reverse the trial court's ruling.

B. Data Collected Indiscriminately on All Los Angeles Drivers—Whether or Not They Have Been Involved in Criminal Activity—is not a Record of an Investigation

Respondent court appeared to recognize that enlarging the scope of "records of investigations" to cover license plate data collected indiscriminately by Real Parties in Interest would be a significant expansion of prior caselaw. The trial court stated that it "held ALPR data to be a record of investigation based in part on the non-random nature with which it is collected," Order, Ex. 1 at 16, and further noted that if data were collected indiscriminately, "*ALPR data might not constitute a record of investigation.*" *Id*. at 16 (emphasis added). Nevertheless, the court held all ALPR data sought by Petitioners to be an investigative record.

As set forth in the prior section, LAPD and LASD use ALPRs to collect license plate data automatically and indiscriminately on each and every driver in Los Angeles who passes within range of their cameras—at a rate of three million scans per week—whether or not those drivers are suspected of wrongdoing. These systems are unlike almost any other surveillance technology in use by law enforcement today. Even red-light cameras, which also capture an image of a vehicle's license plate, are only triggered to save a picture of the plate when the driver has violated the law by entering an intersection after the light has turned red.[26] For this reason,

[26] *See* LAPD, *Photo Red Light FAQs*, http://www.lapdonline.org/get_informed/content_basic_view/1026 (last visited March 3, 2014) ("The red light camera enforcement system only captures vehicles that run the red light.")

prior cases that hold exempt records of investigations into specific alleged criminal activity or a specific person do not support application of the exemption to ALPR data.

The Public Records Act defines neither "investigations" nor "records of . . . investigations," and very few courts in California have addressed this section of the statute. However, all of the few cases to hold records exempt under this exemption have done so within the context of a targeted investigation into a specific crime or person. In no case has a California court ever held that data collected indiscriminately on every member of a community constitute investigative records under 6254(f). To the extent that the trial court did so here, that ruling is in error.

In the main case to address the investigative records exemption, *Haynie v. Superior Court*, the Supreme Court defined "records of investigation exempted under section 6254(f)" as pertaining to "only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred." 26 Cal. 4th 1061, 1071 (2001). In *Haynie*, a man detained by LASD deputies sought records related to his own detention and the bases for it. Mr. Haynie was detained after a civilian reported suspicious activity in the area involving a vehicle similar to Mr. Haynie's. The court held that, because "the investigation that included the decision to stop Haynie and the stop itself was for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission[,] [r]ecords relating to that investigation [were] exempt from disclosure by section 6254(f)." *Id.*

Haynie is distinguishable from the case at hand because it involved an investigation targeted from its inception at a specific report of criminal activity. Mr. Haynie's stop was precipitated by a civilian tip; therefore all

information linked to his stop was also part of the investigation into that civilian tip. In contrast, ALPR plate scans are not precipitated by any specific criminal investigation, not even an officer's hunch. ALPR cameras photograph every license plate that comes into view and the systems store data on up to 14,000 cars during a single shift, LASD Training, Ex. 8 at 256, regardless of whether the car or its driver is linked to criminal activity. They do not conduct investigations; they collect data.

All of the very small number of other cases holding documents exempt from disclosure under the "records of . . . investigations" clause of § 6254(f), are distinguishable for the same reason as *Haynie*: they each involve requests for documents related to targeted investigations into specific criminal acts. For example, in *Williams v. Superior Court*, a newspaper requested records of disciplinary proceedings against two deputies involved in a brutal beating of a drug suspect. 5 Cal. 4th 337. In *Rivero v. Superior Court*, a former police officer requested records relating to the "investigation of a local official for failing to account properly for public funds." 54 Cal. App. 4th 1048, 1050 (1997). And in *Rackauckas v. Superior Court*, a newspaper requested records concerning the investigation of "two separate incidents of alleged police misconduct involving" a specific officer. 104 Cal. App. 4th 169, 171 (2002). In each of these cases, the courts found the records were linked to specific criminal investigations and therefore were properly withheld as records of those investigations.

The automated collection of data on millions of innocent drivers in Los Angeles is not an "investigation" within the meaning of *Haynie* or any of the cases to apply its rule. ALPRs do not involve a "decision" to investigate, *Haynie*, 26 Ca. App. 4th 1071; they also do not involve any specific allegations of wrongdoing or a connection to any particular crime.

Instead, LPR cameras automatically photograph all plates within view without the driver's knowledge, without the officer targeting any particular car, and without any level of suspicion. At the instant an ALPR camera scans a plate, neither the computer system itself—nor the officer in the squad car—has made any determination that the plate may be linked to criminal activity. The plate is scanned only because the system has identified it as a license plate. This data is then stored whether or not that information will lead to evidence of criminal activity.

Law enforcement can use license plate data for investigations in two ways. First, when an ALPR system scans each plate, it immediately runs that data against "hot lists" of stolen vehicles, Amber alerts, wanted lists, etc. *See* Gaw Decl., Ex. 11 at 427; Gomez Decl., Ex. 9 at 410. The "hot list" function alerts the officer to a vehicle that has previously been identified as being connected with a crime, allowing the officer to pull the car over or note it for further investigation. The "hot lists" of wanted vehicles represent the fruits of *prior* investigations that have identified certain vehicles as connected with particular crimes, and Petitioners have not sought those "hot lists," nor the license plate data associated with those lists. The fact that a very small number of scanned plates will be listed on a hot list does not transform the entire database of plates into investigative records.[27]

[27] Few plate scans result in an immediate identification of any law enforcement issue. The typical percentage of license plate scans that become connected to any kind of suspected crime or vehicle registration issue is only about 0.2 percent. ACLU, *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements*, 13-15 (July 2013) https://www.aclu.org/technology-and-liberty/you-are-being-tracked-how-license-plate-readers-are-being-used-record.

Second, after ALPR data has been accumulated and stored, police can search that data—data that provides a history of where Los Angeles drivers have been over the last two to five years—in future investigations. For example, if a robbery occurs while an ALPR-equipped vehicle drives past a house, police who are investigating the robbery can check the database of scanned plates, not only to identify nearby vehicles that might have been connected to the crime, *see also* Gomez Decl., Ex. 9 at 410 (providing examples), but also to learn what vehicles have been scanned near that house for many years in the past. Therefore, the accumulated data allows officers to investigate crimes that were not identified or perhaps not even committed at the time a driver's plate was scanned. While the data accumulated by ALPRs can be used for these future investigations, the accumulation of data, in itself, does not constitute an "investigation." And when that data is not linked to an investigation at the time it was accumulated, the data cannot constitute a record of an investigation.[28]

Finally, the trial court's holding defies any common understanding of the term "investigation." If all ALPR data are exempt as "records of . . . investigations," it would mean that all vehicles in Los Angeles are constantly under investigation by the police, simply because the police use ALPRs to collect license plate data indiscriminately, automatically, and without individualized suspicion throughout the city and county. This fails

[28] Where a license plate scanned by an ALPR matches a vehicle of interest on a "hot list," Petitioners believe that by withholding any information that a match occurred, the City and County would be adequately withholding all "records of . . . investigations"—in the same way that a phone book is not a record of investigation merely because police use it to match a phone number with a particular individual. However, if the Court disagrees, the City and County can simply redact any plate scans that matched plates on "hot lists" at the time they were scanned.

to comport with any reasonable understanding of a law enforcement "investigation."

The collection of millions of datapoints each week on the locations of Los Angeles drivers cannot be deemed "investigations," and this Court should hold that the Superior Court erred by holding ALPR data exempt as "records of … investigations" under Government Code § 6254(f).

V. The Superior Court Erred In Holding the Data Exempt Under Section 6255(a) Because the Public Interest in Disclosure is Far Stronger than the Public Interest in Non-Disclosure

In balancing the public interests in disclosure and nondisclosure under the PRA's catchall provision, Gov't Code § 6255(a), the trial court erred in holding that ALPR data could be withheld because the interests in nondisclosure do not "clearly outweigh" the interests in disclosure.

The Superior Court correctly recognized the strong public interest in access to ALPR data to reveal potential abuse as well as to understand the impact ALPRs have on privacy. The court also correctly recognized both the strong collective privacy interest Californians have in the data and that this privacy interest could be addressed through redaction or anonymization of the data.

However, the two interests in nondisclosure on which the Superior Court relied—the undermining of law enforcement investigations from the disclosure of "patrol patterns" and the ability of individuals to see if the police have ALPR data about them—are speculative in nature and are supported by no evidence other than the unsupported conclusory assertions of LAPD Sgt. Gomez (in the case of people seeking ALPR data on their own vehicles) or no evidence at all (in the case of "patrol patterns"). The Supreme Court has refused to hold records exempt under § 6255 based on

"a few vaguely worded declarations making only general assertions about the risks" of disclosure. *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 75 (2014); *see also CBS,* 42 Cal. 3d 652 (rejected assertion that disclosure of applications and licenses for concealed weapons would allow would-be attackers to more carefully plan their crimes as "conjectural at best"). Because the evidence in the record shows the interest in non disclosure does not clearly outweigh the interest in disclosure, the records should be released.

A. The PRA's Catch-All Exemption is Weighted in Favor of Disclosure

The PRA's catch-all exemption in § 6255 applies when "the public interest served by not disclosing the record *clearly outweighs* the public interest served by disclosure." Gov't Code § 6255(a) (emphasis added). "The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality." *Cal. State Univ., Fresno Assn., Inc. v. Super. Ct.*, 90 Cal. App. 4th 810, 831 (2001); *accord Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 657 (1974).

California recognizes a strong public interest in the disclosure of records, *see* Cal. Const., art. I, § 3(b)(1), especially records related to the police, because of the power they wield. *Comm'n on POST,* 42 Cal. 4th at 300; *see also N.Y. Times Co. v. Super. Ct.*, 52 Cal. App. 4th 97, 104-05 (1997).

B. The Superior Court Recognized that the Public interest served by Disclosure of ALPR Data is Strong

The Superior Court correctly held that "[t]he intrusive nature of ALPRs and the potential for abuse of [ALPR] data creates a public interest in disclosure of the data to shed light on how police are actually using the

technology." Order, Ex. 1 at 16.

The Superior Court recognized that the public interest in understanding how "local law enforcement agencies conduct the public's business" applied strongly to ALPRs. As the court reasoned:

> The ALPR data would show whether police agencies are spreading ALPRs throughout their jurisdictions or targeting the collection of millions of data points on a few locations or communities. The data will reveal whether police are targeting political demonstrations to help identify protestors, or other locations such as mosques, doctors' offices or gay bars that might yield highly personal information. To debate whether police should have ALPR technology and what limitations, if any, should be placed on their use, the public must understand how police actually use the technology, which the underlying data can show.
>
> The public interest in disclosure of ALPR data not only concerns potential abuse, but also lies in understanding what picture of citizen movement law enforcement actually is receiving from ALPR data. Are there residents whose plates are scanned dozens of times in a single week? Hundreds of times? This information helps the public evaluate the threat to privacy posed by ALPR[s].

Order, Ex. 1 at 16.

The Superior Court's reasoning is correct. As set forth above, ALPRs pose a serious threat to privacy and free speech and hold the potential for abuse. Californians can only properly weigh in on whether police should be using ALPRs and what policies might be necessary to control their use if they understand how police actually use the technology. *See In re Sealing & Non-Disclosure*, 562 F.Supp.2d 876, 886 (S.D. Tex. 2008) (noting, in a case addressing the unsealing of electronic surveillance orders: "Cumulatively considered, these secret orders, issued by the thousands year after year . . . may conceal from the public the actual degree of government intrusion that current legislation authorizes. It may very well

be that, given full disclosure of the frequency and extent of these orders, the people and their elected representatives would heartily approve without a second thought. But then again, they might not.").

Courts have recognized that the public has a particularly strong interest in the operation of police. *See Comm'n on POST*, 42 Cal. 4th at 300 ("The public has a legitimate interest not only in the conduct of individual [police] officers, but also in how the Commission and local law enforcement agencies conduct the public's business."); *see also N.Y. Times Co. v. Super. Ct.*, 52 Cal. App. 4th 97, 104-05 (1997)("To maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.").

The requests at issue would illuminate potential constitutional concerns with government use of ALPRs. The collection of location data through ALPRs relates to privacy interests protected by the United States constitution. *See Jones*, 132 S. Ct. 949 (holding collection of vehicle location through GPS required a warrant). The California constitution's protections for privacy also implicate the wholesale, suspicionless collection of ALPR data. *See Hill v. Nat'l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 35-36 (1994) ("[T]he California constitutional right of privacy prevents government and business interests from [1] collecting and stockpiling unnecessary information about us and from [2] misusing information gathered for one purpose in order to serve other purposes or to embarrass us." (citation and quotations omitted)).

The value of the disclosure of ALPR data is not speculative. The revelation of ALPR data in other jurisdictions has had a demonstrable effect, not only on public discussion of ALPRs, but also on the policies

governing their use.[29] In Minneapolis, after the *Star Tribune* obtained license plate data and published a map displaying the 41 locations where plate readers had recorded the mayor's car in the preceding year,[30] the story led to intense public debate on appropriate data retention policies and the introduction of state legislation to curb ALPR data misuse.[31] Similarly, after a request for ALPR records revealed that the Boston Police Department was misusing its ALPR technology, the police department "indefinitely suspended" its ALPR use,[32] and the Massachusetts legislature introduced legislation that would limit law enforcement use of ALPR, including imposing a 48-hour limit on data retention. In Connecticut, the disclosure of ALPR data revealed that some small towns retained more than 20 plate scans per person.[33] This has helped to inform the current debate in that state over new legislation that would set appropriate retention periods for the data. In each of these examples, disclosure of the data was integral to informed debate—within the legislatures, among the general public, and even within the agencies themselves. Without public access to information about how ALPR technology is being used—including the raw ALPR data from a limited time period—the very people whose whereabouts are being recorded cannot know if their rights are being infringed nor challenge

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[29] *See* Police Executive Research Forum, *supra* note 4, at 33-34; ACLU, *supra* note 2, at 23-24.
[30] Eric Roper, "City cameras track anyone, even Minneapolis Mayor Rybak," *supra* note 16.
[31] Eric Roper, "Minnesota House passes protections on vehicle tracking, data misuse," *supra* note 21.
[32] Shawn Musgrave, "Boston Police halt license scanning program," *supra* note 22.
[33] Ken Dixon, "Plate-Scan Database Divides Conn. Police, ACLU," http://www.officer.com/news/11322873/plate-scan-database-divides-conn-police-aclu (March 5, 20014)

policies that inadequately protect their privacy.

The Superior Court also correctly rejected the City's argument that Petitioners should be required to show evidence of abuse of ALPRs before they could demonstrate public interest in disclosure. As the Superior Court observed, "this argument undercuts the CPRA's purpose, which is to provide the public with access to documents necessary to determine whether abuses are taking place." Order, Ex. 1 at 16.

C. The Evidence Does Not Show a Strong Public Interest in Withholding the Records

The Superior Court found that disclosure of a week's worth of ALPR data, even in anonymized form, would so undermine law enforcement efforts as to create a strong public interest in nondisclosure. However, the evidence in the record is thin to non-existent for the two interests in nondisclosure on which the trial court relied. For the concern that a criminal could look up police records of his or her license plates in order to destroy evidence, the court relied on a few speculative lines of a single declaration. The court's other concern, that the data would reveal police "patrol patterns" that could undermine law enforcement if known by the public, is supported by no evidence in the record nor by common sense.[34]

[34] Although the Superior Court recognized the public interest in maintaining the privacy of all vehicles and drivers, finding that release of raw ALPR data could allow any member of the public to track the movements of a vehicle simply by knowing the license plate number, Order, Ex. 1 at 16, the court at the balancing stage did not rely on that factor, as it assumed it could be addressed by anonymization. *Id.* at 17. And while the Superior Court also noted that disclosure of information about "hot lists" could compromise an investigation, it rightly observed that such information would be protected (because Petitioners never requested it). *Id.*

1. *The Superior Court Had Scant Evidence to Support Its Assessment of the Risks that Could Arise from Disclosure.*

The evidence in support of the potential risks arising from disclosure is scant—indeed the only evidence cited by the court, and the only evidence submitted, is a single nine-line paragraph in the declaration of Sgt. Gomez, a sergeant in the Tactical Technology Section who supervises "testing, procuring, managing, and deploying [ALPR] technology." Order, Ex. 1 at 14, 17 (citing Gomez Decl. ¶7); Gomez Decl., Ex. 9 at 409. The sum total of the evidence on the harm from disclosure are Sgt. Gomez's statements, as follows:

> If LAPD were required to turn over raw LPR data, the value of LPR as an investigative tool would be severely compromised. For instance, a criminal or potential criminal would be able to request all LPR data associated with the license plate of his or her vehicle, thereby learning whether LAPD has evidence regarding his or her whereabouts on a particular date and time or near a particular location. This could also result in the potential destruction of evidence.
>
> In addition, the requesting individual could use the data to try and identify patterns of a particular vehicle. Unlike law enforcement that uses additional departmental resources to validate captured LPR information, a private person would be basing their assumptions solely on the data created by the LPR system. Furthermore, the LAPD queries the stored LPR data based for the specific purpose of furthering an investigation.

Gomez Decl., Ex. 9 at 410.[35] Sgt. Gomez's declaration never mentions police "patrol patterns" and lacks evidence to support the claim that releasing the data would allow criminals to access and search through the data.

[35] The only declaration submitted by the County, that of LASD Sgt. Gaw, did not mention potential harms from disclosure of the data. *See generally* Gaw Decl., Ex. 11.

(a) There is no Evidence that Disclosing the Data would Reveal "Patrol Patterns" or that Revealing Patrol Patterns Would Result in Harm [36]

Although the Superior Court relied on the supposed harm from disclosure of police "patrol patterns" in holding that the public interest in non-disclosure clearly outweighed the interest in disclosure, the record contains *no evidence whatsoever* regarding the potential for disclosure of "patrol patterns" or the harm that would result. "Patrol patterns" are neither mentioned (by that term or any other) in Sgt. Gomez's declaration for the City, the declaration of Sgt. Gaw for the County, or in either party's opposition briefs below. *See* Exs. 9, 10, 11. The issue of patrol patterns was not raised until the County's attorney voiced it in the hearing on the Petition. *See* Transcript, Ex. 2 at 58:21-59:3. The Court's conclusion that revealing "patrol patterns" potentially undermines law enforcement investigations has no evidence whatsoever to support it.

Applying common sense, there is no particular reason to think that disclosing the movements of an ALPR-equipped vehicle would compromise law enforcement goals (and the evidence supplies none). ALPRs are not employed on specialized or undercover units, but on marked patrol cars. The movements of cars assigned to patrol are dictated by daily enforcement needs and calls for service. ALPRs collect data without regard

[36] The Superior Court in its Order stated that Petitioners sought data to identify "patrol patterns." Ex. 1 at 14. This is emphatically not true. Petitioners seek the data to illuminate the scope of intrusion caused by ALPRs, and whether the burdens from ALPRs fall disproportionately on some communities. Petitioners care about what data was gathered, but, for purposes of this request, care not at all about the routes of police cars doing the gathering.

to whether the officers are answering a call, patrolling an area, going to a meeting, or even heading to lunch. It is far from obvious why the path a police car drives on any day needs to be secret, or what good it would do criminals to have access to ALPR information that discloses the past routes of some patrol cars.

Further, even if knowing the "patrol patterns" of police were valuable to criminals, that information is already public because it can be readily observed. Mobile ALPRs are mounted on marked, black and white police cars, making their paths through neighborhoods open and obvious. If criminals want to know "patrol patterns" in a particular area, they need only watch for police cars. Disclosure of ALPR data cannot compromise law enforcement investigations by revealing "patrol patterns" if those patterns are not secret in the first place.

Finally, if there were any evidence that revealing patrol patterns could be compromised by disclosure of the data, this could be addressed by redaction. The Superior Court did not address the potential for redaction to cure its concerns with disclosure, but Petitioners could work with Real Parties in Interest to determine appropriate redaction protocol to address these issues, if necessary.

(b) There is no Evidence that Allowing Individuals to Access their own ALPR Data Would Undermine Law Enforcement Effectiveness

The other principal interest in nondisclosure cited by the Superior Court arises from the ability of an individual to determine if he or she appears in the ALPR database, and the conclusion that such a discovery could undermine its usefulness. *See* Order, Ex. 1 at 14 ("A criminal also would be able to determine whether the police have evidence regarding the

location of his or her vehicle relative to the time and location of the crime.").

This reasoning, too, suffers from several flaws. First, like the worry that disclosing license plate data would reveal private information about an individual, this concern can be addressed by anonymization. If license plates are not disclosed in a recognizable form, but are given random, unique identifiers, a criminal cannot simply enter in his license plate to see what information the police have about his past movements. That alone is enough to address the potential harm to law enforcement investigations from criminals accessing the data, and to undercut the Superior Court's reasoning in holding this represents a significant public interest in nondisclosure.

Second, it is not clear what harm would really arise from a criminal learning whether or not police have ALPR data about his vehicle. There is certainly no evidence in the record of harm, other than Sgt. Gomez's conclusory statements that disclosure would mean "the value of [ALPR] as an investigation tool would be severely compromised" and that disclosure "could also result in the potential destruction of evidence." Gomez Decl., Ex. 9 at 410.[37] But such conclusory statements do not explain how likely it

[37] The Court described Sgt. Gomez's declaration as "expert evidence." Order, Ex. 1 at 17. But Sgt. Gomez has been assigned to the Tactical Technology Section for the past eight years, where he describes his ALPR-related duties as supervising "testing, procuring, managing, and deploying [ALPR] technology," and has been certified for ALPR vehicle installation. Gomez Decl., Ex. 9 at 409. There is no evidence, however, that Sgt. Gomez himself supervises the use of ALPR data in criminal investigations, or has significant experience in that regard. While Sgt. Gomez may be an expert in how ALPR technology works, and how to install it, there is no reason to think he has the background to give expert testimony on how

is that disclosure of ALPR data would pose any threat to law enforcement investigations. ALPRs are only one way that a vehicle's location may be recorded. A car (and its license plate) may be captured on surveillance cameras or observed by witnesses. Criminals presumably know this and either take steps to distance their cars from crime scenes or assume their car could have been seen and take steps necessary to destroy evidence or otherwise avoid detection, whether or not an ALPR has scanned their car near a crime. Moreover, a "criminal" would still have to file a public records request with the police agency and wait 10 days (or more likely, 24 days) to obtain information about his or her ALPR data, which not only gives police time to use the data to investigate but would also call police attention to the person's interest in incriminating evidence.[38] *See* Gov't Code § 6253(c) (providing agencies must respond to requests for records within 10 days, but allowing agencies to extend once by no more than 14 days).

The Superior Court also made a related mistake in concluding that a criminal could "monitor the police to see if he is under investigation and, if so, the nature and timing of the surveillance." Order, Ex. 1 at 14. This misunderstands the nature of ALPRs. The declaration of Sgt. Gomez, which the court cited on this point, nowhere says that disclosing ALPR data would reveal targeted surveillance of an individual, as opposed to revealing

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criminals might react to the release of ALPR data or how that might affect law enforcement investigations.

[38] If a requestor sought ALPR data that was being used as evidence in an ongoing investigation — for example, asking for ALPR data from the location of a homicide at the time it occurred — a police agency could presumably withhold that data as "investigatory" under § 6254(f) once it actually was being used in investigation.

only their presence in the randomly collected plate data. And if a person were under investigation and sought access to her own records, the agency could also withhold this data as an investigatory record.

(c) Personal Privacy Can be Addressed Through Anonymization of the Data

Petitioners do acknowledge that data about location information is sensitive and private and that releasing raw ALPR data poses a threat to privacy of the millions of Angelenos whose location information would be publicly revealed. However, Petitioners suggested addressing this concern through anonymization—using a computer algorithm to remove the actual license plate number for each scan and substitute a random, unique identifier. This would prevent someone from finding a person's location information from the ALPR data just by entering in his or her license plate.[39] At the hearing, the County acknowledged that anonymization would address privacy concerns. Transcript, Ex. 2 at 58, 60. The Court in its Order also recognized (or at least assumed) that the privacy interest in data could be addressed by redaction and segregation. Order, Ex. 1 at 17.

(d) Petitioners Did Not Request Plates Associated with "Hot Lists"

Finally, disclosing ALPR data would in no way interfere with police use of ALPRs to find vehicles on "hot lists." Although the Superior Court observed that disclosure of information about "hot lists" could compromise an investigation, Petitioners have never sought information about hot lists

[39] Petitioners note that even if the original plate numbers were disclosed, it is not trivial to use those numbers to get information on who the owner of the vehicle is or where she lives. Information such as this, which is maintained by the DMV, is protected by federal law, and government entities treat it as confidential.

and openly disclaimed seeking "hot list" information at the hearing. Transcript, Ex. 2 at 30:18-31:8. The Superior Court therefore rightly concluded that "hot list" information would remain protected and should not impact the balancing analysis under § 6255. Order, Ex. 1 at 17.

D. The Balancing of Interests Weighs Strongly in Favor of Disclosure

On balance, the public interest in nondisclosure of Petitioners' request for ALPR data falls far short of "clearly outweigh[ing]" the interests in disclosure. Gov't Code § 6255(a). But even if the court were to find the balance favored nondisclosure, all of Respondents' arguments concern the interests in nondisclosure of information that identifies particular vehicles. These interests could be addressed by anonymizing the license plate information from the data to protect individual privacy interests (or to prevent criminals from knowing if or where their cars have been scanned) or potentially redacting other information, while still providing the public with enough data to partially assess Respondents' practices. *See, e.g.*, *CBS*, 42 Cal. 3d at 655 (recognizing that where public interest favoring disclosure conflicts with information about individuals that "entail[s] a substantial privacy interest.… In such special cases, the confidential information [about that individual] may be deleted.").

VI. CONCLUSION

For the reasons stated above, Petitioners respectfully request this Court issue a peremptory writ of mandamus, or other appropriate relief, directing the Superior Court to set aside its August 27, 2014 Order. Petitioners also request that this Court hold that the ALPR data sought by

Petitioners is not exempt from disclosure under the PRA and direct Real-Parties-in-Interest to disclose the requested data.

Dated: October 14, 2014

Respectfully submitted,

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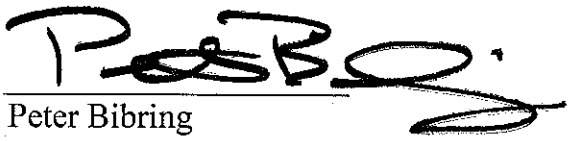
CERTIFICATE OF WORD COUNT

I certify pursuant to California Rules of Court 8.486(a)(6) and 8.204(c)(1) that this Petition for Writ of Mandate is proportionally spaced, has a typeface of 13 points or more, contains 12,742 words, excluding the cover, the tables, the signature block, verification, and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: October 14, 2014



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1313 West Eighth Street, Los Angeles, California 90017. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On October 14, 2014, I served the foregoing document: VERIFIED PETITION FOR WRIT OF MANDATE TO ENFORCE CALIFORNIA PUBLIC RECORDS ACT PURSUANT TO GOVERNMENT CODE § 6259(C), on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

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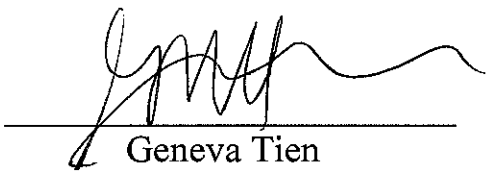
I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on October 14, 2014, at Los Angeles, California.



Geneva Tien