2d. Civ. No. B259392

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE

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

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE TO ENFORCE CALIFORNIA PUBLIC RECORDS ACT PURSUANT TO GOVERNMENT CODE § 6259(c)

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INTRODUCTION

The opposition briefs filed by Real Parties in Interest City of Los Angeles and County of Los Angeles (collectively "Real Parties") clarify several key issues before this Court.

The City's opposition clarifies that there is no factual dispute in the manner ALPRs gather license plate information — both ALPRs mounted on vehicles and those mounted on fixed objects like light poles gather the time, date, and location data indiscriminately on any license plate that comes within range of the camera, without any prompting or targeting from officers. Accordingly, the Superior Court erred when it concluded ALPR data collection "is not the indiscriminate recording of license plates. *If it were, ALPR data might not constitute a record of an investigation.*" Order, Ex. 1 at 13 (emphasis added). But the City argues that the Superior Court did not determine ALPRs were targeted — even if that were true, it means only that all parties agree on the facts, and the issue whether the exemption for "records of . . . investigations" under Government Code § 6254(f)[1] applies is solely a question of law for this Court to review *de novo.*

As set forth below, Real Parties' oppositions on the investigatory records exemption under § 6254(f) are most telling for what they do not contest—that no California court has held such wholesale, indiscriminate collection of data to be exempt from disclosure as an investigatory record; that the Court's discussions of the definition of "investigation" under that provision imply a targeted inquiry into criminal conduct that is not present in ALPR data collection; and that Real Parties' argument has the absurd consequence that Los Angeles drivers are constantly under investigation

[1] Statutory references are to the Government Code unless otherwise noted.

because the police are constantly collecting license plate data, a result that cannot square with any common sense understanding of a law enforcement "investigation."

On the balancing of interests in disclosure and nondisclosure under § 6255, Real Parties' oppositions verge on outlandish. The County attacks Petitioners at length for what they characterize as fearmongering, while both Real Parties question the relevance of examples of abuses from other jurisdictions—but Petitioners have simply pointed to examples of abuse of ALPRs and other surveillance to convey the strong public interest in accessing ALPR data. Petitioners need not show ongoing misconduct at LAPD or LASD to demonstrate a public interest in records—after all, the purpose of the Public Records Act is to "enable[] the press and the public to ensure that public officials are acting properly." *CBS, Inc. v. Block*, 42 Cal. 3d 646, 654–55 (1986).

While Petitioners certainly recognize that the public has strong privacy interests in license plate data, neither the City nor the County convincingly articulates any harm that would result to law enforcement from disclosing ALPR data or the "patrol patterns" it might reveal, much less point to any admissible evidence of such harm in the record. Nor do the Real Parties rebut Petitioners' position that any harms from disclosure could be addressed through redaction, other than an argument from the City that redaction would be overly burdensome which unjustifiably assumes that all data would have to be manually altered, despite Real Parties' own documents acknowledging that the data can be exported into Microsoft Excel files where it could be redacted with relative ease.

LAPD and LASD have already used ALPRs to amass roughly half a billion data points on the location of Los Angeles drivers. The public has a

right to access a week's worth of ALPR data to better understand the threat to privacy from ALPRs, how they are being used and whether they are being abused, and whether some communities disproportionally bear the burden of their scrutiny. Because ALPR data is not properly exempt as "records of . . . investigations" under § 6254(f), and because the public interest in nondisclosure does not clearly outweigh the public interest in disclosure under § 6255, this Court should grant the Petition and order the ALPR data disclosed.

ARGUMENT

I. THE DATA REQUESTED IS NOT PROPERLY EXEMPT UNDER § 6254(F)

The Superior Court erred in holding that ALPR scan data constitute "records of . . . investigations" and so can be withheld under Government Code § 6254(f).[2] In so holding, the Court appeared to rely on a mistaken understanding that ALPR data is collected in a targeted manner, despite Real Parties' concession to the contrary. Regardless of whether the Court

[2] *Amici curiae* California State Sheriffs' Association, California Police Chiefs' Association and California Police Officers' Association (collectively "Law Enforcement Association Amici" or "LEA Amici") suggest the data may be exempt as intelligence information. *See, e.g.*, LEA Amici at 7). However, neither Real Party in Interest addressed intelligence information in their opposition briefs filed before the lower court or this court—despite the fact that Petitioners addressed this in their writ petition filed with the Superior Court. *See* Ex. 7 at 211–12. Real Parties have thus waived claims to exempt data based on this category under 6254(f) (*See* Pet. Reply, Ex. 12 at 499 n. 1). Further, as Petitioners noted in their Superior Court Petition, ALPR data cannot be considered intelligence information because it neither: 1) identifies individuals that police suspect of criminal activity, 2) "identif[ies] confidential sources," nor 3) contains information "that was supplied in confidence by its original source." *See CBS, Inc. v. Block*, 42 Cal. 3d at 654.

indeed relied on this misunderstanding, its decision was erroneous — if, on the one hand, it based its decision on this uncontested falsehood, it committed manifestly clear factual error; if, on the other hand, it did *not* rely on the finding that ALPR scanning is targeted, it committed legal error in holding that the data nonetheless qualify as records of investigations under § 6254(f). California legal precedent establishes that untargeted, indiscriminate amassing of data does not constitute an investigation within the meaning of that exemption. And regardless of how law enforcement makes use of the ALPR data after its collection, such use cannot transform the scan data itself into records of investigations. As Petitioners seek only the scan data and not any records of how it is used by law enforcement, the Superior Court erred in holding that Real Parties could shield it from disclosure under § 6254(f).

A. Defendants Concede That ALPR Data Collection Is Not Targeted By Any Suspicion

In their Petition, Petitioners argue that the Superior Court erred by determining, despite clear evidence to the contrary, that "ALPR data generated by mobile cameras . . . is not the indiscriminate recording of license plates" but rather is "non-random," because officers who operate ALPR-equipped vehicles decide "what vehicle plates will be photographed." Order, Ex. 1 at 12, 13, 16; Pet. at 24–29. Instead, as set forth in the Petition and as the City conceded below, "ALPR devices 'automatically' and 'indiscriminately' scan the license plates of all vehicles within range." Ex. 9 at 405. Officers make no decisions about "what plates will be photographed," and there is no evidence in the record that officers investigate particular crimes by intentionally targeting certain areas with ALPR scanners, that officers are encouraged to use ALPR-mounted

vehicles to gather plates in a particular way, or in fact that officers in ALPR-equipped vehicles do anything other than go about their jobs in an ordinary fashion, with the ALPR collecting license plate data as they go. *See* Pet. at 26.

In its response, the City of Los Angeles *agrees* with Petitioners' factual characterization of ALPRs as "untargeted" scans that "automatically and indiscriminately" collect data "on each and every driver in Los Angeles who passes within range of their cameras . . . whether or not those drivers are suspected of wrongdoing." City Opp. at 7 (citing Pet. at 29); *see also id.* (noting that "it is correct that the ALPR scans are not specifically targeted at persons suspected of criminal activity"); *see generally id.* at 7–9 (describing how ALPRs function). Instead, the City argues that the Superior Court neither determined that ALPRs were targeted nor relied on its belief in the targeted nature of ALPRs to hold the data they collect exempt as "records of investigations" under § 6254(f).

As an initial matter, the City is plainly wrong in its characterization of the Superior Court's opinion. The district court repeatedly described ALPRs as being targeted, including:

- Stating that "ALPR data generated by mobile cameras . . . is not the indiscriminate 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.
- Describing the difficulties separating "targeted mobile patrol data," which the Superior Court indicated would be a record of investigation, from "random patrol data," which it suggested might not be. Ex. 1. at 14 n. 16.

- Stating that the officer in the squad car "makes the decision where he will go and what vehicle plates will be photographed." Ex. 1 at 12.[3]

Moreover, the Superior Court repeatedly stressed that its holding that ALPR data should be exempt as "records of investigation" relied on its determination that ALPRs collected information in a targeted fashion, including:

- Stating plainly that ALPR data collection "is not the indiscriminate recording of license plates. *If it were, ALPR data might not constitute a record of investigation.*" Ex. 1 at 13 (emphasis added).
- Noting that, in contrast to "hot list comparisons and *targeted* mobile car patrol inquiries," "it is less clear that ALPR data from fixed point and *random* mobile car patrol cameras are records of investigation." Ex. 1 at 13–14 (emphasis added).
- Explaining that it "held ALPR data to be a record of investigation based in part on the non-random nature with which it is collected." Ex. 1 at 16.

The City in its Opposition simply ignores the Superior Court's repeated, explicit reliance on its determination that ALPR scans are targeted to support its holding.

[3] The City argues that this statement simply reflects an attempt to summarize the position of Real Parties in Interest at the hearing—although the City also suggests they made no such claim. City Opp. at 16–17. Even if this were true, the Superior Court clearly accepts the reasoning of the City's argument (or the argument it describes the City making), concluding on the following page, "This concern . . . demonstrates [Real Parties in Interests'] point: ALPR data generated by mobile cameras . . . is not the indiscriminate recording of license plates. If it were, ALPR data might not constitute a record of investigation." Ex. 1 at 13.

The Superior Court recognized that if ALPRs engaged in "the indiscriminate recording of license plates . . . ALPR data might not constitute a record of investigation." Ex. 1 at 13. But as the City concedes, the collection of license plates by ALPRs is indiscriminate. Because the Superior Court rested its holding that ALPR data constitute "records of investigation" under § 6254(f) on an unsupported factual characterization of ALPRs as targeted — and which the City both below and in its opposition concedes is not factually accurate — the court's decision should be overturned.

B. The Untargeted, Indiscriminate Amassing of Data by ALPRs Does Not Constitute an Investigation Within the Meaning of § 6254(f)

Even if the City were correct in its assertion that the Superior Court did not determine that ALPRs were targeted and non-random, the City's position on the facts is crucial for this Court: given that the parties do not dispute that ALPRs mounted on fixed objects and vehicles scan license plates and collect license plate data indiscriminately, this Court must decide, as a matter of law on which it exercises *do novo* review, whether this constitutes "records of investigations" that are exempt from disclosure under § 6254(f). For this Court to find that each ALPR scan is an "investigation," rather than the collection of data that may be useful in an investigation, would result in a significant expansion of the California Supreme Court's prior interpretations of § 6254(f) and would mean that all drivers in Los Angeles are constantly under investigation by ALPRs—a result that does not fit with any common sense understanding of the term as it is used to exempt "records of . . . investigations" in § 6254(f).

1. *Real Parties' Suggestion That There Is No Requirement That Investigations Be "Targeted" Ignores the Significant Expansion of § 6254(f) Such a Holding Would Entail*

The City argues that "[t]here is no authority for the proposition that records of investigation, to qualify as such, must relate to individuals who were specifically targeted by law enforcement." City Opp. at 10. There may be no case that directly settles the question before this Court. But the City's position ignores the dramatic expansion of the "records of . . . investigations" exemption that would be required to find that ALPR records qualify as "investigations" under that provision.[4]

As Petitioners demonstrate in their opening, none of the reported

[4] Relatedly, Defendants also argue that drivers have no privacy interests in their license plates that would require checks to be based on individualized suspicion. City Opp. at 13; County Opp. at 9 ("Whether that license plate is viewed by one officer on a public street . . . or 1000 officers on 1000 public streets, the license plate never becomes private."); *id.* at 12. Although Petitioners have never suggested that checking a single license plate requires reasonable suspicion or probable cause, the suggestion that drivers have no privacy interests in the electronic tracking of their cars' locations over time is at odds with both the recognition to the contrary by five Supreme Court justices in *United States v. Jones*, 132 S. Ct. 945, 949 (2012), and the privacy arguments both Real Parties advance under the balancing test of § 6255, *see* City Opp. at 29–30; County Opp. at 13–14; *infra,* Part IIB. Law Enforcement Association Amici similarly cite to a section of the International Association of Chiefs of Police report that states the "premise of [law enforcement's] position" is that LPR systems simply automate the same exact process that has been available to police manually." *See* LEA Amici at 6 (citing IACP Privacy Impact Assessment at 12). However, this Assessment was written in 2009, well before the Supreme Court recognized in *Jones* and *Riley v. California,* 134 S. Ct. 2473, 2490 (2014) that new technology capable of collecting data on a mass scale must be treated differently under the Fourth Amendment from its analog counterparts. More importantly, however, the strength of drivers' privacy interests is simply irrelevant to whether plate scanning constitutes an "investigation" under § 6254(f).

cases to hold documents exempt as "records of . . . investigations" under § 6254(f) address records of such wholesale, indiscriminate collection of information as are involved in ALPRs. Instead, the cases that hold records exempt as "records of . . . investigations" under § 6254(f) all involve targeted inquiries that fit easily within the common understanding of a police investigation, such as a traffic stop,[5] a corruption investigation against a local official,[6] police internal affairs investigations,[7] or disciplinary proceedings against police officers.[8] *See* Pet. at 30–31. Nor do Real Parties, in their oppositions, point to any case that holds such an indiscriminate collection of information qualifies as an "investigation" under § 6254(f).[9] For this Court to so hold would therefore work a significant expansion of the exemption over prior cases.

Such an expansion would not match the purposes of § 6254(f). As the City points out, courts have held that the exemption for "records of . . . investigations" is meant to protect nascent investigations against disclosure so as to avoid revealing who or what is being investigated: "Limiting the

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[5] *Haynie v. Super. Ct.*, 26 Cal. 4th 1061, 1070–71 (2001). The examples in the section from *Haynie* cited by Law Enforcement Association Amici only reinforce this point. *See* LEA Amici at 10–11 (examples of investigatory records include: "an investigation of a complaint," a "suspicious" fire, and "a report of what [deputies] believed might be criminal conduct." *Haynie*, 26 Cal. 4th at 1070-1071).

[6] *Rivero v. Super. Ct.*, 54 Cal. App. 4th 1048, 1050 (1997).

[7] *Rackauckas v. Super. Ct.*, 104 Cal. App. 4th 169, 171 (2002).

[8] *Williams v. Super. Ct.*, 5 Cal. 4th 337, 341 (1993).

[9] LEA Amici also point to an opinion of the Attorney General stating that mug shots are properly exempt from disclosure as "records of . . . investigations" under § 6254(f). *See* LEA Amicus at 9 (citing 86 Ops. Cal. Atty. Gen. 132). But police take mug shots only after having arrested a suspect for a crime — as such, mug shots unquestionably record the investigation of specific individuals suspected of particular crimes.

section 6254(f) exemption only to records of investigations where the likelihood of enforcement has ripened into something concrete and definite would expose to the public the very sensitive investigative stages of determining whether a crime has been committed or who has committed it." *Haynie*, 26 Cal. 4th at 1070; *see* City Opp. at 12. That rationale makes sense where an investigation is targeted—police would not want to alert someone targeted by an investigation (or someone involved in a crime they were investigating) to their interest, out of fear that person might destroy evidence or take steps to avoid detection, and might not want to reveal the investigation to the public for fear of affecting the reputation of a target for whom no wrongdoing had yet been shown. But because police use ALPRs indiscriminately to collect information on all drivers in Los Angeles, the fact that a driver's license plate information appears in ALPR data does not mean the driver is the subject of any special scrutiny, nor does it mean that police are investigating any particular crime. In other words, precisely because ALPRs are not targeted, but automated and indiscriminate, revealing records of ALPR data collection reveals nothing about who or what police are targeting in their investigations. Holding ALPR data exempt therefore would not serve the purposes of § 6254(f).

2. *Neither the Descriptions of Investigations in Haynie Nor Dictionary Definitions Justify Extending § 6254(f) to the Untargeted Collection of Data*

Both the City and County point to the language used by the *Haynie* Court to describe the investigative records exception to argue that the provision applies to ALPR data. The City points to *Haynie*'s statement that "section 6254(f) does not distinguish between investigations to determine if a crime has been or is about to be committed and those that are undertaken

once criminal conduct is apparent," 26 Ca1. 4th at 1070 (cited in City Opp. at 6). The City and County also rely on *Haynie*'s statement:

> The records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency.

Id. at 1071 (cited in City Opp. Br. at 6; County Opp. at 10).

Even if this language did suggest that "investigation" could encompass the untargeted, mass collection of data, that suggestion would be *dictum* since *Haynie* addressed a fundamentally different circumstance than that before the Court, one in which officers targeted their investigation of potential criminal activity on a specific vehicle and detained the driver based on a tip. *Id.* at 1071. The court's holding — that crime need not be certain in advance for such conduct to qualify as an "investigation" under § 6254(f) — is limited by those facts and does not reach the suspicionless mass surveillance conducted by ALPRs.

But even the language Real Parties cite does not support their position, because it is not the initial ALPR data collection that Real Parties argue is an investigation, but the later and separate checks the ALPR systems perform—comparing the scanned plates against a "hot list" of plate numbers that may be associated with criminal activity.

Real Parties do not contest that ALPR systems are fundamentally data collection machines. Instead, they conflate the collection of plate data performed by ALPRs with its later investigative uses by emphasizing that the data is checked against the "hot list" immediately. However, in their briefs before this Court, Real Parties recognize that the function of

collecting data through the plate scan occurs distinct from the function of checking the data against the "hot list." In the words of the County, "[t]he parties all agree that *once license plates are scanned* by ALPR cameras, the plates are checked against stolen vehicle databases." County Opp. at 9 (emphasis added); *see also id.* at 10 ("ALPR data is systemically collected, is checked against 'hot lists,' is used to determine whether a crime has occurred, is only used prospectively for criminal investigation, ..."). The City similarly describes the two-step process of collecting data and checking it against the "hot list," referring to the "initial plate scan" as simply a "read" that "[c]apture[s] data . . . includ[ing] 'date, time, longitude and latitude, and information identifying the source of the number capture.'" City Opp. at 7 (quoting Gomez Decl., Ex. 9 at 409).

The City's declarant, Sergeant Dan Gomez, used the term "raw LPR data" to describe the information captured by the initial plate scan, and clearly delineated the two functions when he explained that "[t]he LPR system captures still images . . . This data can be compared against known license plate lists." Gomez Decl., Ex. 9 at 409–10. The collection of license plate time and location information by the ALPR systems—the ALPR scan data that Petitioners seek—therefore does not itself represent an inquiry "undertaken for determining whether a violation of law may occur or has occurred" under *Haynie*. And it is this "raw LPR data" captured in the "initial plate scans," unconnected from its later use for "hot list" checks or other investigations, that Petitioners seek, nothing more.[10]

[10] Real Parties attempt to elide the distinction between collection and investigative use by stressing that ALPR data is checked against the "hot lists" right after it is collected. But the immediacy with which collected ALPR data is checked against the "hot list" does not render the initial plate

Real Parties also cite dictionary definitions of the term "investigate" to suggest that § 6254(f) might encompass any sort of inquiry about the state of the world. *See* City Opp. at 13–14; County Opp. at 8. Even the dictionary definitions of "investigate" and "investigation" put forth by Real Parties imply a targeted quality or focus. County Opp. at 8 (quoting Black's Law Dictionary (Bryan A. Garner ed., 9th ed. 2009)) (defining "investigate" as "'1. To inquire into *(a matter) systematically*; to make *(a suspect) the subject* of a criminal inquiry . . . 2. To make an official inquiry'") (emphasis added); City Opp. at 13 (quoting Oxford University Press, 2014) (to "investigate" is to "'make a check to find out *something*;'" "investigation" is "'the action of investigating *something or someone;* formal or *systematic* examination or research.'") (emphasis added). Indiscriminately collecting the plate information of every random vehicle that comes within range of a police car is not a systematic inquiry and does not focus on any particular "something or someone."

More importantly, dictionary definitions of the term "investigate" are of limited use. Section 6254(f) does not address any kind of

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scan data itself a record of an investigation. If the plate data were not checked against the "hot list" until an hour, a week, or even a month after it was collected, the distinction would be clearer but no different.

Similarly, Real Parties emphasize the "hot list" use to suggest that all ALPR data is simply a record of those "hot lists" checks. But if ALPRs were simply tools to conduct "hot list" checks, rather than to gather data on the locations of drivers for future use, LAPD and LASD would not retain data from the 99.8% of vehicles for which those checks show no association with any kind crime or registration violation. *See* ACLU, *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements*, 13-15 (July 2013) available at https://www.aclu.org/technology-and-liberty/you-are-being-tracked-how-license-plate-readers-are-being-used-record.

investigation, but only *law enforcement* investigations— a context in which, as *Haynie* indicates, "investigation" is a term of art for a particular inquiry by police into whether a crime has been committed, and if so, by whom. *See Haynie*, 26 Ca1.4th at 1071 ("The records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred.").

3. *The City Ignores the Absurd Results of Their Argument, While the County Embraces Them*

As Petitioners point out in their opening brief, if this Court accepts Real Parties' argument that ALPR scans are investigations, then because police are constantly scanning license plates in Los Angeles County at a rate of 3 million per week, every driver in Los Angeles is under constant investigation. As set forth above, such a result does not comport with the purpose of protecting "records of . . . investigations" in § 6254(f). It also flies in the face of any common sense understanding of the term "investigation." Most drivers would be shocked to discover that they were subject to ongoing "investigation" simply for driving on public streets.

The City downplays the inevitable conclusion of their argument. While the City asserts that "[ALPR] scans do further law enforcement investigations" and that "LAPD and LASD, through ALPR, do conduct investigations," City Opp. at 7, 12, they notably avoid suggesting that the scans themselves are investigations that target every vehicle on the streets.

The County, by contrast, embraces the implications of Real Parties' argument and recognizes that, under the broad definition they offer, an officer's "walking or driving a beat" or "simply observing public places to make sure no crime occurs" constitutes an investigation, such that the

records of that conduct would be exempt from public disclosure under § 6254(f). County Opp. at 8. The County is correct about the sweep of its argument, and these examples demonstrate that it swallows the rule. As *Haynie* recognized, the exemption for "records of . . . investigations" does not "shield everything law enforcement officers do from disclosure." 26 Cal. 4th at 1071. It surely does not encompass records relating to every action of police officers "walking or driving a beat" and "observing public places to make sure no crime occurs," any more than it encompasses the automated, indiscriminate collection of data on vehicles in Los Angeles.

4. *Real Parties' Other Arguments Mischaracterize Petitioners' Positions*

Finally, the City misconstrues Petitioners' positions in two passing arguments. First, the City suggests that Petitioners effectively request that this Court protect only records where there is a "specific and concrete" possibility of future enforcement—an argument the Supreme Court rejected in *Williams*, *Supra.* *See* City Opp. at 9–10. But that is simply not Petitioners' position. Petitioners do not suggest that ALPR records are not records of investigations because the prospect of enforcement is too remote. Rather, because ALPR records are collected in a wholesale, indiscriminate manner, their collection does not fit with the term "investigation" as used in § 6254(f).

Real Parties also wrongly suggest that Petitioners are arguing that ALPR records cannot be "investigations" because of the quantity of records collected. *See* City Opp. at 11; County Opp. at 9. Petitioners have cited the number of ALPR records collected — approximately 3 million a week, totaling more than half a billion to date — not to suggest that the definition of "investigation" has a numerical limit, but for two reasons: first, to

illustrate the indiscriminate nature of the collection that results in such massive quantities of information collected; and second, to indicate the potential threat to privacy ALPRs pose, and therefore the strong public interest in understanding the intrusion and how they are used.

II. THE PUBLIC INTEREST SERVED BY DISCLOSURE OF THE RECORDS FAR EXCEEDS ANY INTEREST SERVED BY WITHHOLDING RECORDS

Despite the wealth of evidence Petitioners presented in their Writ Petition, supporting both a significant public interest in disclosure of the records at issue and demonstrating that ALPRs hold the potential for abuse and pose a serious threat to privacy, Real Parties in Interest attempt to discredit this evidence and minimize the public interest in disclosure.

The County accuses Petitioners of somehow catering to the "reptile brain" and "a human's subconscious fear response," in part by relying on "events from other localities where the facts are more alarmist." County Opp. 14–19. Yet Petitioners discuss abuses from other jurisdictions and the public's response to them to demonstrate that public interest exists in similar records held by Real Parties. These examples, combined with historical concerns with surveillance, racial profiling and police misconduct within the City and County of Los Angeles law enforcement agencies (discussed briefly below) show the significant public interest in Los Angeles law enforcement agencies' ALPR data.

The City of Los Angeles argues that because Petitioners already know how the technology behind ALPR systems works, and because ALPR data would not demonstrate "individualized surveillance," the data could not provide any additional information on police practices in Los Angeles. City Opp. at 37, 40–41. And both agencies rely on an inapposite Ninth

Circuit case to argue that drivers lack a constitutionally-recognized privacy interest in their license plates and therefore there is no public interest in a week's worth of ALPR data. None of these arguments withstands scrutiny.

A. There Is a Strong Public Interest in Disclosure of ALPR Data, Given the History of Police Misconduct and Abuse of Police Surveillance Tools in Los Angeles and Elsewhere

Petitioners have demonstrated how the release of ALPR data could not only inform public debate on this widely used surveillance tool but could also shed light on possible racially or ethnically-motivated surveillance within either law enforcement agency. Pet. at 35–39. However, the County suggests this is mere fearmongering, while both the City and County argue that Petitioners' presentation of evidence of police misconduct and ALPR misuse in other jurisdictions somehow fails to support a public interest in disclosure of ALPR data collected in Los Angeles.

Petitioners respond to this only briefly. By describing the potential abuses of ALPR data and other surveillance that have occurred in other jurisdictions, Petitioners have illustrated the public interest in disclosure of ALPR data. Real Parties cannot dispute the strong public interest courts have recognized in the conduct of the police. *See* Pet. at 37 (citing *Comm'n on Peace Officer Standards & Training v. Super. Ct.*, 42 Cal. 4th 278, 300 (2007) ("The public has a legitimate interest not only in the conduct of individual [police] officers, but also in how . . . 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.").

Petitioners need not show specific misconduct within LAPD or LASD to demonstrate a public interest in ALPR records. The reach of the CPRA is not limited to those documents shown to prove to misconduct. Rather, the purpose of the CPRA is to grant access to documents to see how the public business is conducted, to help determine whether or not misconduct is afoot. *CBS, Inc. v. Block*, 42 Cal. 3d at 654–55 ("Public inspection . . . enables the press and the public to ensure that public officials are acting properly . . . ."); Cal. Const. Art. I, § 3(b) ("The people have the right of access to information concerning the conduct of the people's business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny."). As the Superior Court observed, the suggestion that Petitioners must show evidence of Los Angeles law enforcement agency abuse of ALPRs to demonstrate public interest in disclosure "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.

In light of public reaction across the country to the recent police shooting of Michael Brown in Ferguson, Missouri and death of Eric Garner in New York, it is beyond question that potential evidence of racial disparities in the impact of policing is a matter of public interest. At the risk of drawing further accusations of fearmongering, and because Real Parties fault Petitioners for pointing to abuses only in other jurisdictions, Petitioners point out that neither LAPD nor LASD has been immune from such problems.

In April 2014, for example, the Center for Investigative Reporting revealed that LASD secretly used the City of Compton to test a proposed airborne "wide-area surveillance" system. This system allowed a private

company, under contract with LASD, to "literally watch[] all of Compton during the time that [they] were flying, so [they] could zoom in anywhere within the city of Compton and follow cars and see people."[11] When asked why Compton residents purposely were not informed of the project, an LASD sergeant said, "A lot of people do have a problem with the eye in the sky, the Big Brother, so in order to mitigate any of those kinds of complaints, we basically kept it pretty hush-hush."[12] Compton's mayor, who only learned of the program through news reports, said, "There is nothing worse than believing you are being observed by a third party unnecessarily."[13]

LAPD has also generated controversy over its surveillance of minority communities. In 2007, LAPD proposed a "community mapping" program targeting Los Angeles' American Muslim populations in an effort to "identify [Muslim] communities . . . which may be susceptible to violent ideologically based extremism."[14] As the *Los Angeles Times* noted, "the effort sparked an outcry from civil libertarians and some Muslim activists,

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[11] Amanda Pike & G.W. Schulz, *Hollywood-style surveillance technology inches closer to reality*, CENTER FOR INVESTIGATIVE REPORTING (Apr. 11, 2014), available at http://cironline.org/reports/hollywood-style-surveillance-technology-inches-closer-reality-6228 (last visited Jan. 27, 2015).

[12] *Id.*

[13] Angel Jennings, *et al.*, *Sheriff's secret air surveillance of Compton sparks outrage*, L.A. TIMES (Apr. 23, 2014), available at http://articles.latimes.com/2014/apr/23/local/la-me-ln-sheriffs-surveillance-compton-outrage-20140423 (last visited Jan. 27, 2015).

[14] Junaid Sulahry, *Former LAPD Chief Bratton's Proposed Muslim Mapping*, MUSLIM ADVOCATES (Dec. 7, 2013), available at http://www.muslimadvocates.org/former_lapd_chief_william_bratton_s_proposed_muslim_program_nypd_de_blasio/ (last visited Jan. 27, 2015).

who compared the program to religious profiling."[15] These recent examples add to a history of questionable practices, including surveillance by the LAPD's Public Disorder Intelligence Division in the 1970s and 1980s[16] and the Red Squad in the 1930s;[17] the notorious LAPD Rampart Division scandals in the 1990s that led to federal oversight from 2001 to 2013;[18] concerns about racial disparities in stops, searches and uses of force

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[15] Richard Winton, *et al*., *LAPD defends Muslim mapping effort*, L.A. TIMES (Nov. 10, 2007), available at http://www.latimes.com/local/la-me-lapd10nov10-story.html (last visited Jan. 27, 2015).

[16] Robert Lindsey, *Los Angeles Police Subject of Inquiry*, N.Y. TIMES (Jan 17, 1983), available at http://www.nytimes.com/1983/01/17/us/los-angeles-police-subject-of-inquiry.html (last visited Jan. 27, 2015). The PDID gathered information about the personal and political activities of then-Mayor Tom Bradley and other local politicians and maintained secret files on more than 50,000 people, most of whom were Los Angeles residents. *Id.*

[17] LOS ANGELES POLICE DEPARTMENT, *The LAPD: 1926-1950*, available at http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1109 (last visited Jan. 27, 2015). The LAPD police chief at the time believed those under Red Squad investigation lacked any constitutional rights, and even the LAPD itself now describes the Red Squad's methods as "intolerable." *Id*.

[18] Peter J. Boyer, *Bad Cops*, NEW YORKER (May 21, 2001), available at http://www.newyorker.com/magazine/2001/05/21/bad-cops (last visited Jan. 27, 2015); Joel Rubin, *Federal judge lifts LAPD consent decree*, L.A. TIMES (May 16, 2013), available at http://articles.latimes.com/2013/may/16/local/la-me-lapd-consent-decree-20130517 (last visited Jan. 27, 2015). The Rampart Division engaged in "bogus arrests, perjured testimony, and the planting of 'drop guns' on unarmed civilians." After investigations began into the division's actions, more than 70 police officers were implicated and more than 100 convictions were tossed out—at an estimated cost to the City of $125 million in settlements alone. It has been described as the "worst police scandal in Los Angeles city history." Nicholas Riccardi, *Rampart Scandal's Cost to County Rising Fast*, L.A. TIMES (May 11, 2000), available at http://articles.latimes.com/2000/may/11/news/mn-28866 (last visited Jan. 27, 2015).

at LAPD raised by two separate Ivy-League reports;[19] and federal obstruction of justice investigations that led to the conviction of seven lower-ranking LASD officers and have implicated then Sheriff Lee Baca and Undersheriff Paul Tanaka.[20] To the extent Real Parties suggest that the public has no interest in uncovering potential abuses of police surveillance in Los Angeles, they are plainly mistaken.

B. <u>There is a Strong Public Interest in Disclosure, Whether or Not Drivers Have a Fourth Amendment-Protected Privacy Interest in Their License Plates</u>

Both Real Parties in Interest cite to a Ninth Circuit case, *United*

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[19] A 2008 report by Yale researchers for the ACLU of Southern California, based on data from 700,000 cases between 2003 and 2004 in which LAPD officers stopped pedestrians or drivers, found that stopped blacks were 127% more likely to be frisked, 76% more likely to be searched, and 29% more likely to be arrested than stopped whites, and that such disparities were not because "people of color live in higher-crime areas or because they more often carry drugs or weapons, or any other legitimate reason." Ian Ayres, *A Study of Racially Disparate Outcomes in the Los Angeles Police Department*, Prepared for the ACLU of Southern California (Oct. 2008), available at http://islandia.law.yale.edu/ayers/Ayres%20LAPD%20Report.pdf (last visited Jan. 27, 2015). A 2009 Harvard report commissioned by then-LAPD Chief William Bratton found "[a] troubling pattern in the use of force . . . that African Americans, and to a lesser extent Hispanics, are subjects of the use of such force out of proportion to their share of involuntary contacts with the LAPD." Christopher Stone, Todd Foglesong, and Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, 37 (2009), available at http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf (last visited Jan. 27, 2015).

[20] Cindy Chang, *Sheriff's Dept. higher-ups now appear to be targets in jails inquiry*, L.A. TIMES (Jan. 10, 2015), available at http://www.latimes.com/local/california/la-me-sheriff-grand-jury-20150111-story.html (last visited Jan. 27, 2015).

States v. Diaz-Castenada, 494 F. 3d 1146 (9th Cir. 2007),[21] to argue that drivers lack a privacy interest in their license plates and therefore there could be no public interest in the disclosure of ALPR data.[22] This argument lacks merit for several reasons.

First, *Diaz-Castenada* considered whether—on a criminal motion to suppress evidence—there was a reasonable expectation of privacy under the Fourth Amendment in a license plate number; it did not consider whether there might be privacy concerns that support the public interest in obtaining ALPR data through a public records request. For this reason alone, it is unclear what relevance the case has in the context of this writ petition. Real Parties fail to point to any statutory language within the PRA requiring proof of a constitutionally-recognized privacy interest to obtain public records, so whether or not the Ninth Circuit held the public lacked such an interest in license plate numbers is immaterial.

Second, even if *Diaz-Casteneda* were relevant to Petitioners' request for ALPR data, the Ninth Circuit only opined on a person's privacy interest in the license plate itself. It did not discuss the privacy interest implicated by license plate cameras that record the time, date and location a vehicle was encountered, as ALPR data does, much less the storage of mass

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[21] The County also cites to *United States v. Ellison*, 462 F. 3d 557 (6th Cir. 2006) for the same proposition. County Opp. at 12–13.

[22] Real Parties in Interest seem to be arguing in different places in their briefs that drivers do and do not have a privacy interest in their license plate data. *See* County Opp. at 9, 12, 20–23 (arguing no privacy interest in license plates and that other police activities are more intrusive of privacy), *cf.* 13 (citing privacy concerns to support a public interest in nondisclosure); *see also* City Opp. at 35 ("It is settled law that license plate checks . . . do not violate a reasonable expectation of privacy."), *cf.* 38 ("the City certainly agrees that the location information contained in ALPR data does implicate the privacy interests of those drivers").

quantities of this data over time—on all drivers within a densely populated and geographically large metropolitan area—and what can be gleaned from that data. In light of *United States v. Jones, supra,* and other, more recent Supreme Court and appellate court cases addressing the collection of mass amounts of location data,[23] it is likely the court's analysis would change when faced with facts more closely on point.

Finally, the privacy implications of ALPR data are not the only reason to support a public interest in this data. Outside of those privacy interests, disclosure of the actual data could also show the public how accurate and effective these systems are—an important metric for any system purchased with taxpayer money. A RAND Corporation study released last summer noted that ALPRs have technical flaws that lead to license plate misreads.[24] The cameras frequently cannot distinguish

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[23] *See, e.g., Riley,* 134 S. Ct. at 2490 (requiring a warrant for cell phone searches and citing Justice Sotomayor's concurring opinion in *Jones* to recognize that cell phones collect vast amounts of historic information on a person's location over time that "reflects a wealth of detail about [a person's] familial, political, professional, religious, and sexual associations"); *United States v. Davis*, 754 F.3d 1205 (11th Cir. 2014), rehearing *en banc* granted 2014 WL 4358411; *Commonwealth v. Augustine,* 4 N.E.3d 846 (Mass. 2014) (historical cell site location information constitutionally protected); *State v. Earls,* 70 A.3d 630 (NJ 2013) (same). Law Enforcement Amici state "Petitioners and communities served by law enforcement *must continue to adapt their perception* as sophisticated and automated technological advancements are deployed in daily police work . . ." LEA Amici at 7 (emphasis added). This statement ignores a host of recent Supreme Court cases recognizing Americans continue to enjoy privacy rights in their homes and their data despite advances in technology and surveillance capabilities. *See, e.g., Kyllo v. United States*, 533 U.S. 27 (2001); *Jones,* 132 S. Ct. 945 (2012); *Riley,* 134 S. Ct. 2473 (2014).

[24] Keith Gierlack *et al., License Plate Readers for Law Enforcement: Opportunities and Obstacles,* RAND CORP. 15 (2014), available at

between plates from different states, and "vanity plates are especially susceptible to this problem."[25] The cameras "can false-read structures as license plates," and the study noted that one department's cameras "kept reading wrought-iron fences around homes as '111–1111'…plates."[26] Petitioners found evidence of this in ALPR data recently released by the Oakland Police Department.[27] This data showed 150 plate misreads over the course of one week, including obvious misreads from signs (*e.g.*, "PLUMBING," "AHEAD," "PRIVATE," "PARKING," "PARKIMG," "ALLOWED," "ORTOWED," "DORTOWED," "ONLEFT," "CAUTON," "CAUT10N," "CROSSWALK" and "ONE WAY"). In 95 other instances, ALPR cameras captured license plates but failed to record any geographic coordinates. Plate misreads like this can have important implications for civil liberties. For example, last year the Ninth Circuit Court of Appeals held a civil rights case against the San Francisco Police Department could proceed where the Department pulled over a driver and held her on her knees at gunpoint after the ALPR system misidentified her plate as belonging to a stolen vehicle. *See Green v. City & Cnty. of San Francisco*, 751 F.3d 1039 (9th Cir. 2014).

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https://www.ncjrs.gov/pdffiles1/nij/grants/247283.pdf (last visited Jan. 27, 2015).

[25] *Id*.

[26] *Id.* at 59.

[27] Jeremy Gillula & Dave Maass, *What You Can Learn from Oakland's Raw ALPR Data*, EFF (Jan. 21, 2015), available at https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data (last visited Jan. 27, 2015). In contrast to Real Parties, the Oakland Police Department was able to release the week's worth of data within two months of EFF filing its public records request.

C. The Weight of the Public Interest in Disclosure is High

Petitioners have sufficiently shown both that there is a public interest in disclosure and that the weight of that disclosure is high. The gravity of the "governmental tasks sought to be illuminated" in this case is clear. *See Connell v. Super. Ct.* 56 Cal. App. 4th 601, 616 (1997). Between them, the City and County have admitted to scanning 3 million plates per week and keeping the data from two to five years. This means they are amassing databases of more than half a billion plates scans—and the vast majority of this data pertains to Los Angeles residents who have never committed and will never commit a crime.

The City and County argue that, because they have disclosed the fact that LAPD and LASD are scanning plates and the amount of plate scans they conduct per week, this somehow diminishes the weight of the public interest in disclosure. However, these two facts alone do not inform the public on *where* and *when* the agencies are conducting those scans and which communities are impacted. Only the actual data can shed light on those questions.

Contrary to the City's assertions, City Opp. at 36, the actual data would show if the LAPD is targeting certain communities over others.[28] Although ALPR systems automatically scan all plates within view of the cameras, the officer or the police department chooses where the officer will

[28] The City argues that because ALPR cameras operate automatically, the data cannot reveal "individualized surveillance" and therefore there is no public interest in the data's release. City Opp. at 37. However, Petitioners have consistently argued, not that the data could show individualized surveillance, but that it could show patterns of surveillance within communities.

drive the vehicle mounted with ALPR system.[29] For example, if police happen to drive ALPR-mounted squad cars more often through minority communities or to collect plates from a parking lot for a place or worship, a doctor's office, or even bars frequented by gays, lesbians or other minority populations,[30] then the data would reveal that fact. As Petitioners noted, only with the actual data can the public understand whether or not the agencies are misusing their surveillance technologies by scanning certain communities over others. As EFF demonstrated recently after receiving a week's worth of ALPR data from the Oakland Police Department, ALPR data can be plotted on a map and overlaid with census, crime and other data to reveal far more than one could learn solely from the minimal facts on ALPR use the agencies have revealed so far.[31]

The actual data is necessary for the public and legislators to fully grasp the extent of ALPRs' impact on privacy. As Petitioners noted, in other areas where data was released, that data has helped to shape the

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[29] As the City notes, counsel for the County recognized this at the Superior Court hearing. County counsel stated officers "make decisions about where they are going to patrol, where they are going to investigate." *See* City Opp. at 17.

[30] *See, e.g.*, Dana Priest & William Arkin, *Monitoring America*, WASHINGTON POST (Dec. 20, 2010), available at http://projects.washingtonpost.com/top-secret-america/articles/monitoring-america/print/ (last visited Jan. 27, 2015) (describing police patrolling parking lots in "run-down section[s] of town" using ALPR cameras); Rita Farlow, *Clearwater's new license plate reader helps catch car thief*, TAMPA BAY TIMES (Dec. 17, 2010), available at http://www.tampabay.com/news/publicsafety/crime/clearwaters-new-license-plate-reader-helps-catch-car-thief/1140593 (last visited Jan. 27, 2015) ("an officer on patrol in the Wal-Mart parking lot . . . was using the new license plate reader when the system hit on a stolen license plate").

[31] Gillula & Maass, *What You Can Learn from Oakland's Raw ALPR Data*, *supra* n. 27.

debate over appropriate steps to take to protect drivers' privacy rights. Pet. at 37–38. Comments made at a public hearing after ALPR data was released in Minnesota only reinforce this fact. At the hearing, a Minneapolis city official stated, "*now that we see someone's patterns in a graphic on a map in a newspaper*, you realize that person really does have a right to be secure from people who might be trying to stalk them or follow them or interfere with them." And a state legislator and former police chief noted at that same hearing, "even though technology is great and it helps catch the bad guys, *I don't want the good guys being kept in a database.*"[32] Similar discussions occurred in Boston and Connecticut.[33] Release of the ALPR data at issue here will similarly inform the public debate in Los Angeles and beyond.

D. The Weight of the Public Interest in Withholding Records is Minimal

Real Parties in Interest argue that the public interest in withholding

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[32] Chris Francescani, *License to Spy,* MEDIUM (Dec. 1, 2014), available at https://medium.com/backchannel/the-drive-to-spy-80c4f85b4335 (last visited Jan. 27, 2015) (emphasis added). Real Parties' argument that the data is somehow less at risk of impacting Angelenos' privacy interests in the hands of law enforcement than in the hands of the public is not necessarily true. For example, a state audit of law enforcement access to driver information in Minnesota revealed "half of all law-enforcement personnel in Minnesota had misused driving records. Often the breaches involved men targeting women." *Id.*

[33] Contrary to the City's assumption, the ACLU of Connecticut, using a Freedom of Information request in 2012, was able to obtain "a set of 3.1 million scans accumulated by 10 police departments, most of them in central Connecticut. Using this data, the ACLU was able to map the locations of cars driven by its own staff around the area." ACLU OF CONNECTICUT, *Limit Storage of Plate Scan Data To Protect Privacy,* (Feb. 23, 2012), available at https://www.acluct.org/updates/limit-storage-of-plate-scan-data-to-protect-privacy (last visited Jan. 27, 2015).

records is high, both because the data could reveal the "patrol patterns" of department vehicles and because releasing the data could impact driver privacy and public safety.[34] The City also argues that because the data is an investigatory record under 6254(f), the public interest, by default, must weigh in favor of withholding records. City Opp. at 20–22.

As Petitioners argued, there can be no public interest in protecting the supposed secrecy of patrol patterns because the agencies have put forward no evidence that "patrol patterns" of marked police cars on public streets are secret or that data related to "patrol patterns" needs to be protected. The original public records requests at issue in this case did not seek information on patrol patterns, and no party addressed it (in briefs or otherwise) until County counsel raised it at the Superior Court hearing.[35] Pet. at 41–42; City Opp. at 24–25. Yet neither Real Party in Interest has shown counsel for the County to be an expert in LASD ALPR use or even a

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[34] Petitioners again note that Real Parties argue at different places in their briefs that drivers do and do not have a privacy interest in license plate data. *See supra* n. 22.

[35] The City suggests that Sgt. Gomez addressed "patrol patterns" in his declaration, although that term appears nowhere in the document. The only phrase the City points to—a reference to using ALPR data "to try and identify patterns of a particular vehicle"—refers to using data to identify patterns in civilian drivers, as the next two sentences make clear. Moreover, the City never raised any concern in its briefing below about revealing patrol patterns, nor suggested below that Sgt. Gomez's declaration addressed the location of police vehicles. This Court should not credit the City's belated attempt to reinterpret this language beyond its obvious meaning. Even if it did, the declaration lacks any explanation of why disclosure would cause harm, and Sgt. Gomez—who supervises "testing, procuring, managing, and deploying [ALPR] technology"—has offered no showing he would qualify as an expert who could opine on such harm. Order, Ex. 1 at 14, 17 (citing Gomez Decl., Ex. 9 at 410); Gomez Decl., Ex. 9 at 409.

fact witness.

Further, to the extent that ALPR data would reveal patrol patterns, or provide somewhat delayed information on what license plates police have scanned, there is no evidence releasing this data would cause harm to law enforcement or public safety. Real Parties and Law Enforcement Amici repeatedly suggest that criminals could use the data, but fail to explain *how* that data could be helpful to criminals (particularly if it is redacted or anonymized, as discussed below). The City argues that information on where a marked police car goes is somehow secret because "as a matter of common sense" watching for police cars "would be time consuming and inefficient." City Opp. at 25. But while it might be difficult to track locations of all police cars across the City, watching for police cars at a particular location seems no less difficult than analyzing ALPR data. More importantly, Real Parties fail to show how the data on past routes of police cars would give criminals an upper hand in committing future crimes. Even if gathering information on the movements of police cars would be time consuming and difficult to gather without the CPRA, it does not make the information secret or any less subject to disclosure without some showing of harm. The entire purpose of the CPRA is to subject to disclosure information that a member of the public would be unable to collect on his or her own.

E. Any Public Interest in Withholding Records Based on Driver Privacy or Public Safety Could be Addressed by Redaction

Agencies are required to produce segregable portions of records, and "the fact that a public record may contain some confidential information does not justify withholding the entire document." *Cnty. of Santa Clara v.*

Super. Ct., 170 Cal. App. 4th 1301, 1321 (2009) (citing *State Bd. of Equalization v. Super. Ct*, 10 Cal. App. 4th 1177, 1187 (1992).)[36] Although the City and County argue disclosure of ALPR data could compromise the privacy and safety of members of the public, City Opp. at 29; County Opp. at 13–14, Petitioners argued and the Superior Court noted this could be addressed through redaction. Pet. at 45.[37]

The City argues that segregating data would be impossible because what data might be associated with criminal investigations changes from one day to the next. City Opp. at 28. But what the City in effect seeks is an expansion of the "investigatory files" exemption to a rule that because

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[36] Law Enforcement Association Amici argue that *U.S. Dep't of Justice v. Reporters' Comm. for Freedom of Press*, 489 U.S. 749 (1989), and *Westerbrook v. Cnty. of Los Angeles*, 27 Cal. App. 4th 157 (1994) both justify the broad, categorical exemption of ALPR data. However, as Petitioners argued in their Reply Brief before the Superior Court and as undisputed by Real Parties in Interest here, neither case applies because both involved the specific privacy interests implicated by criminal history information (or "rap sheets"). *See* Pet. Reply, Ex. 12 at 511–12. Similarly, *ACLU v. Deukmejian*, 32 Cal. 3d 440 (1982) is not on point because the "substantial harm" noted by the supreme court—namely the "public revelation that an individual was listed in an index of persons involved in organized crime or even listed as an 'associate' of someone involved in organized crime"—does not apply here where data is not linked to specific criminal activity but is instead collected indiscriminately on all cars driven in Los Angeles.

[37] The City argues that Petitioners did not raise the possibility of redaction to protect the confidentiality of patrol patterns in their briefing at the Superior Court and did not address redaction at all until their Reply brief. City Opp. at 26, 30. This is incorrect. Petitioners raised the possibility of redaction and anonymization of data in both its Writ Petition and Reply filed with the Superior court. Ex. 7 at 202, 213; Ex. 12 at 500, 504 n. 8. The fact that Petitioners did not address this in specific regard to "patrol patterns" could be because neither the City nor the County ever discussed patrol patterns before County Counsel raised it at the Superior Court hearing. Pet. at 41–42.

ALPR data might be used in some investigation in the future, it should be allowed to withhold all ALPR data today. That is not the law—Real Parties may withhold as "investigatory files" only the ALPR data that is being used in an investigation with "concrete and definite" prospect of prosecution. The possibility that data may be used in some future investigation that is not yet "concrete and definite" means it cannot be withheld because of its value as an investigatory file.

While Real Parties in Interest have claimed that the burden of segregation would be "extreme," City Opp. at 31, Petitioners have never had the opportunity to submit evidence to rebut this assertion. Real Parties base this claim on a description of the redaction process offered for the first time at the Superior Court hearing on the writ petition, where the City's declarant suggested that segregation and redaction would be unduly burdensome based on his assumption it would have to be done manually. But the County's own slide presentation on its ALPR program—produced in response to Petitioners' public records request—states that the data may be exported from the ALPR system. *See* Ex. 8 at 289–91. Once exported, the data "can then be entered into an Excel spreadsheet, WORD document, etc." *Id.* Once imported into Excel, the data "can be modified and searched for crime analysis." *Id*. at 291 (showing an image of what the data looks like once imported into Excel). Once the data is in Excel, either the agency or Petitioners could quickly and easily redact or anonymize certain data points. For example, one could highlight the entire column of license plates and delete those plate numbers or assign them random numbers as a

replacement.[38] EFF did just this after it recently received a week's worth of unredacted license plate data from the Oakland Police Department.[39]

The City also argues that data cannot be disclosed to Petitioners because that would lead to similar data being disclosed to criminals. City Opp. at 27. It argues that it cannot be responsible for policing who gets this data because "[s]eparate units within the agencies typically handle" CPRA requests and such requests "are not routed through detectives." *Id*. That response fails to engage Petitioners' primary points—that it is far from clear what harm disclosing ALPR data to "criminals" would work because ALPRs scan data indiscriminately and are only one of many ways of tying a vehicle to a particular location. Criminals presumably know their car may have been seen, photographed on a security camera, or recorded in the vicinity of a crime. Further, this seems a particularly slow and ineffective means of getting this information as a "criminal" would have to take time to file a Public Records Act request and await a response.[40] The City acknowledges the former argument but responds only by repeating its bare assertion of the importance of keeping ALPR data confidential. See *id.* at

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[38] The availability of technology to allow redaction also distinguishes this case from *ACLU v. Deukmejian*, 32 Cal. 3d at 453, relied on by the City, in which the Court held the manual redaction of nonexempt information on index cards too burdensome.

[39] Jeremy Gillula & Dave Maass, *What You Can Learn from Oakland's Raw ALPR Data*, *supra* n. 27.

[40] The City argues it does not have a system in place to screen requests and prevent individuals who are under investigation from obtaining sensitive records related to that investigation. City Opp. at 27. This seems farfetched—if there is a disconnect between divisions, then LAPD may either releasing investigatory information that could be withheld under the CPRA or improperly withholding information just to avoid fixing its own bureaucratic problems. Either way, this does not detract from the fact that any interest in non-disclosure could be addressed through redaction.

26 ("Regardless of the possibility of other modes of detection of a wanted vehicle apart from ALPR, maintaining the integrity of the investigatory data captured by ALPR is paramount.").

For all of these reasons, the public interest in disclosure clearly outweighs the public interest in non-disclosure under section 6255(f), and the data must be released.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court grant the Petition.

Dated: January 27, 2015

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 10,071 words, excluding the cover, the tables, the signature block, 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: January 27, 2015

PETER BIBRING
Counsel for Petitioners

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 January 27, 2015, I served the foregoing document: PETITIONERS' REPLY IN SUPPORT OF 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 January 27, 2015, at Los Angeles, California.

Geneva Tien