



VIA EMAIL

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May 25, 2023

Re: Tracy Police Department's Violations of State Law for Sharing License Plate Reader Data

Dear Mr. Patel and Mr. Millington,

We write regarding records obtained by our offices in response to a California Public Records Act Request ("PRA Records"),¹ which state that the Tracy Police Department ("the Department") shares automated license plate reader ("ALPR") information, including the locations of drivers, with out-of-state law enforcement agencies. This sharing violates two state laws that prohibit sharing of information with out-of-state entities about the provision of abortion care, Cal. Penal Code § 13778.2, and sharing of information collected by ALPR systems. Cal Civ. Code § 1798.90.55(b). We are particularly concerned that anti-abortion states may seek to exploit this information to track, locate, and prosecute abortion seekers and providers. Regardless of your Department's intent, this act of sharing poses a risk to people and violates state law. We therefore urge that you immediately investigate any sharing relationship with these agencies, prohibit the Department from sharing in this fashion again, and reconsider the Department's use of ALPR technology.

¹ <https://www.muckrock.com/foi/tracy-3474/automated-license-plate-readers-tracy-police-department-136286/>

I. ALPR Surveillance of Tracy Drivers' Locations Violates Their Civil Liberties and Civil Rights and Could be Used to Prosecute Out-of-State Abortion Seekers.

ALPR technology is a powerful surveillance system that can be used to invade the privacy of individuals and violate the rights of entire communities. ALPR systems collect and store location information about drivers whose cars pass through ALPR cameras' fields of view, which, along with the date and time of capture, can be built into a database that reveals sensitive details about where individuals work, live, associate, worship, seek medical care, and travel.² Much of this information has traditionally been unavailable to law enforcement without a search warrant. Further, ALPR systems are easily misused to harm marginalized communities.³ As with other surveillance technologies, police often deploy license plate readers in poor and historically overpoliced areas, regardless of crime rates.⁴

Additionally, and particularly since the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,⁵ which overturned *Roe v. Wade*,⁶ ALPR technology and the information it collects is vulnerable to exploitation against people seeking, providing, and

² See, e.g., *Automatic License Plate Readers*, ELECTRONIC FRONTIER FOUND., March 29, 2023, <https://www.eff.org/sls/tech/automated-license-plate-readers>; *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements*, AM. CIV. LIBERTIES UNION, July 2013, <https://www.aclu.org/other/you-are-being-tracked-how-license-plate-readers-are-being-used-record-americans-movements>.

³ See, e.g., Angel Diaz & Rachel Levinson-Waldman, *Automatic License Plate Readers: Legal Status and Policy Recommendations for Law Enforcement Use*, BRENNAN CTR. FOR JUST., Sept. 10, 2020, <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations>; Christine Hauser, *Aurora Police Chief Apologizes After Officers Handcuff Children on the Ground*, N.Y. TIMES, Aug. 5, 2020, <https://www.nytimes.com/2020/08/05/us/aurora-police-black-family.html> (ALPR falsely flagged a Black family's SUV as stolen, leading to a stop during which entire family, including four children, was forced to lie on the ground during the stop); Vasudha Talla, *Records Reveal ICE Agents Run Thousands of License Plate Queries a Month in Massive Location Database*, ACLU OF NORTHERN CAL., June 2019, <https://www.aclunc.org/blog/records-reveal-ice-agents-run-thousands-license-plate-queries-month-massive-location-database>; Matt Cagle, *San Francisco – Paying the Price for Surveillance Without Safeguards*, ACLU OF NORTHERN CAL., May 22, 2014, <https://www.aclunc.org/blog/san-francisco-paying-price-surveillance-without-safeguards>; Adam Goldman and Matt Apuzzo, *With Cameras, Informants, NYPD Eyed Mosques*, ASSOCIATED PRESS, Feb. 23, 2012, <https://www.ap.org/ap-in-the-news/2012/with-cameras-informants-nypd-eyed-mosques>.

⁴ Dave Maass and Jeremy Gillula, *What You Can Learn from Oakland's Raw ALPR Data*, ELECTRONIC FRONTIER FOUND., Jan. 21, 2015, <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>; Barton Gellman and Sam Adler-Bell, *The Disparate Impact of Surveillance*, THE CENTURY FOUND., Dec. 21, 2017, <https://production-tcf.imgix.net/app/uploads/2017/12/03151009/the-disparate-impact-of-surveillance.pdf>; see also, e.g., Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, THE ATLANTIC, Apr. 22, 2016 <https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/> (summarizing data indicating that Oakland Police Department deployed ALPRs “disproportionately often in low-income areas and in neighborhoods with high concentrations of African-American and Latino residents”).

⁵ 142 S. Ct. 2228 (2022).

⁶ 410 U.S. 113 (1972).

facilitating access to abortion.⁷ Law enforcement officers in anti-abortion jurisdictions who receive the locations of drivers collected by California-based ALPRs may seek to use that information to monitor abortion clinics and the vehicles seen around them and closely track the movements of abortion seekers and providers.⁸ This threatens even those obtaining or providing abortions in California, since several anti-abortion states plan to criminalize and prosecute those who seek or assist in out-of-state abortions.⁹

II. The Department Shares Local Drivers' Data with Out-of-State Agencies, including Agencies in Anti-Abortion States.

The PRA Records obtained by our office state that the Department shares ALPR information with law enforcement agencies across the country, including with at least one agency in a state where abortion is banned or highly restricted. The Department lists out-of-state agencies as sharing partners with the ability to search your Department's local ALPR information, including scans of license plates and the location of the scanned plate. These out-of-state agencies have the ability to search sensitive local ALPR information but are not subject to the important privacy protections imposed by the California state legislature.

III. Sharing of ALPR Information with Out-of-State Agencies Violates State Law and Undermines California's Protections for Reproductive Health Privacy.

Any sharing of ALPR information with out-of-state agencies violates state law and the only way to prevent these violations, and the harm caused by exposing sensitive driver information to out-of-state agencies, is to cease such sharing. Under the California Civil Code, as amended by Senate Bill No. 34, “[a] public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law.” Civ. Code § 1798.90.55(b). A “public agency” is defined as “the state, any city, county, or city and county, or any agency or political subdivision *of the state*.” See Civ. Code § 1798.90.5(f) (emphasis added). The Civil Code, therefore, prohibits an agency from sharing or transferring ALPR information with or to out-of-state agencies, including those listed in the PRA Records.

In addition, sharing ALPR information with law enforcement in states that criminalize abortion undermines California's extensive efforts to protect reproductive health privacy. Since last summer when the Supreme Court decided *Dobbs*, the Legislature has passed more than a

⁷ Johana Bhuiyan, *How expanding web of license plate readers could be 'weaponized' against abortion*, THE GUARDIAN, Oct. 6, 2022, <https://www.theguardian.com/world/2022/oct/06/how-expanding-web-of-license-plate-readers-could-be-weaponized-against-abortion>.

⁸ Dave Maass, *Automated License Plate Readers Threaten Abortion Access. Here's How Policymakers Can Mitigate the Risk*, ELECTRONIC FRONTIER FOUND., Sept. 28, 2022, <https://www.eff.org/deeplinks/2022/09/automated-license-plate-readers-threaten-abortion-access-heres-how-policymakers>.

⁹ See, e.g., Caroline Kitchener and Devlin Barrett, *Antiabortion lawmakers want to block patients from crossing state lines*, WASHINGTON POST, June 30, 2022, <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/>; Josh Moon, *Alabama AG: state may prosecute those who assist in out-of-state abortions*, ALABAMA POLITICAL REPORTER, Sept. 15, 2022, <https://www.alreporter.com/2022/09/15/alabama-ag-state-may-prosecute-those-who-assist-in-out-of-state-abortions/>.

dozen laws to protect reproductive freedom, including laws that prohibit law enforcement from cooperating with out-of-state entities regarding abortions that are lawful in California.¹⁰

As shown in the PRA Records, the Department shares ALPR information with at least one law enforcement agency in an anti-abortion state. Sharing ALPR information with these agencies raises concerns in light of the recently enacted Assembly Bill No. 1242, which prohibits state and local public agencies from “cooperat[ing] with or provid[ing] information” to out-of-state agencies “regarding an abortion that is lawful under the laws of this state and that is performed in this state.” Cal. Penal Code § 13778.2.

The sharing of ALPR information is harmful because it exposes the sensitive location information of drivers to misuse in states without California’s privacy protections. The only way to prevent these harms and address these violations of the law is the terminate the out-of-state sharing.

Additionally, sharing ALPR information with out-of-state agencies undermines the California Constitution’s long-standing protections for reproductive rights¹¹ and the values guiding state law, as set out in the legislative findings and declarations of the Reproductive Privacy Act:

“The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that . . . [e]very woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion . . . [and t]he state shall not deny or interfere with a woman’s fundamental right to choose to bear a child or to choose to obtain an abortion[.]”

Cal. Health & Safety Code § 123462. These declared rights are undermined by Tracy sending ALPR information to out-of-state law enforcement agencies that may use it to investigate and punish people who seek abortion.

IV. The Department Should End the Illegal Sharing of ALPR Information and Any Further Use of ALPRs.

We urge the Department to investigate—and end—the sharing documented above. We ask that you provide proof in writing that such sharing has ended and any record reflecting the same. Cal. Const., art. I, § 3(b)(2); Gov’t Code §§ 7920 et seq.

¹⁰ See Joe Garofoli, *Newsom signs California abortion protections into law following GOP push for a nationwide ban*, SAN FRANCISCO CHRONICAL, Sept. 27, 2022, <https://www.sfchronicle.com/bayarea/article/Newsom-signs-California-abortion-protections-into-17470927.php>; *New Protections for People Who Need Abortion Care and Birth Control*, OFFICE OF GOVERNOR GAVIN NEWSOM, Sept. 27, 2022, <https://www.gov.ca.gov/2022/09/27/new-protections-for-people-who-need-abortion-care-and-birth-control/>.

¹¹ See *People v. Belous* (1969) 71 Cal. 2d 954. The California Constitution was recently amended to expressly enumerate these long-standing protections. See Cal. Const. Art. 1, § 1.1 (“The state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion[.]”) (*added Nov. 8, 2022, by Prop. 1. Res. Ch. 97, 2022. Effective Dec. 21, 2022*).

Further, the risks to civil liberties and civil rights that ALPR technology creates are well-documented. Even if the Department takes steps to prevent the formal sharing of data with out-of-state agencies, the risk of informal sharing with these same agencies will remain. Thus, the best way to ensure that Tracy's residents and visitors are safe from unnecessary intrusion into their personal lives is to reject the use of ALPR technology altogether.

We look forward to your prompt action and response by June 15, 2023. If you have any questions, please do not hesitate to reach out to Jennifer Pinsof at ALPR@eff.org.

Sincerely,

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