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12 **SUPERIOR COURT OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES**
14

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

18 Petitioners,)

19 v.)

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

23)
24 Respondents.)
25)
26)
27)
28)

Case No.: BS143004

**PETITIONERS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PETITION FOR WRIT
OF MANDAMUS**

[Gov. Code §§ 6250, *et seq.*;
Civ. Proc. Code §§ 1085, *et seq.*]

Hearing Date: March 21, 2014
Hearing Time: 9:30 a.m.
Place: Department 86
Honorable Joanne O'Donnell

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1 **I. INTRODUCTION**

2 Amid growing concern over the government’s use of technology to collect massive amounts of
3 data on the lives of ordinary Americans, Petitioners sent requests under the Public Records Act (“PRA”)
4 to Los Angeles Police Department (“LAPD”) and Los Angeles Sheriff’s Department (“LASD”),
5 agencies of Respondents City and County of Los Angeles, seeking information on Automatic License
6 Plate Readers (“ALPRs”), devices used by police to identify a vehicle and collect the precise time and
7 place it was encountered, and capable of logging thousands of plates per hour. Petitioners’ requests
8 sought the policies, practices, procedures, training, and instructions on how ALPRs should be used by
9 the departments, how the information obtained through the devices could be used or shared, and how the
10 data collected with such devices was retained, protected and purged. Petitioners also sought one week’s
11 worth of the data collected by ALPRs, between August 12 and August 19, 2012. But Respondents’
12 responses and productions fall short of their statutory obligations in at least two ways.

13 First, Respondents refused to disclose the single week of ALPR data requested. But none of the
14 exemptions Respondents asserted apply. While Petitioners recognize the strong privacy interest
15 members of the public have in aggregate information about their location over time, the privacy interest
16 in one week’s worth of data does not outweigh the public’s interest in understanding how its government
17 is using these surveillance tools under § 6255—and even if it does, that privacy interest could be
18 adequately addressed through redaction or other means. ALPR data are not subject to an evidentiary
19 privilege as “official information,” as they were collected without consent, not shared in confidence. As
20 data collected *en masse* on the lawful activities of the general public, ALPR data are neither
21 investigatory records into specific crimes nor intelligence information under § 6254(f). Because no
22 exemptions apply, this Court should order Respondents to produce the requested ALPR data.

23 Second, the selection of documents Respondents’ produced relevant to their practices,
24 procedures, training and instructions on the use of ALPRs and ALPR data is so limited that it cannot
25 reflect all documents in their possession. However, Respondents’ responses do not clearly indicate
26 whether they are withholding documents based on exemptions or whether they have found no other
27 documents. With this insufficient showing, Petitioners lack information to adequately brief
28 Respondents’ failures. At a minimum, this Court should order Respondents to produce an index of any

1 documents withheld based on asserted exemptions, as well as an affidavit detailing the nature and scope
2 of their search for documents, so that Petitioners can appropriately address Respondents' production.

3 **II. STATEMENT OF FACTS**

4 **A. Automatic License Plate Recognition (ALPR) Technology Poses Significant Privacy 5 Risks that Require Public Knowledge of How It Is Used by Law Enforcement**

6 ALPRs consist of high-speed cameras and software that photograph and record every passing
7 vehicle's license plate. These cameras can be placed on structures or mounted to patrol cars, where they
8 record the plate number, the location, and time and date when the data was collected. The photograph
9 often captures not just the license plate but the vehicle and its occupants.¹ The photograph and data can
10 be stored in databases, shared with other agencies, and retained for years or indefinitely, depending on
11 individual agency policy.² Agencies have created massive databases that record the travels of millions
12 of drivers in an area.³ According to the *LA Weekly*, LASD and LAPD "are two of the biggest gatherers
13 of automatic license plate recognition information [and] have logged more than 160 million data points,"
14 constituting "some 22 scans for every one of the 7,014,131 vehicles registered in L.A. County."⁴
15 Agencies also share data, so that, for example, LASD can query license plate data from 26 other police
16 agencies in Los Angeles County and is working to expand its reach to Riverside and San Bernardino.⁵

17 The data can trigger instant alerts if a scanned plate is associated with a crime, is on a stolen
18 vehicle list or meets other criteria. Departments, and even individual units, can also create their own

19
20 ¹ See LASD, "Field Operations Directive 09-04" (Aug. 17, 2009), Pet. Ex. I. (hereinafter "LASD Field
21 Directive"); Sgt. Gaw Letter dated Sept 5, 2012, Decl. of Peter Bibring in Support of Pet., Ex. A at 7-13
22 ("Sgt. Gaw letter"); Ali Winston, "License plate readers tracking cars," *SFGate* (June 25, 2013) *avl. at*
<http://www.sfgate.com/bayarea/article/License-plate-readers-tracking-cars-4622476.php> (license plate
23 image clearly showed man and his daughters stepping out of vehicle in their driveway).

24 ² The LASD retains ALPR data for two years, although the department "would prefer to retain data
25 indefinitely." (See Sgt. Gaw letter, at 13.) LAPD's retention period is five years. Jon Campbell,
26 "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/>.

27 ³ See David J. Roberts & Meghann Casanova, International Association of Chiefs of Police, *Automated
28 License Plate Recognition Systems: Policy and Operational Guidance for Law Enforcement*, 24 (2012);
29 ACLU, *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans'
30 Movements*, 21-22 (July 2013) <https://www.aclu.org/files/assets/071613-aclu-alpreport-opt-v05.pdf>

⁴ Campbell, *supra* note 2.

⁵ Bibring Decl. Ex. A at 8 (Sgt. Gaw Letter); Ex. B at 48-51 (LASD PowerPoint).

1 “hot lists” so that ALPR users will be alerted whenever a “vehicle of interest” is located. Officers can
2 also enter individual plates into their ALPR system to be searched for during that shift.⁶

3 Police use of ALPRs has exploded in recent years. A September 2009 survey reported that 70 of
4 305 (23%) randomly selected police departments nationwide used ALPRs.⁷ A 2011 Police Executive
5 Research Forum survey of more than 70 of its member police departments showed that 79% used ALPR
6 technology and 85% expected to acquire or increase use in the next five years.⁸

7 While ALPR technology can be a powerful tool, without proper safeguards, the technology can
8 also harm individual privacy and civil liberties. A network of readers enables police to collect extensive
9 location data on an individual, without his knowledge and without any level of suspicion. ALPRs can be
10 used to scan and record vehicles at a lawful protest or house of worship; track all movement in and out
11 of an area;⁹ specifically target certain neighborhoods¹⁰ or organizations;¹¹ or place political activists on
12 hot lists so that their movements trigger alerts.¹² The Supreme Court has noted the sensitive nature of
13 location data and the fact that it can reveal “a wealth of detail about [a person’s] familial, political,
14 professional, religious, and sexual associations.” See *United States v. Jones*, 132 S. Ct. 949, 955 (2012)
15 (Sotomayor, J. concurring); *id.* at 958 (Alito, J., concurring) (concluding that defendant had a reasonable
16 expectation of privacy from monitoring of his location by GPS tracker). Taken in the aggregate, ALPR
17 data can create a revealing history of a person’s movements, associations, and habits.

18 Indeed, this has already occurred. In August 2012, the Minneapolis Star Tribune published a map
19 displaying the 41 locations where license plate readers had recorded Minneapolis Mayor R.T. Rybak’s

20 _____
21 ⁶ See Sgt. Gaw Letter, Bibring Decl., Ex. A at 8.

22 ⁷ Roberts & Casanova, *supra* note 3, at 19-20.

23 ⁸ Police Executive Research Forum, *How are Innovations in Technologies Transforming Policing?*, 1-2
(Jan. 2012) http://policeforum.org/library/critical-issues-in-policing-series/Technology_web2.pdf.

24 ⁹ Cyrus Farivar, “Rich California town considers license plate readers for entire city limits,” *Ars
Technica* (Mar. 5, 2013) [http://arstechnica.com/tech-policy/2013/03/rich-california-town-considers-
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25 ¹⁰ Paul Lewis, “CCTV aimed at Muslim areas in Birmingham to be dismantled,” *The Guardian* (Oct. 25,
2010) <http://www.guardian.co.uk/uk/2010/oct/25/birmingham-cctv-muslim-areas-surveillance>.

26 ¹¹ Adam Goldman & Matt Apuzzo, “With cameras, informants, NYPD eyed mosques,” *Associated
Press* (Feb. 23, 2012) [http://www.ap.org/Content/AP-In-The-News/2012/Newark-mayor-seeks-probe-
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27 ¹² Richard Bilton, “Camera grid to log number plates,” *BBC* (May 22, 2009) *avl. at*
28 http://news.bbc.co.uk/2/hi/programmes/whos_watching_you/8064333.stm.

1 car in the preceding year.¹³ And this data is ripe for abuse; in 1998, a police officer “pleaded guilty to
2 extortion after looking up the plates of vehicles near a gay bar and blackmailing the vehicle owners.”¹⁴

3 Police tracking of the public’s movements can have a significant chilling effect on speech and
4 civil liberties. The International Association of Chiefs of Police has cautioned that ALPR technology
5 “risk[s]... that individuals will become more cautious in the exercise of their protected rights of
6 expression, protest, association, and political participation because they consider themselves under
7 constant surveillance.”¹⁵

8 The very real risks to privacy and civil liberties require public understanding of how police
9 departments use ALPRs. Many jurisdictions trying to implement ALPRs have struggled to strike the
10 right balance between effectiveness of the technology and safeguards against misuse.¹⁶ In Minneapolis,
11 the *Star Tribune* story about ALPRs led to a public debate on data retention policies.¹⁷ Similarly, after a
12 request for ALPR records revealed that the Boston Police Department was misusing its ALPR
13 technology, the Police Department “indefinitely suspended” its ALPR use.¹⁸ In California, Senator Jerry
14 Hill recently recognized the privacy interests in Californians’ license plate data and introduced a bill that
15 would place some limits on the collection of this data.¹⁹ Without public access to information about how
16 ALPR technology is being used, the very people whose whereabouts are being recorded cannot know if
17 their rights are being infringed nor challenge policies that inadequately protect their privacy.

19
20 ¹³ Eric Roper, “City cameras track anyone, even Minneapolis Mayor Rybak,” *Minneapolis Star Tribune*
(Aug. 17, 2012) <http://www.startribune.com/local/minneapolis/166494646.html>.

21 ¹⁴ Julia Angwin & Jennifer Valentino-DeVries, “New Tracking Frontier: Your License Plates,” *Wall St.*
22 *J.* (Sept. 29, 2012)
<http://online.wsj.com/news/articles/SB10000872396390443995604578004723603576296>.

23 ¹⁵ 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.pdf.

24 ¹⁶ See Police Executive Research Forum, *supra* note 4, at 33-34; ACLU, *supra* note 2, at 23-24.

25 ¹⁷ Eric Roper, “Minnesota House passes protections on vehicle tracking, data misuse,” *Minneapolis Star*
Tribune (May 17, 2013) <http://www.startribune.com/politics/statelocal/207965541.html>.

26 ¹⁸ Shawn Musgrave, “Boston Police halt license scanning program,” *Boston Globe* (Dec. 14, 2013)
27 <http://www.bostonglobe.com/metro/2013/12/14/boston-police-suspend-use-high-tech-licence-plate-readers-amid-privacy-concerns/B2hy9UIzC7KzebnGyQ0JNM/story.html>.

28 ¹⁹ See S.B. 893, Legislative Counsel’s Digest (Jan. 13, 2014) http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_893_bill_20140113_introduced.html.

1 For these reasons, Petitioners filed PRA requests with Respondents seeking access to a week's
2 worth of ALPR data and other records on the use of ALPR technology. *See* Petition (“Pet.”) ¶¶ 9-11, 18-
3 19 & Exs. A, C; Pet. ¶¶ 26-27, 31-32, 39-40 & Exs. E, G, J, L. Argument

4 **B. The Public Records Act**

5 The California Constitution guarantees the public’s “right of access to information concerning
6 the conduct of the people’s business,” Cal. Const., art. I, § 3(b)(1), and the PRA recognizes this
7 “fundamental and necessary right of every person.” Gov’t Code § 6250. The PRA defines “public
8 record” broadly so as to include “every conceivable kind of record that is involved in the governmental
9 process.” *Versaci v. Super. Ct.*, 127 Cal. App. 4th 805, 813 (citation omitted) (2005); *see also* Gov’t
10 Code § 6252(e). It also mandates that “all public records are subject to disclosure unless the Legislature
11 has expressly provided to the contrary.” *Williams v. Super. Ct.*, 5 Cal. 4th 337, 346 (1993). The
12 exemptions in the PRA, and any other authority for withholding records, are narrowly construed, *see*
13 Cal. Const. art. I, § 3(b)(2), and the government bears the burden of demonstrating that the records at
14 issue are exempt. *Comm’n on Peace Officer Standards & Training (“POST”) v. Super. Ct.*, 42 Cal. 4th
15 278, 299 (2007). The public interest in transparency and “ensuring accountability is particularly strong
16 where the discretion invested in a government official is unfettered” and where “the degree of
17 subjectivity involved in exercising the discretion cries out for public scrutiny.” *CBS, Inc. v. Block*, 42
18 Cal. 3d 646, 655 (1986).

19 **C. Respondents Are Improperly Withholding ALPR Data Under the PRA**

20 While Respondents’ responses do not clearly specify what records they have found but are
21 withholding as exempt, at a minimum, they have refused to produce the single week of ALPR data
22 requested by EFF. *See* Pet. ¶¶ 9, 12, 18, 20 & Exs. A - D. Respondents have claimed that these records
23 can be withheld under various exemptions, none of which apply. Even if some of the requested records
24 may be directly involved in an investigation, Respondents are obligated to segregate and produce the
25 parts of the records that do not fall under an exemption.

26 **1. Respondents Improperly Withheld ALPR Data Under § 6255**

27 The PRA includes a catch-all exemption in § 6255 that applies when “the public interest served
28 by not disclosing the record clearly outweighs the public interest served by disclosure.” Gov’t Code

1 § 6255(a). The withholding party has the burden of showing a clear overbalance in favor of
2 nondisclosure. *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 657 (1974).

3 **(a) The Public Interest Served by Disclosure Is Strong**

4 There is a strong public interest in disclosure of records, *see* Cal. Const., art. I, § 3 (b)(1),
5 especially for records related to police, because of the power they wield. “The public has a legitimate
6 interest not only in the conduct of individual [police] officers, but also in how the Commission and local
7 law enforcement agencies conduct the public's business.” *Comm'n on POST*, 42 Cal. 4th at 300; *see also*
8 *N.Y. Times Co. v. Super. Ct.*, 52 Cal. App. 4th 97, 104-05 (1997)(“To maintain trust in its police
9 department, the public must be kept fully informed of the activities of its peace officers.”).

10 Here, the intrusive nature of ALPRs and their potential for abuse creates a strong public interest
11 in disclosure of data that would help shed light on how police are actually using the technology. The
12 actual data would reveal whether police agencies are spreading ALPRs throughout their jurisdictions or
13 focusing collection of millions of data points on a few locations or communities, raising concerns about
14 the detailed picture painted of those individuals’ movements. The data will reveal whether police seem
15 to be targeting political demonstrations to help identify protestors, or other locations such as mosques,
16 doctors’ offices or gay bars that might yield highly personal information. Californians can only properly
17 weigh in on whether police should be using ALPRs and what policies might be necessary if they
18 understand how police actually use the technology. *See In re Sealing & Non-Disclosure*, 562 F.Supp.2d
19 876, 886 (S.D. Tex. 2008) (“Cumulatively considered, these secret orders, issued by the thousands year
20 after year . . . may conceal from the public the actual degree of government intrusion that current
21 legislation authorizes. It may very well be that, given full disclosure of the frequency and extent of these
22 orders, the people and their elected representatives would heartily approve without a second thought.
23 But then again, they might not.”).

24 **(b) Respondents Have Not Shown Public Interests in Non-**
25 **Disclosure Clearly Outweigh Interests in Disclosure**

26 In contrast to the strong public interest in disclosure of data, Respondents either failed to offer a
27 specific interest in favor of nondisclosure or justified withholding records with only the interest of
28 retaining “confidentiality.” *See, e.g.* Pet. Exs. D (LASD response letter to EFF), B (LAPD response to
EFF); M (LAPD’s response to ACLU).

1 None of the requested data is confidential. The ALPR data was not provided in confidence—or
2 even with permission—by the individuals whose license plates were scanned. *Cf. Sacramento Cnty.*
3 *Employees’ Ret. Sys. v. Super. Ct.*, 195 Cal. App. 4th 440, 472 (2011) (“home and e-mail addresses,
4 telephone numbers, and Social Security numbers, are data provided *by* members *to* SCERS and therefore
5 are confidential”) (emphasis in original). Drivers in Los Angeles do not knowingly turn over
6 information about their whereabouts to law enforcement with an expectation that it will be kept secret;
7 such information is taken without their consent, and generally without their knowledge.

8 In invoking the catch-all exception, Respondents have only asserted the “confidentiality” of the
9 records; they notably fail to assert the *privacy* interests of the vehicles’ drivers whose information has
10 been captured. As set forth above, Petitioners recognize that license plate data yields location
11 information that can reveal intimate facts about political or religious associations or other personal
12 matters and thus raises significant privacy interests. *See supra*, Section II.A at 3-4; *See Jones*, 132 S. Ct.
13 at 955 (Sotomayor, J. concurring) (noting highly sensitive nature of location data); *id.* at 958 (Alito, J.,
14 concurring) (same). Here, however, Petitioners requested a very narrow slice of data—the ALPR data
15 collected over a period of only one week, which will reveal patterns in law enforcement use of ALPRs
16 in which the public has a strong interest, without revealing the movements of private individuals over a
17 prolonged time. Even if such a limited request for data constituted sufficient intrusion to justify
18 exemption under the catch-all provision, certain parts of the data could be redacted to protect individual
19 privacy interests while still providing the public with enough data to assess Respondents’ practices. *See,*
20 *e.g., CBS, Inc. v. Block*, 42 Cal. 3d 646, 655 (1986) (recognizing that where public interest favoring
21 disclosure conflicts with information about individuals that “entail[s] a substantial privacy interest[,] . . .
22 In such special cases, the confidential information [about that individual] may be deleted.”).

23 **2. Respondents Improperly Withheld ALPR Data Based on § 6255(k) and**
24 **Evidence Code § 1040**

25 Section 6254(k) exempts records from the PRA’s disclosure requirements if state or federal law,
26 including “provisions of the Evidence Code relating to privilege,” would prohibit disclosure. Gov’t
27 Code § 6254(k). Respondents claim that Evidence Code §1040 exempts ALPR data and ALPR policies
28 as “official information.” However, this section only protects records “acquired in confidence” or
provided by a confidential source. *Id.* at §1040(a); *see also, e.g., Ochoa v. Super. Ct.*, 199 Cal. App. 4th

1 1274, 1283 (2011) (protecting information from prison informants because it was necessarily “clothed
2 with the indicia of confidentiality and therefore conditionally privileged”). The records at issue here
3 were neither “acquired in confidence” nor provided to Respondents by a confidential source. Rather,
4 Respondents obtained the ALPR data without the knowledge of the people it indirectly identifies and
5 likely generated the requested ALPR policies and procedures within the departments.

6 Even if these records were confidential, they still could not be withheld because their disclosure
7 is not “against the public interest.” Evid. Code § 1040 (b)(2); *see also Marylander v. Super. Ct.*, 81 Cal.
8 App. 4th 1119, 1126 (2000). The balancing of public interest in disclosure versus nondisclosure under
9 § 1040 is the same test as that required by Gov’t Code § 6255, and “the burden of demonstrating a need
10 for nondisclosure is on the agency claiming the right to withhold the information.” *CBS*, 42 Cal. 3d at
11 656. Therefore, the same arguments in favor of disclosure under § 6255, *see* Section III.B.1 *supra*, bar
12 Respondents’ claims of exemption under § 1040 as well.

13 3. Respondents Improperly Withheld Public Records Under § 6254(f)

14 Section 6254(f) exempts investigatory files and records, intelligence information, and security
15 procedure records collected by state and local police agencies. Gov’t Code § 6254(f). Unlike the federal
16 Freedom of Information Act (“FOIA”), Section 6254(f) “require[s] the disclosure of *information derived*
17 *from the records*” even if the records themselves remain subject to the exemption. *Williams v. Super.*
18 *Ct.*, 5 Cal. 4th 337, 353 (1993) (emphasis in original).

19 (a) The ALPR Data Are Not Records of Investigations or 20 Investigatory Files Because They Are Not Connected to an Ongoing or Potential Investigation

21 A file is exempt as investigatory “only when the prospect of enforcement proceedings [becomes]
22 concrete and definite.” *Williams*, 5 Cal. 4th at 355 (quoting *Uribe v. Howie*, 19 Cal. App. 3d 194, 213
23 (1971)). “[T]he law does not provide[] that a public agency may shield a record from public disclosure,
24 regardless of its nature, simply by placing it in a file labeled ‘investigatory.’” *Id.* at 355. Courts have
25 rejected the argument that § 6254(f) “appli[es] to any document which a public agency might, under any
26 circumstances, use in the course of [an investigation]” as “creat[ing] a virtual *carte blanche* for the
27 denial of public access to public records.” *Id.* at 355-56 (citing *Uribe*, 19 Cal. App. 3d at 212-13).

28 The California Supreme Court has found that “records of investigations” include “the very

1 sensitive investigative stages of determining whether a crime has been committed or who has committed
2 it.” *Haynie v. Super. Ct.*, 26 Cal. 4th 1061, 1070 (2001). Nevertheless, to be considered a record of
3 investigation, the information collected must relate to specific investigations, not the general purposes of
4 “crime prevention” and “public safety.” *Id.* at 1071. Even if routine stops may be considered part of an
5 “investigation,” the investigatory records exemption “encompass[es] only those investigations
6 undertaken for the purpose of determining whether a violation of law may occur or has occurred.” *Id.*

7 Here, ALPR data cannot be considered “investigatory” because it is collected and retained
8 indiscriminately of whether “enforcement proceedings [are] concrete and definite.” *Williams*, 5 Cal. 4th
9 at 355. ALPR cameras automatically record all plates within view without the driver’s knowledge and
10 without any level of suspicion or relationship to an ongoing criminal investigation. Any value in
11 retaining records after a vehicle has been compared with databases and found not to be wanted is for
12 “purposes related to crime prevention and public safety.” *Haynie*, 26 Cal. 4th at 1071.

13 Respondents’ publicly admit their non-investigatory uses of ALPR data. They have stated they
14 use ALPR data for “crime prevention” and to “strengthen public safety,”²⁰ and their internal documents
15 show that a majority of the records retained are not tied to any specific investigation. Within a six-month
16 span, one LAPD ALPR camera-equipped unit was noted to have recovered 165 stolen vehicles.²¹
17 However, because “ALPR cameras can photograph thousands of plates in a shift,” that six-month span
18 likely included hundreds of thousands of license plate scans of vehicles that were not connected to any
19 crime.²² Analysis of ALPR data from other law enforcement agencies around the country shows that the
20 typical percentage of scans that become connected to a crime is a fraction of one percent.²³ Nevertheless
21 the LASD’s ALPR database retains license plate data for two years, while LAPD retains that same data
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24 ²⁰ LASD Advanced Surveillance and Protection, *avl. at* <http://www.lasdhq.org/sites/ASAP/>; LASD,
25 *Sheriff’s Department expands its use of surveillance to fight crime and gang violence throughout Los*
Angeles County, Sheriff’s News Room (Nov. 16, 2009) *avl. at* <http://tinyurl.com/lasdsheriffsnewsroom>.

26 ²¹ LAPD, *Utilizing Technology in Policing*, Pet., Ex. A at 26.

27 ²² LASD Field Operations Directive 09-04, Pet. Ex. I, at 72.

28 ²³ 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-](https://www.aclu.org/technology-and-liberty/you-are-being-tracked-how-license-plate-readers-are-being-used-record)
[license-plate-readers-are-being-used-record](https://www.aclu.org/technology-and-liberty/you-are-being-tracked-how-license-plate-readers-are-being-used-record).

1 for five, regardless of any connection to an ongoing or potential investigation.²⁴

2 Internal documents also mention the use of “hot lists” to track “vehicles of interest” so that their
3 plates trigger alerts when scanned. It is unclear what criteria, if any, justify the inputting of an
4 individual’s plate into the ALPR system so that he is subjected to police monitoring. In fact, Respondent
5 LASD’s Field Operations Directive on ALPR states that an

6 ALPR vehicle alert identified via hot list information does not automatically provide
7 ALPR users with sufficient justification to pull over or detain vehicle occupants. Often
8 times, these hotlists will identify a ‘vehicle of interest’ which is not necessarily wanted
for a crime (ex. sex registrants vehicle). Personnel must use discretion and in some cases
have independent information justifying a traffic stop.²⁵

9 Given that it is not necessary for a vehicle to be connected to an ongoing or potential investigation
10 before its plate is scanned and input into the ALPR database, Respondents cannot withhold all requested
11 ALPR data as investigatory records.

12 Finally, because ALPR data is not an investigatory file or a record of an investigation, the
13 general policy reasons for protecting such information do not apply. Because ALPR data is collected
14 unselectively on every passing motorist, making a subset of the data public does not reveal the nature or
15 the target of any law enforcement investigation. Courts have noted the “chilling effects of disclosure
16 upon [investigators] or their sources” if investigatory materials, including police analysis and witness
17 accounts were to be revealed. *Rackauckas v. Super. Ct.*, 104 Cal. App. 4th 169, 177 (2002). However,
18 Respondents collect ALPR data by mass scanning of the license plates of unwitting motorists, not from
19 human sources whose cooperation depends on confidentiality of the information they provide.

20 **(b) The Records Are Not Intelligence Information**

21 A government record is intelligence information if it: 1) identifies individuals that police suspect
22 of criminal activity, *CBS, Inc. v. Block*, 42 Cal. 3d 646, 654 (1986) (citing *ACLU v. Deukmejian*, 32
23 Cal. 3d 440, 449-50 (1982)); 2) “identif[ies] confidential sources,” or 3) contains information “that was
24 supplied in confidence by its original source.” *ACLU*, 32 Cal. 3d at 449-50.

25 _____
26 ²⁴ LASD Field Operations Directive 09-04, “Automated License Plate Recognition (ALPR) System,”
27 dated Aug. 17, 2009, Pet., Ex. I at 74; Jon Campbell, “License Plate Recognition Logs Our Lives Long
Before We Sin”, LA Weekly (June 21, 2012) <http://www.laweekly.com/2012-06-21/news/license-plate-recognition-tracks-los-angeles/>.

28 ²⁵ LASD Field Directive 09-04, Pet., Ex. I, at 75.

1 Here, because Respondents collect ALPR data on every passing vehicle, the mere inclusion of a
2 person's license plate in the database does not identify that individual as being suspected of any crime,
3 nor does the fact a person owns or drives a car carry any social stigma in Los Angeles.²⁶ Further, there is
4 no proof that releasing ALPR data has the potential to tip off a criminal to whether he or she is under
5 investigation and to what the government knows. *See ACLU*, 32 Cal. 3d at 451 (reasoning names of
6 people suspect of organized crime are properly exempt as intelligence information because, otherwise,
7 "[p]ersons connected with organized crime may seek to discover what the police know, or do not know,
8 about organized criminal activities"). ALPR data also does not identify confidential sources, nor was it
9 supplied in confidence. ALPR technology indiscriminately scans license plates open to public view
10 without the input of any confidential sources, let alone the vehicle owner.

11 **(c) The Records Are Not Related to Security Procedures**

12 Section 6254(f) also exempts law enforcement records of security procedures. Gov't Code
13 § 6254(f); *N. Cal. Police Practices Project v. Craig*, 90 Cal. App. 3d 116 (1979). Police training
14 documents that "deal with the protection and security of the officers and others" are security procedure
15 records protected by 6254(f). *Craig*, 90 Cal. App. 3d at 120. However, just because a record may be
16 related to police training or policies does not mean that it falls under the "security procedure"
17 exemption. *See Cook v. Craig*, 55 Cal. App. 3d 773, 784 (1976) (regulations governing the investigation
18 of complaints about the conduct of California Highway Patrol personnel were subject to disclosure).

19 The requested records are not related to the procedures for the protection or security of police
20 officers or the public. The only appellate court to apply the security procedure exemption has done so
21 for police training materials on "Enforcement Tactics" (including "officer-violator contact, search and
22 handcuffing techniques, the use of firearms, patrol vehicle operations, and hostage incidents"),
23 "Weapons Training," and "Personal Weapons and Physical Methods of Arrest Guide." *Craig*, 90 Cal.
24 App. 3d at 118-19. The ALPR data here simply does not implicate police safety or enforcement in the

25 ²⁶ Petitioners recognize that motorists have privacy interests in location information contained in ALPR
26 data, *see supra*, Section II.A, but no case suggests that privacy interests alone turn documents into
27 "intelligence information" under § 6254(f). *See, e.g., ACLU*, 32 Cal. 3d at 449-50 (discussing privacy
28 interests and social stigma in the context of the California Constitution's right of privacy in addition to
§ 6254(f); *CBS*, 42 Cal. 3d at 653 (same).

1 same manner as revealing the tactics of force and conflict.

2 **4. Even If Some of the Records Properly Fall Under a PRA Exemption, the**
3 **Respondents Must Separate and Disclose Nonexempt Material**

4 As a general rule, when exempt material is segregable from nonexempt material, the former may
5 be withheld but the remainder of the record must be disclosed. Gov't Code § 6253(a); *State Bd. of*
6 *Equalization v. Super. Ct.*, 10 Cal. App. 4th 1177, 1187 (1992). The fact that it is time consuming to
7 segregate exempt material does not discharge the requirement to do so. *ACLU*, 32 Cal. 3d at 447. Only if
8 the burden is so onerous as to clearly outweigh the public interest in disclosure can the agency be
9 released from its obligation to provide public access to information. *Id.* Because the records sought here
10 do not include those involved in actual investigations, it will not be unduly burdensome for Respondents
11 to separate exempt materials from nonexempt materials.

12 **D. Respondents' Inadequate Production Indicates They are Either Improperly**
13 **Withholding Documents or Failed to Conduct an Adequate Search**

14 Apart from the wrongly withheld ALPR data, Respondents' responses indicate that have failed to
15 produce other documents. But their responses do not clarify whether they have withheld additional
16 documents based on claims of exemptions or simply conducted inadequate searches. Without knowing
17 which, Petitioners cannot adequately brief the issue. This Court should correct the imbalance of
18 knowledge by ordering Respondents to produce an index of any documents withheld on the basis of
19 exemptions, as well as affidavits describing the searches they conducted for responsive materials.

20 **1. Respondents' Productions Indicate that They Have Failed to Produce**
21 **Documents**

22 The ACLU requested records related to "policies, procedures, training and practices" on both
23 ALPRs and GPS Tracking Devices, including how the devices themselves should be used by the
24 departments, how the information obtained through the devices could be used or shared, and how the
25 data collected with such devices was retained, protected and purged. Pet., Exs. E, G, L. EFF made a
26 similar request. Pet., Exs. A & C. In response to the ACLU's request, LASD produced only three
27 documents: (1) a two-page order from LASD regarding policies for using video surveillance and
28 advanced technologies; (2) a seven-page letter apparently composed in response to the public records
requests, describing ALPRs and how the department uses them, setting forth some applicable policies
and describing the absence of any written policies on data retention; and (3) a four-page "Field

1 Operations Directive” issued by LASD on the ALPR system. To EFF, LASD produced the second and
2 third documents, but not the first, and also produced a redacted PowerPoint presentation that appears to
3 be a training document for officers on ALPRs.

4 On its face, LASD’s production is inadequate. Petitioners recognize that a law enforcement
5 agency may not have formal policies on every detail of its operations, but Petitioners did not limit their
6 requests to formal policies. Instead, Petitioners sought documents on “procedures, training, and
7 practices,” as well as “instructions,” regarding use of ALPRs and ALPR data. Such additional
8 documents must exist, if only as emails or informal memos. The three documents LASD produced do
9 not provide enough information to deputies to operate their ALPR systems. Indeed, the second
10 document produced—the letter composed in response to Petitioners’ requests—sets forth practices on
11 data retention (indicating, for example, that LASD “would prefer to retain data indefinitely” but
12 indicates “we have looked at similar standards, such as video, which is currently (2) years”), but
13 provides no underlying documents constituting those “instructions” or documenting those “practices”—
14 not even informal memos or emails between those responsible for administering the data system.²⁷

15 Although LAPD produced more documents, most were not responsive. Out of 31 documents
16 LAPD produced to the ACLU, at least 22 involve the logistics of acquiring ALPRs (requests for
17 proposals, invoices, or purchase orders) or company user manuals. Bibring Dec. ¶ 4 & Ex. C. Only a
18 handful involved the practices or policies on use or operation of ALPRs. LAPD notably failed to include
19 some documents describing “practices” using ALPR data—for example, LAPD’s production omitted a
20 report describing the use of Palantir Law Enforcement, a platform for integrating databases, by one
21 LAPD division to integrate ALPR tracking with other investigative tools.²⁸ Although the PowerPoint
22 produced by LASD indicates that LAPD shares its ALPR data with other agencies, LAPD’s production
23 provided not a single document referring to practices, procedures or training on sharing ALPR data.

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25 ²⁷ Additionally, LASD responded to a public records request from EFF by including a PowerPoint
26 presentation used to train officers on the use of ALPRs that was not produced in response to the nearly
27 identical request by the ACLU. Pet. ¶ 23, 38.

28 ²⁸ See Transmittal of the Extention for the 2009 Los Angeles Smart Policing Project, Bibring Dec. Ex. D
at 160, 161. Palantir has also posted information about its work on LAPD’s ALPR database. Palantir,
Responding to Crime in Real Time at LAPD, *avl. at* [http://www.palantir.com/_ptwp_live_ect0/wp-
content/uploads/2012/06/ImpactStudy_LAPD.pdf](http://www.palantir.com/_ptwp_live_ect0/wp-content/uploads/2012/06/ImpactStudy_LAPD.pdf).

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2. This Court Should Require Petitioners to Produce an Index

Courts often require agencies to create a “*Vaughn* Index” to meet their burden of showing why withheld materials should not be disclosed. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). The index typically identifies the author, recipient, subject matter, reason for exemption, and consequences of disclosure for each withheld document. *See Times Mirror Co.v. Super. Ct.*, 53 Cal. 3d 1325, 1356 (1991); *ACLU of N. Cal.v. Super. Ct.*, 202 Cal. App. 4th 55, 83 (2011). While the PRA does not require that government agencies always create an index in response to a records request, courts have the authority to order such an index, and often do so. *See State Bd. of Equalization*, 10 Cal. App. 4th at 1177, 1191-93 (providing index upholds the pro-disclosure spirit of PRA); *Haynie*, 26 Cal. 4th at 1072-75. Moreover, an index is one of the most effective ways a trial court can ensure the reasonableness of an agency’s claim that a document is exempt from disclosure or non-responsive to the request. *See ACLU of N. Cal.*, 202 Cal. App. 4th at 86.

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Here, the Court should require Respondents to create an index for any documents withheld other than the requested week’s worth of ALPR data. Without an index, Petitioners cannot brief the applicability of exemptions to documents, the nature and identity of which they do not know from Respondents’ bare, conclusory assertions of exemptions. An index is therefore essential to enable the Court to make an informed evaluation of Respondents’ withholding.

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3. This Court Should Require Respondents to Submit Affidavits Verifying the Adequacy of their Search

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As a general matter, a court should order agencies to provide affidavits describing their search process — but this Court should particularly do so here given the apparent inadequacy of Respondents’ searches. In FOIA cases,²⁹ in order for a court to award summary judgment on the basis of affidavits, the agency must “describe what records were searched, by whom, and through what processes.” *Lawyers’ Comm. for Civil Rights v. U.S Dept. of the Treasury of San Francisco Bay Area*, 534 F. Supp. 2d 1126, 1131(N.D. Cal. 2008) (quoting *Steinberg v. U. S. Department of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994)). The agency must also show “that the search was reasonably calculated to uncover all relevant

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²⁹ The PRA was explicitly modeled on the federal FOIA, and “the judicial construction and legislative history of the federal act serve to illuminate the interpretation of its California counterpart.” *ACLU*, 32 Cal. 3d at 447.

1 documents” and conducted in good faith. *Id.* at 1130-31 (quoting *Weisberg v. U.S. Department of*
2 *Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983)).

3 Since the documents produced by Respondents reflect a facially inadequate search, this Court
4 should order Respondents to produce affidavits, if they do not produce them voluntarily, explaining how
5 their search was conducted and justifying the reasonableness of their methods. Absent such affidavits,
6 this Court lacks sufficient information to make a determination regarding the adequacy of the search.

7 **4. Respondents Cannot Refuse to Conduct an Adequate Search Because the**
8 **Records Are Described By Their Content**

9 In answer to the ACLU’s request for documents related to use of “hot lists,” LASD responded
10 that it was “unable to assist . . . with your request” because “[t]he request does not ask for ‘identifiable’
11 public records, but specific ‘information’ in the form of interrogatories.” *See* Pet., Ex. K at 78. Such a
12 grounds for refusing to comply with Petitioners’ request is improper. While a party must reasonably
13 describe a record or the information to be produced for requests made under the PRA, “the requirement
14 of clarity must be tempered by the reality that a requester, having no access to agency files, may be
15 unable to precisely identify the documents sought.” *Cal. First Amendment Coal. v. Super. Ct.*, 67 Cal.
16 App. 4th 159, 165-66 (1998). “Thus, writings may be described by their content” and when done so an
17 agency is still “obliged to search for records.” *Id.* at 166; *See also ACLU of N. Cal.*, 202 Cal. App. 4th
18 at 85 n.16. Here, the ACLU asked for records relating to standards for placing a vehicle on a “hot list”
19 for surveillance and the sharing of “hot list” data with other law enforcement agencies. Pet. Ex. J. at 76.
20 While these requests do not name a particular document, they do reasonably describe the content of the
21 documents sought. This court should order LASD to conduct a reasonable search in good faith for the
22 requested “hot list” documents.

23 **III. CONCLUSION**

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


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1 Dated: January 24, 2014

Respectfully submitted,

2 ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

3 ELECTRONIC FRONTIER FOUNDATION

4 By: 
5 PETER BIBRING
6 Attorneys for Petitioners

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

7 On January 24, 2014, I served the foregoing document: PETITIONERS'
8 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR
9 WRIT OF MANDAMUS, on the parties in this action by placing a true and correct copy of
10 each document thereof, enclosed in a sealed envelope, addressed as follows:

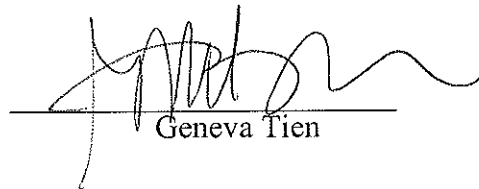
11 Tomas A. Guterres
12 Eric C. Brown
13 Collins Collins Muir & Stewart LLP
14 1100 El Centro Street
15 South Pasadena, CA 91030

14 Heather L. Aubry, Deputy City Attorney
15 City Hall
16 200 North Main Street
17 City Hall East, Room 800
18 Los Angeles, CA 90012

17 I caused such envelope(s) fully prepaid with U.S. Postage to be placed in the United
18 States Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of
19 collection and processing correspondence for mailing. Under that practice it would be deposited
20 with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles,
21 California in the ordinary course of business.

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

24 Executed on January 24, 2014, at Los Angeles, California.

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27 Geneva Tien
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