



VIA EMAIL AND POSTAL SERVICE

June 25, 2020

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100
West Sacramento, CA 95605

Re: POST Violations of SB 978

Dear California Commission on Peace Officer Standards and Training (POST),

On behalf of the Electronic Frontier Foundation (EFF), we write to inform you that POST has failed to comply with the requirements of SB 978, which was signed into law by Governor Jerry Brown on September 30, 2018. This law requires POST and local law enforcement agencies to “conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act” commencing January 1, 2020.¹

EFF is an international non-profit organization based in San Francisco that advocates for civil liberties as technology advances in our society. Our mission includes ensuring transparency regarding police practices such as surveillance. We have previously reached out to POST to raise concerns about inadequate training materials for automated license plate readers (ALPRs) that were outdated and did not reflect changes to state law.²

EFF supported SB 978 because it would allow the public to understand the operations of law enforcement agencies, without the need for filing hundreds of individual California Public Records Act (CPRA) requests throughout the state. Although POST has created an open data portal for its education and training materials, an inspection by EFF has found a number of deficiencies that undermine both the spirit and the letter of the law.

First, we specifically identified problems with the ALPR and facial recognition training modules, as well as the California Peace Officers Association’s use of force training. These modules would otherwise be available to the public if they were requested through the CPRA. In fact, EFF obtained a full, unredacted copy of the POST-certified ALPR

¹ Cal. Penal Code § 13650.

² Dave Maass & Saira Hussain, *EFF Calls on California to End Vendor-Driven ALPR Training*, Electronic Frontier Foundation, (Aug. 19, 2019), <https://www.eff.org/deeplinks/2019/08/eff-calls-california-end-vendor-driven-alpr-training>.

training, which included both participant notes and presentation slides, through a CPRA request last year.³

In place of the ALPR, facial recognition technology, and use of force training modules, POST has uploaded documents stating that the modules' creators have invoked copyright protections.⁴ These creators—private companies certified by POST to provide education and training programs—may have done so in response to a POST bulletin dated September 24, 2019, which stated that copyrighted education and training materials are exempt from disclosure under the CPRA.⁵

However, the CPRA does not include a broad-based copyright exception. The CPRA has carved out a narrow copyright exemption only for computer software developed by a state or local agency. That exemption does not apply to education and training materials.⁶ California courts have specifically held that the CPRA's software exemption "provides no statutory authority for asserting any other copyright interest."⁷

The public has the right to know how peace officers are trained—and for good reason. Officers' use of force causes bodily harm and, in some cases, death. ALPR and facial recognition technology amass vast amounts of data about California residents. Both technologies have triggered legislative action on the state and local level,⁸ and it is important for the public to examine whether the training reflects new and evolving law. In fact, a 2020 report by the California State Auditor's Office found that three out of four

³ Copy provided to EFF available at <https://www.documentcloud.org/documents/6228660-PRA-LPR-Redacted.html>.

⁴ These documents can be downloaded from POST's open data hub, and are also available at <https://www.documentcloud.org/public/search/projectid:50009-POST-SB-978-Redactions>.

⁵ Comm'n on Police Officer Standards & Training, ACTION REQUIRED: Senate Bill 978 Requires Publication of All Non-Exempt Education and Training Materials, Including Presenter Course Content, on POST's Website by January 1, 2020, at 1 (Sept. 24, 2019), https://post.ca.gov/Portals/0/post_docs/bulletin/2019-29.pdf.

⁶ Cal. Gov. Code § 6254.9.

⁷ *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1334 (2009).

⁸ See, e.g., Cassidy Johncox, *Michigan Senate Passes Bill Requiring Implicit Bias, De-escalation Police Training Amid National Unrest*, Click On Detroit (June 4, 2020), <https://www.clickondetroit.com/news/local/2020/06/04/michigan-legislature-passes-bill-requiring-implicit-bias-de-escalation-police-training-amid-national-unrest/>; Matthew Guariglia, *Victory! Berkeley City Council Unanimously Votes to Ban Face Recognition*, Electronic Frontier Foundation (Oct. 16, 2019), <https://www.eff.org/deeplinks/2019/10/victory-berkeley-city-council-unanimously-votes-ban-face-recognition> (identifying Berkeley, Oakland, and San Francisco as California cities that have banned government use of facial recognition technology); Matthew Guariglia, *Victory! California Governor Signs A.B. 1215*, Electronic Frontier Foundation (Oct. 9, 2019), <https://www.eff.org/deeplinks/2019/10/victory-california-governor-signs-ab-1215> (describing statewide moratorium in California on use of facial recognition on mobile law enforcement devices); Electronic Frontier Foundation, *Automated License Plate Readers (ALPRs)*, <https://www.eff.org/pages/automated-license-plate-readers-alpr> (describing California law placing limitations around law enforcement use of ALPRs).

agencies it audited did not ensure that ALPR users are adequately trained. “Without sufficient training, there is little assurance that ALPR users know and understand agency ALPR policies, including recent changes, or are aware of the limits on how they may use ALPR data,” the auditor wrote.⁹

As the statutes and case law have made clear, the public’s right to know does not give way when private companies claim that their content is copyrighted.

Moreover, POST has failed to comply with SB 978’s requirements that it conspicuously publish *all* current education and training materials that would otherwise be available to the public through a CPRA request. Instead, POST has only uploaded brief outlines to its open data portal, in place of the full education and training materials.¹⁰ These outlines lack detailed descriptions of their course curriculums. Indeed, all of the materials that POST has uploaded about peace officers’ use of force trainings are outlines. Many of those outlines mention presentation slides, but POST frequently excludes those slides from the uploaded materials.¹¹ With police use of force currently a hotly debated issue throughout the state and nation, it is all the more concerning that POST is unlawfully hiding this material.

In light of these concerns, we demand that POST fully comply with SB 978 by uploading the full education and training materials for all modules, including modules regarding ALPR, facial recognition, and use of force.

Please advise us of your position on POST’s SB-978 violations by July 10, 2020. You may contact us via email at dm@eff.org and naomi@eff.org and by phone at 415-436-9333 x151.

Sincerely,

Dave Maass
Senior Investigative Researcher

Naomi Gilens
Frank Stanton Fellow

⁹ Cal. State Auditor, Automated License Plate Readers: To Better Protect Individuals’ Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects (Feb. 13, 2020), <https://www.auditor.ca.gov/pdfs/reports/2019-118.pdf>.

¹⁰ Consider, for example, the four- to six-page outlines that POST has uploaded for its “Stress Problem Solving,” “Active Shooters/Violent Intruders,” “Computer Crime Investigation,” “Critical Incident and Stress Management,” “Unmanned Aircraft Systems,” “Police Sniper/Observer Tactics,” and “Special Weapons and Tactics” modules.

¹¹ Consider, for example, the outlines POST has uploaded for its “Evidence and Property Function Management” “Community Engagement/Building Trust,” “Court and Contemporary Holding, and “Stress Management” modules.