S227106

IN THE SUPREME COURT OF CALIFORNIA

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.

After A Decision by The Court Of Appeal,
Second Appellate District, Division Three (No. B259392)
Los Angeles County Superior Court (No. BS143004)
Hon. James C. Chalfont, Judge Presiding

ANSWER BRIEF ON THE MERITS BY REAL PARTY IN INTEREST COUNTY OF LOS ANGELES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA CASES

FEDERAL CASES

CALIFORNIA STATUTES, COURT RULES AND LEGISLATIVE MATERIALS

FEDERAL STATUTES, COURT RULES AND LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTRODUCTION

Local police agencies use special cameras to read license plates and check whether a passing vehicle is stolen or of interest to a criminal investigation. This technology is known as ALPR, for "automatic license plate reader," and the resulting records are commonly referred to as "plate scans." The American Civil Liberties Union and the Electronic Frontier Foundation submitted California Public Records Act requests for one week's worth of plate scans from the County of Los Angeles Sheriff's Department and the City of Los Angeles Police Department. Both agencies opposed on grounds that plate scans are exempt from disclosure as records of investigation.

The trial court and Court of Appeal agreed with the agencies. The definition of "investigation," California precedent, and the factual findings rendered by the trial court establish that the County and City's plate scans constitute a "record of investigation" under the CPRA, for the simple reason that they are generated solely during the course of an investigation to locate specific criminal suspects. That makes the data exempt from public disclosure, as this court has repeatedly recognized in controlling precedent.

Balancing of the public interests for and against disclosure confirms that the current state of the law compels the correct decision for Californians. Plate scans are generated to investigate crimes involving

motor vehicles, child abduction and murder. The public interest in the investigation and prosecution of these crimes clearly outweighs the public interest in the disclosure of plate scans, because the County and City have fully disclosed the extent of their use of ALPR technology, as well as their policies, procedures and safeguards regarding its use. Furthermore, the production of plate scans is likely to lead to the violation of the public's privacy interests by making records of their movements over time a public record that is available to anyone, for any purpose. This likelihood confirms that the County and City's refusal to produce plate scans is consistent with the public policies underlying the CPRA.

Were that not enough, the California Legislature recently enacted protections for private citizens regarding the use of ALPR technology, which expressly classify ALPR data as "personal information" not subject to disclosure by ALPR users. The statutory scheme includes a private right of action coupled with recovery of attorney's fees. This deterrent model is well recognized in the field of civil rights, and the Legislature's express intent to maintain the confidentiality of ALPR data while providing an effective deterrent for abuses should not be second-guessed by the courts.

Even if this Court disagrees with the Legislature, the public policies underlying the CPRA as embodied in applicable "catchall" exemptions from disclosure confirm that plate scans should not be disclosed in view of the privacy considerations of private citizens.

The trial and appellate court decisions should be affirmed.

BACKGROUND

A. ALPR Technology.

ALPR technology is a computer-based system that utilizes special cameras to capture a license plate scan, which is a color image and an infrared image of a license plate. The infrared image is translated into the characters of the license plate through character recognition technology. This "plate scan" is then compared against a "hot list" of stolen vehicles or vehicles wanted in a criminal investigation. The law enforcement agent is notified of a "hit" by an audible alert and a notification on their computer screen. (Opn., 3.)

The County and City use ALPR technology to investigate specific crimes that involve motor vehicles. This includes stolen motor vehicles, Amber alerts that identify a specific motor vehicle, warrants that relate to the owner of a specific motor vehicle, and license plates of interest that relate to a specific investigation being conducted by the agencies. (*Id.*) ALPR data can be and is used to find vehicles that might not have been of interest in an investigation at the time scanned, but which later were involved in an investigation. An example is the case of Lamondre Miles, who was found at Lake Castaic, murdered, on September 4, 2013. Through the use of ALPR plate scans, law enforcement agents were able to

determine that the murder actually occurred the day before, 50 miles away. The suspects were caught. (*Id.* at 4.)

The investigatory records generated by ALPR units are referred to as plate scan data. Plate scan data collected from ALPR units is transmitted to an ALPR server within the County and City's confidential computer systems. Plate scan information is retained for two years by the County and five years by the City. (*Id.*) Access to plate scan data is restricted to approved law enforcement personnel within the agencies and within other law enforcement agencies with which the agencies share data. Access to plate scan data is for law enforcement purposes only. Any other use of plate scan data is strictly forbidden and subject to criminal penalties. (*Id.*)

B. The Underlying Action.

The ACLU and EFF brought suit to compel disclosure of one week's worth of ALPR data generated by the County and City. (*Id.*) The agencies opposed, citing the exemption for records of law enforcement investigations under Government Code section 6254, subdivision (f), as well as the catchall exemption under section 6255. (*Id.* at 5.) They also filed supporting declarations accompanied by policy documentation establishing applicable procedures for use of ALPR technology and maintenance of ALPR plate scan data, which are maintained on confidential, secure networks with restricted access and applicable criminal penalties for unauthorized use. (*Id.*) The trial court found that ALPR data

are subject to the exemption for "records of investigations" under section 6254, subdivision (f) as well as the catchall exemption under section 6255.

C. The Court of Appeal Opinion.

The Court of Appeal affirmed, relying on authority which defines an investigation as an attempt to "uncover[ ] information surrounding the commission of [a] violation of law and its agency." (*Id.* at 10.) Consequently, the ALPR data maintained by the City and County are "records of investigation" because the agencies generate ALPR data in an attempt to locate vehicles suspected of being involved in a crime. (*Id.* at 10.) The exemption applies to plate scans that fail to identify a criminal suspect, as well as all ALPR data that are retained , because there is no requirement that the prospect of enforcement be definite and concrete, and there is no time limit on the exemption. (*Id.* at 11-12, 13.) The Court of Appeal did not reach the merits of the catchall exemption under section 6255 because it concluded the exemption under section 6254(f) supported Real Parties' decision to withhold the ALPR data.

STANDARD OF REVIEW

Petitioners frame the standard of review as *de novo*, however "factual findings made by the trial court will be upheld if based on substantial evidence." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1336.) Review under the substantial evidence standard involves

an undertaking to "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660 (citations omitted).) This standard of review is "deferential" to the factual findings of the trial court. (*Bickel v. City of Piedmont* (1997) 16 Cal. 4th 1040, 1053.)

Where the trial court is called on to make credibility judgments, its decisions will stand so long as they are not arbitrary. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) Where different inferences may reasonably be drawn from the undisputed evidence, the "fact that it is possible to draw some inference other than that drawn by the trier of fact is of no consequence." (*Jessup Farms, supra,* 33 Cal. 3d at 660.) Deference to the trial court embraces both express and implied factual findings. (*People ex rel. Dept. of Corrections v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143.)

DISCUSSION

I.
PLATE SCANS ARE EXEMPT FROM DISCLOSURE AS RECORDS OF INVESTIGATIONS BECAUSE THEY ARE GENERATED TO LOCATE CRIMINAL SUSPECTS

A. The Plain Language of section 6254(f) Confirms that Records Generated to Locate Criminal Suspects Are Records of Investigations.

This Court's primary task in construing a statute is to determine legislative intent. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, slip opinion at p. 9.) "The statutory language, of course, is the best indicator of legislative intent." (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826.) "We give the words their usual and ordinary meaning, while construing them in light of the statute as a whole and the statute's purpose." (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 529-530.) "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*Id.* at 530.)

Section 6254(f) sets forth a comprehensive, detailed statutory scheme exempting records of investigation from the CPRA's disclosure requirements:

> Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:
>
> * * *

> (f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

(Emphasis added.) This chapter does not require the disclosure of any records of investigations conducted by any state or local police agency. There is nothing ambiguous about that statement.

Section 6254(f) does not define the word "investigation," and neither does any other portion of the Government Code. In the absence of an express statutory definition, courts look first at the common meaning of the term in question. (*In re Ethan C.* (2012) 54 Cal.4th 610, 627.) "Investigation" has a commonly understood meaning as reflected by the various online dictionaries accessible through a simple Google search. Simply typing the phrase "definition of investigation" into Google yields the following: "the action of investigating something or someone; formal or systematic examination or research; a formal inquiry or systematic

study."[1] The Merriam-Webster Dictionary defines the term as "the act or process of studying by close examination and questioning." (Merriam-Webster Dictionary 2015.[2]) Dictionary.com yields "the act or process of investigating or the condition of being investigated; a searching inquiry for ascertaining facts; detailed or careful examination."[3] Black's Law Dictionary is consistent with these lay definitions: "The process of inquiring into or tracking down through inquiry." (6th ed. 1990.)

There is no ambiguity in the definition of investigation as confirmed by these multiple references, and nothing to indicate that the definition varies according to the scope of the effort involved or the identity of persons involved in the investigation. The County maintains that this is the end of the inquiry as correctly decided by the Court of Appeal in view of this Court's long-established precedent governing the construction of section 6254(f).

This Court has determined that, as drafted by the Legislature, section 6254(f) "articulates a broad exemption from disclosure for law enforcement investigatory records." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 349.) This includes specific exceptions to the exemption: "Instead of adopting criteria that would require the exemption's applicability to be determined on a case-by-case basis, the Legislature, as already mentioned,

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[1] https://www.google.com/search?q=definition+of+investigation.
[2] http://www.merriam-webster.com/dictionary/investigation.
[3] http://dictionary.reference.com/browse/investigation.

adopted a series of amendments that required disclosure of information derived from the records while, in most cases, preserving the exemption for the records themselves." (*Id.* at 353.) There are only three exceptions to the exemption, none of which is at issue here:

- Disclosures of specific information[4] to specific classes of persons (victims, insurance companies and claimants).
- Disclosures of specific information[5] regarding arrests;
- Disclosures of specific information[6] regarding complaints or requests for assistance.

In light of this detailed, explicit list of exceptions to the exemption from disclosure, this Court has consistently refused to recognize additional exceptions permitting disclosure. It is settled law that the exemption for records of investigation applies regardless of the stage of investigation. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061.) In *Haynie*, County

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[4] The names and addresses of persons involved and witnesses other than confidential informants; the description of any property involved; the date, time and location of the incident; all diagrams; statements of the parties involved in the incident; statements of all witnesses, other than confidential informants. (Govt. §6254.)

[5] The full name and occupation of all arrestees, as well as their: physical description; date of birth; time, date and location of arrest; time and date of the report; name and age of the victim; factual circumstances surrounding the crime or incident; and a general description of any injuries, property or weapons involved. (Govt. §6254(f)(1).)

[6] The time, substance, and location of all complaints or requests for assistance; the time and nature of the response thereto, including: the time and date of the report; the name and age of the victim; the factual circumstances surrounding the crime or incident; and a general description of any injuries, property or weapons involved. (Govt. §6254(f)(2).)

sheriffs detained Haynie in his vehicle while investigating reports that three armed men had entered a similar vehicle. Haynie was released and not charged because upon investigation deputies determined that he was not the suspect. He subsequently submitted a CPRA request for the County's records of investigation regarding his detention. He argued that section 6254(f)'s exemption did not apply because the prospect of enforcement proceedings was not concrete and definite (i.e., he was not the suspect). This Court rejected Haynie's argument, refusing to apply a non-textual limitation to the express exemption for records of investigation based upon the stage of the investigation:

> Limiting the 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, supra*, 26 Cal.4th at 1070.)

Haynie's holding applies with equal force to the facts before this Court. Just as the deputies in *Haynie* were "determining whether a crime has been committed or who has committed it" when they stopped Haynie, deputies using ALPR units are performing an investigation to locate persons suspected of committing vehicle-related crimes. The plate scans

that are generated while they do this are no different than a deputy examining a nearby vehicle to determine whether it meets the description of any vehicles of interest, nor is the subsequent check against a hot list any different than what that same deputy would do to verify whether the vehicle he is examining is in fact a vehicle of interest. These are basic, fundamental investigatory steps to "determine whether a crime has been committed or who has committed it." Records generated for the purpose of performing them are "records of investigations."

The ACLU argues that the term "investigation" is limited to "targeted inquiries," however there is nothing in the text of the statute that suggests the Legislature intended public agencies or courts to engage in a case-by-case evaluation to determine whether a particular investigation qualifies for the exemption. This Court rejected the same argument on precisely the same grounds in *Williams*. There, a newspaper company sought to apply criteria from the Freedom of Information Act (FOIA) to limit the exemption for records of investigation to investigations that "directly pertain to specific, concrete and definite investigations of possible violations of the criminal law." (*William, supra*, 5 Cal.4th at 353.) Reasoning that the suggested judicial gloss "would require the exemption's applicability to be determined on a case-by-case basis," the *Williams* court noted that the California Legislature had expressly rejected that approach:

> The California Legislature limited the CPRA's exemption for law enforcement investigatory files a few years after Congress limited the analogous exemption in the FOIA. However, the Legislature took a different approach than Congress. Instead of adopting criteria that would require the exemption's applicability to be determined on a case-by-case basis, the Legislature, as already mentioned, adopted a series of amendments that required the disclosure of *information derived from the records* while, in most cases, preserving the exemption for the records themselves.

(*Id.* at 353, *emphasis in original.*) This Court concluded:

> These provisions for mandatory disclosure from law enforcement investigatory files represent the Legislature's judgment, set out in exceptionally careful detail, about what items of information should be disclosed and to whom. Unless that judgment runs afoul of the Constitution, it is not our province to declare that the required disclosures are inadequate or that the statutory exemption from disclosure is too broad. Nor is it our province to say that the approach

> the Legislature chose is inferior to that which Congress chose, or to substitute one approach for the other. Requests for broader disclosure must be directed to the Legislature.

(*Id.* at 361.)

The ACLU's argument that the quantity of data in question somehow changes this analysis fares no better. It is a truism that "[g]overnment files hold huge collections of information," and both the Legislature and the courts have long recognized that, in the context of the CPRA, government files "can roughly be divided into two categories: (1) records detailing public business and official processes; and (2) records containing private revelations." (*CBS, Inc. v. Block* (1982) 42 Cal.3d 646, 651.) The facts before this Court are thus well within the considerations weighed by the Legislature when it enacted the 1976 and 1982 amendments providing for the disclosure of specific information while maintaining the exemption for the records themselves. (See Stats. 1976, ch. 314, §1, pp. 629-631; Stats. 1982, ch. 83, §1, pp. 242-243.) Section 6254 has been amended numerous times since then, adding additional exemptions up through subdivision (ad). There is nothing to suggest that the Legislature is displeased with the current language of section 6254(f) as it has been consistently applied by the courts of this state in reliance on long-established precedent issued by this Court.

B. Non-Disclosure of the Information Contained in Plate Scans Is Consistent with the Public Policies Underlying the CPRA.

Disclosure of public records involves two fundamental competing concerns, which must be harmonized to realize the Legislature's intent: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Govt. §6250.) This Court has long recognized that the CPRA embraces "two fundamental and frequently competing societal concerns that result from the commingling of public and personal information." (*CBS, Inc., supra,* 42 Cal.3d at 651.)

> In the spirit of this declaration, judicial decisions interpreting the Act seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy.

(*ACLU v. Deukmejian* (1982) 32 Cal.3d 440, 447.) The language of section 6254(f) confirms that the Legislature expressly addressed these competing interests when it crafted the current scheme for exceptions to the exemption from disclosure.

As amended in 1976 and 1982, section 6254(f) provides for the release of specific types of information to victims of crimes, insurance

companies and claimants, as well as the release of information regarding arrests, arrestees, complaints and requests for assistance. (Govt. §6254(f), (f)(1), (f)(2).) However, the release of all such information is limited to the extent that "disclosure would endanger the safety" of a person involved in the investigation. (*Ibid.*)

This Court has repeatedly recognized that concern for the lives of private citizens whose information is contained in law enforcement records trumps the public's right to disclosure. (*ACLU, supra,* 32 Cal.3d at 449-450 [no disclosure of information that would connect private individuals to organized crime interests].) In *ACLU*, this Court refused to order the disclosure of exempt records containing "personal identifiers…[n]ot only names, aliases, addresses, and telephone numbers…but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question." (*Id.* at 450.) The same concern applies to the disclosure of plate scans.

As acknowledged by Petitioners, the Supreme Court of the United States has recognized that location data can reveal "a wealth of detail about familial, political, professional, religious, and sexual associations." (*United States v. Jones* (2012) 132 S.Ct. 945, 955; see Opening Brief, p. 37.) While Petitioners' Fourth Amendment arguments in this regard are misplaced because publicly available data does not implicate Fourth Amendment rights, it is a simple fact that, "[t]aken in the aggregate, ALPR data can

create a revealing history of a person's movements, associations, and habits." (Opening Brief, p. 37.)

This concern for the privacy interests of private citizens confirms that not even the information contained in plate scans should be subject to disclosure. As an initial matter, there is no specific exception for the disclosure of information contained in plate scans to members of the public. If anyone would be entitled to disclosure of the *information*, it would be limited to victims, insurance companies and claimants. (Govt. §6254(f).) The only other exceptions for information subject to disclosure – arrests and arrestees, and complaints and requests for assistance – do not apply here. (Govt. §6254(f)(1), (f)(2).)

Even were that not the case, disclosure of plate scan data without question constitutes "information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question." (*ACLU, supra,* 32 Cal.3d at 450.) This is a grave concern for at least two reasons. First, there are numerous reverse license plate lookup services readily found by a simple Google search.[7] Thus, it is not speculative to conclude that disclosure of plate scan data will enable other members of the public to identify private individuals. Second, plate scans are generated during the

[7] The search "license plate reverse lookup" returns 230,000 results, with five separate websites listed on the first page of results offering the service: www.docusearch.com; www.numberplateseek.com; govdmvregistry.com; www.einvestigator.com; www.reverselicenseplatelookup.com. Westlaw and LexisNexis contain similar features.

"very sensitive investigative stages of determining whether a crime has been committed or who has committed it." (*Haynie, supra*, 26 Cal.4th at 1070.) These concerns echo those addressed in *ACLU v. Deukmejian*, where the Court refused to turn over data that might disclose private citizens' connections to organized crime elements. (*ACLU, supra*, 32 Cal.3d 440.)

ACLU addressed the concern arising from disclosure of private citizens' associations with criminal elements, but the concerns present here are no less compelling. As acknowledged by Petitioners, the compilation of otherwise publicly available information regarding location data raises concerns that the individual in question "really does have a right to be secure from people who might be trying to stalk them or follow them or interfere with them." (Opening Brief, p. 39, quoting Chris Francescani, *License to Spy*, Medium (Dec. 1, 2014)[8].) These concerns are exacerbated by public disclosure of the information, and as such applying an extra-textual exception to the exemption from disclosure directly contradicts express legislative intent to withhold disclosure of information where it would "endanger the safety of a person involved in the investigation." (Govt. §6254(f).)

In contrast, these concerns are vastly reduced where ALPR data remain exempt from disclosure. Plate scan data collected from ALPR units

[8] https://medium.com/backchannel/the-drive-to-spy-80c4f85b4335.

are transmitted to an ALPR server within the County and City's confidential computer systems. Plate scan information is retained for two years by the County and five years by the City. (Opn., p. 4.) Access to plate scan data is restricted to approved law enforcement personnel within the agencies and within other law enforcement agencies with which the agencies share data. Access to plate scan data is for law enforcement purposes only. Any other use of plate scan data is strictly forbidden and subject to criminal penalties. (*Id.*) If plate scan data are subject to public disclosure, none of these protections will be afforded to private citizens.

II.

THE LEGISLATURE ALREADY HAS ENACTED LEGISLATION TO ADDRESS PETITIONERS' CONCERNS

Petitioners' argument that disclosure of plate scans or the data contained within them is necessary "so that the legal and policy implications of the government's use of ALPRs" can be "fully and fairly debated" ignores specific efforts the Legislature has taken to prevent abuses of ALPR technology. In October 2015, Governor Brown signed Senate Bill 34, Chapter 532 into law, which enacts Title 1.81.23 of the Civil Code ("Collection of License Plate Information") as set forth at Civil Code section 1798.90.5 et seq. Its express legislative purpose is to regulate the use of ALPR technologies as follows:

- ALPR operators (i.e., the County) and ALPR end-users (i.e., deputies) are required to maintain reasonable security procedures and practices to protect ALPR information and implement a usage and privacy policy with respect to that information. (Civil §§ 1798.90.51, 1798.90.53.)
- ALPR operators are required to maintain a specified record of access for each inquiry made that reflects the time and date of access, the license plate number or other data elements used to query the ALPR system, the username of the person accessing the information, and the purpose for accessing the information. (Civil §1798.90.52.)
- Any person harmed by a violation of the title may bring a civil suit for damages, including actual damages, liquidated damages, reasonable attorney's fees and costs, and such other preliminary and equitable relief as a court may determine to be appropriate. (Civil §1798.90.54.)
- An ALPR operator must provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing an ALPR program. (Civil §1798.90.55.)

Finally, and most significantly for purposes of this case, section 1798.90.55(b) provides that a public agency "shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law." Referencing Vehicle Code section 2413 (governing ALPR use by the California Highway Patrol), the Legislature further notes that existing law prohibits "making the data available to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer." (2015 Cal. Legis. Serv. Ch. 532 (S.B. 34), October 6, 2015.) In crafting these protections for private citizens, the Legislature plainly contemplated the possibility of simply disclosing ALPR data via the CPRA and expressly rejected it in view of the privacy considerations at issue and existing statutory schemes addressing CHP's use of ALPR technology.

This is further corroborated by analysis performed by the Assembly Committee on Privacy and Consumer Protection, which expressly found that SB 34 requires that "data collected through the use or operation of an ALPR system be treated as personal information for purposes of existing data breach notification laws applying to agencies, persons, or businesses that conduct business in California and own or license computerized data including personal information." (California Bill Analysis, Assembly Committee, 2015-2016 Regular Session, S.B. 34 Assem., July 7, 2015.)

If there are any remaining questions about the Legislature's intent, the short title of SB 34 more than answers them in favor of the County's position: "Personal Information – Automated License Plate Recognition Systems – Use of Data." There is no question that the California Legislature expressly intends that ALPR operators and ALPR end-users withhold ALPR data as personal information exempt from disclosure to the public.

Civil Code section 1798.90.5 et seq. addresses the concerns presented by Petitioners without compromising the privacy concerns of private citizens. Rather than deem ALPR data "public records" and thus force the Legislature and citizenry to choose between privacy concerns and more effective law enforcement of vehicle-related crimes, the Legislature has chosen to provide a private enforcement mechanism that will deter abuses of ALPR technology on a case-by-case basis. It is significant that the Legislature also has seen fit to provide the courts with the discretion to award reasonable attorney's fees and litigation costs, which removes concerns that the new law will fail to deter abuses due to the costs of enforcement. (Cf. 42 U.S.C. §1988; *Perdue v. Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 550 [prevailing party attorney's fee provision helps ensure that civil rights are adequately enforced].)

III.

ARTICLE I, SECTION 3(b)(2) DOES NOT CHANGE THE EXEMPT STATUS OF RECORDS OF INVESTIGATION

While this court has discretion to consider issues not raised below, "as a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal." (Cal. Rules of Court, rule 8.500(b); *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 481.) Petitioners take the Court of Appeal to task for its failure to address the implications of Article I, section 3(b)(2) of the California Constitution, but Petitioners failed to raise the issue below. As a result, it was neither briefed by the parties nor addressed by the Court of Appeal. However, even if Petitioners had raised the issue below, it does not affect the outcome.

Contrary to Petitioners' contentions, the Court of Appeal expressly recognized that exemptions from disclosure must be strictly construed in favor of disclosure: "Consistent with the CPRA's purposes, '[s]tatutory exemptions from compelled disclosure are narrowly construed.'" (Opn., p. 6, quoting *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831; see, e.g., *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425.) The *Williams* and *Haynie* courts similarly recognized that the CPRA renders public records "subject to

disclosure unless the Legislature has expressly provided to the contrary." (*Williams, supra*, 5 Cal.4th at 346; *Haynie, supra*, 26 Cal.4th at 1068.) There is nothing to suggest that this Court's existing jurisprudence on section 6254(f) is based upon an improper application of the relevant principles of statutory construction.

The legal effect of Article I, section 3(b) as interpreted by this Court confirms this analysis. Section 3(b) did not change any rules of law applicable to construction of the CPRA. Rather, it served to "enshrine" the principles of the CPRA into the state Constitution. (*Intn'l Fed. of Prof. and Tech. Engineers, Local 21 v. Superior Court* (2007) 42 Cal.4th 319, 329.) It expressly did not change existing law regarding the explicit exemption of law enforcement records from the CPRA's disclosure requirements:

> This subdivision does not repeal or nullify, either expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(Cal. Const., Art. I, §3(b)(5).) This Court has held that this language means that courts "may not countermand the Legislature's intent to exclude or exempt information from the PRA's disclosure requirements where that

intent is clear." (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166-167.)

Section 6254(f)'s exemption for records of investigation is detailed, explicit and clear. Far from interpreting it "broadly" to provide for exemptions not specified in the language, this Court has strictly construed its language, which "articulates a broad exemption from disclosure for law enforcement investigatory records." (*Williams, supra*, 5 Cal.4th at 349.) As applied to this case, the operative language of section 6254(f) is: "This chapter does not require the disclosure of any records of investigations conducted by any state or local police agency." Rather than qualify the exemption from disclosure as Congress chose to do when it amended the FOIA, the California Legislature instead amended section 6254(f) with express, detailed language providing for disclosure of specific information contained in records of investigation without disclosing the records themselves. (*Williams, supra*, 5 Cal.4th at 353-354.)

As the *Williams* court noted, the Legislature is "[a]pparently satisfied with this approach," as confirmed by subsequent amendments in 1982 that follow the same statutory scheme: maintenance of the exemption for records of investigation while providing exceptions for disclosure of specific information contained in records of investigation. (*Id.* at 353.) That process has continued to the present, as the Legislature has added additional exceptions. As the *Williams* court noted, if the Legislature had

wanted to adopt the statutory scheme that Petitioners prefer, "words to achieve that result were available. It is not the province of the court to 'insert what has been omitted.'" (*Id.* at 357, quoting Code Civ. Proc. §1858.)

Review of the authorities applying section 3(b)(2) confirms that no case has held that section 6254(f) must be construed narrowly in derogation of its plain language exempting all records of investigation from disclosure. This is in contrast to the *Pitchess* statutes, which protect only specific types of peace officer personnel information and thus were impacted by section 3(b)(2). (*Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 72 (2014) [specific enumeration of exemptions from disclosure supported narrow construction disallowing unspecified exemptions]; *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278, 294 (2006) [specific exemptions from disclosure demonstrated legislative intent to limit exemptions to confidential information supplied by employee].)

Section 6254(f)'s expressly broad exemption of records of investigation, combined with detailed, explicit exceptions for disclosure of specific information not at issue here, confirms the legislative intent that the exemption apply to all records of investigation. For that reason, section 3(b)(2) does not impact section 6254(f)'s exemption of all records of investigations from disclosure.

IV.

THE "CATCHALL" EXEMPTION CONFIRMS THE PUBLIC INTEREST IS BEST SERVED BY CONFIDENTIALITY

Petitioners argue that consideration of the catchall exemption under section 6255 is not before this Court because the Court of Appeal did not address it. However, the issue was fully briefed in the Court of Appeal and expressly raised in the Answer to Petition for Review. Furthermore, the public policies underlying the catchall exception mirror the public policies underlying the CPRA itself. Those public policies confirm that, even if the Court decides that plate scans are not records of investigations, disclosure of plate scan data would be contrary to the express legislative intent of the CPRA, which is to balance the need for disclosure with the privacy interests of private citizens. (*ACLU, supra*, 32 Cal.3d at 447.)

The test for withholding a record under the CPRA's catch-all exemption is whether "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Govt. §6255(a).) No facts presented in this case show how the public would have an interest in its driving patterns being made public. Right now, only law enforcement can access the information, only for a legitimate law enforcement purpose, and automatic notifications of the specific location of a particular vehicle only occur if that vehicle is wanted in a crime. (Opn., 3.) The California

Legislature has adopted this view with recent legislation deeming ALPR data confidential personal information not subject to disclosure by ALPR users. (Civil §1798.90.5.) If this court decides that ALPR data are public records, then that information will be available to anyone for any purpose, even nefarious ones.

Balanced against that possibility is the interest the public has in not disclosing the information. The privacy concerns noted above are one weight on that scale. Another is the public interest in the efficient and effective investigation and prosecution of crimes involving motor vehicles, child abduction and murder. (Opn., 3; see, e.g., *County of Orange v. Superior Court,* 79 Cal.App.4th 759, 767 (2000) [public interest in apprehension of child's murderer]; *In re David W.* 62 Cal.App.3d 840, 847 (1976) [public interest in prevention of vehicle theft].) California law recognizes the importance of the public interest in law enforcement with safeguards designed to promote the effective, efficient administration of justice. (See, e.g., Govt. §821.6 [prosecutorial immunity].) The same considerations confirm that the current state of the law achieves the right result here.

The ACLU claims that it needs the data so that "the legal and policy implications of the government conduct at issue may be fully and fairly debated." However, the ACLU's motivation in seeking disclosure is irrelevant, because the public interest controls. (*Times Mirror Company,*

supra, 53 Cal.3d at 1345-1346.) More importantly, the County's use of ALPR technology is not being hidden. The policies have been produced, and the capabilities of ALPR technology have been disclosed. (Opn., 4.) The City disclosed that in a one-week period it reviewed as a sample, its ALPR cameras generated over 1.2 million plate scans. (*Id.*) The County similarly disclosed that it generated between 1.7 and 1.8 million plate scans in a week. (*Id.*) A person's license plate likely is being read by ALPR devices, many times. Where the information sought is not likely to disclose something about the workings of government (because it is already known), the public interest in disclosure is not a strong one. (See, e.g., *Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222, 242.) There is no dispute that the County is generating plate scans, nor is there any dispute regarding how plate scans are being used.

CONCLUSION

The evidence shows that ALPR data is used by the County and the City to investigate crime. There are standards for its use, consequences for its misuse, and potentially devastating consequences to both law enforcement efforts and the privacy of the driving public if the data is disclosed. The current state of the law recognizes ALPR data is a record of investigation, balances the interest in disclosure against the interest in nondisclosure, and properly determines that the records should not be disclosed. The trial court and Court of Appeal decisions should be affirmed.

Dated: January 26, 2016 COLLINS COLLINS MUIR + STEWART LLP

By: _____
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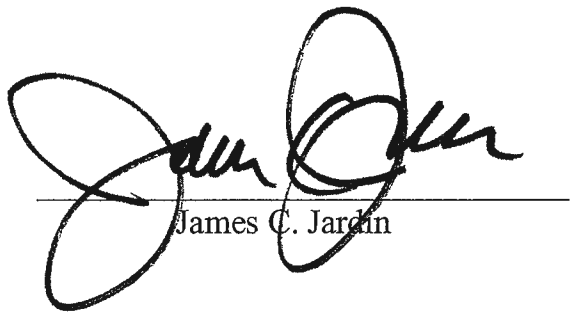
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c)(1))

The text of this brief, excluding this Certificate and the Certificate of Interested Parties, consists of 7,736 words as counted by the Microsoft Word version 2010 word-processing program used to generate the brief.

Dated: January 26, 2016



James C. Jardin

PROOF OF SERVICE
(CCP §§ 1013(a) and 2015.5; FRCP 5)

State of California,)
) ss.
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 1100 El Centro Street, South Pasadena, California 91030.

On this date, I served the foregoing document described as ANSWER BRIEF ON THE MERITS BY REAL PARTY IN INTEREST COUNTY OF LOS ANGELES on the interested parties in this action by placing same in a sealed envelope, addressed as follows:

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Patrice Porter

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