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April 3, 2017

The Honorable Chief Justice Cantil-Sakauye  
The Honorable Associate Justices  
Supreme Court of California  
Earl Warren Building  
350 Mc Allister St.  
San Francisco, Ca 94102



SUPREME COURT  
**FILED**

APR 4 - 2017

Jorge Navarrete Clerk

Deputy

Re: **Case No.: S227106** *American Civil Liberties Union of Southern California, et al. vs. Superior Court of Los Angeles, et al.*, Incorporating By Reference *Brief of Amici Curiae California State Sheriffs' Association, California Police Chiefs Association, and California Peace Officers' Association*, filed in Second Appellate District, Division Three Case No. B259392

Dear Chief Justice Cantil-Sakauye and Associate Justices,

Amici Curiae, The California State Sheriffs' Association, California Police Chiefs Association and the California Peace Officers' Associations submit the following supplemental letter brief, as invited by the Court:

**SUPPLEMENTAL LETTER BRIEF**

This Court has asked the following question:

Whether the catchall exception of Government Code section 6255, subdivision (a), applies to any or all of the automated license plate reader ("ALPR") data collected by real parties during the one-week period in August, 2012, that is the subject of the Court's review under the California Public Records Act. (Gov. Code § 6250 et seq.)

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This matter has already been fully briefed and Amici incorporate by this reference the Statement of Facts and Procedural History set forth in Respondents' and Amici's briefs herein. Amici also accept the Court's invitation to rely on their briefing in the Court of Appeal on the question presented. Amici have extensively briefed the application of Government Code section 6255, subdivision (a), to the ALPR data in their *Brief of Amici Curiae California State Sheriffs' Association, California Police Chiefs Association, and California Peace Officers' Association* to the Court of Appeal, Second Appellate District, Division Three, filed on January 21, 2015, and thus incorporate by reference Section IV, contained on pages 12-16 and Section V, contained on pages 16-19.

Amici have argued that there remain significant reasons for protecting ALPR data from public disclosure, from the law enforcement perspective. The articulated public safety concerns of law enforcement in the lower court concerning the sensitive nature of the ALPR data have not changed, and are addressed in Amici's prior briefing, incorporated by reference above. However, Amici also address in this supplemental letter brief new legal authority below that has been issued since the submittal of prior briefs, and other authorities that may relate specifically to the question posed by the Court.

Most recently this Court addressed the issue of whether public access under the CPRA must give way to personal privacy interests:

[P]ublic access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the right to privacy (§ 6250), and set out multiple exemptions designed to protect that right. (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal. 4th 278, 288, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (*Commission on Peace Officer Standards*); see § 6254.) Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. (Cal. Const., art. I, § 3, subd. (b)(3).)

CPRA and the Constitution strike a careful balance between public access and personal privacy.

*City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 615-616, 214 Cal.Rptr.3d 274, 279, 389 P.3d 848, 852.

This Court recognized the multiple CPRA exemptions intended to protect the right to privacy, but noted that they are narrowly construed and are not determined solely by the location of those records. Thus, the Court found that public officials' use of their private email account did not transform their correspondence relative to what would otherwise be considered public business into exempt personal records.

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The analysis here, as with other exemptions, appropriately focuses on the *content* of specific records rather than their location or medium of communication. (See *Commission on Peace Officer Standards, supra*, 42 Cal. 4th at p. 291[, 64 Cal. Rptr. 3d 661, 165 P.3d 462].)”

City of San Jose v. Superior Court (2017) 2 Cal. 5th 608, 626, 214 Cal. Rptr. 3d 274, 287–88, 389 P.3d 848, 859.

Conversely, here, the fact the ALPR data is collected, used and stored by law enforcement does not automatically render the raw data accessible as public records, particularly when considering the content of the data, which can be readily utilized as a gateway to private and sensitive information. As articulated by law enforcement in the lower court, public disclosure of ALPR raw data poses safety and privacy concerns due to the manner in which the data is stored and can be accessed. The date and location, for example, subject vehicle license plate owners to stalking, and other illegal potential invasions of their interests and privacy, and hinder police interests by exposing certain witness identification and location information. Specifically, a person could obtain disclosure of this data in electronic form and easily search for a person’s license plate number information to reconstruct a stalking target’s location and travel patterns for any given dates.

Moreover, those engaged in sophisticated criminal activities could obtain such data and utilize it to evade detection of their activities and prosecution therefor. For example, a sophisticated criminal organization could continually request such data to determine where law enforcement officials have placed ALPR equipment, determine what data has been obtained that concerns the criminal organization and thereafter adjust its activities and travel patterns in order to ensure that no further information is being revealed to law enforcement. This would, of course, make it more difficult for law enforcement officers to investigate the criminal activities of such organizations and obtain evidence for potential criminal prosecutions.

Similar to this case, in County of Los Angeles v. Superior Court (2015) 242 Cal. App. 4th 475, 483–84, 195 Cal. Rptr. 3d 110, 116, *review denied* (Mar. 9, 2016), sensitive private information derived from Department of Motor Vehicle records were included on impoundment forms which were sought under a CPRA request by a party who sought to investigate alleged constitutional violations occurring in connection with the 30-day vehicle impound statute. The court of appeal held the records were exempt from disclosure because they contained sensitive information that originated from the DMV records and thus should remain protected from nondisclosure under Vehicle Code section 1808.21 and Government Code section 6254.1.

As articulated by law enforcement in the lower court, the vehicle code and penal codes restrict access to ALPR and other databases (such as the California Law Enforcement Telecommunications System (CLETS) Message Management System and DMV records)

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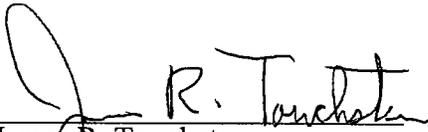
available to and shared by law enforcement. The courts should continue to recognize the statutory and procedural safeguards that prohibit the misuse of this data, and which are designed to protect against the dissemination or unauthorized disclosure of inherently sensitive information associated with the database. Amici have already briefed extensively the fact that this information would be severely compromised by its release as public information under the CPRA. These intersecting public safety and privacy considerations must be given great weight in the delicate balance between the privacy interests and the public's need for government transparency.

Subjecting law enforcement ALPR data to public access under the CPRA poses a detriment to public safety and potentiates abuse and invasion of privacy in contravention of public policy interests which far exceed any public benefits that are portended here by ACLU/EFF and their attempts to obtain disclosure of this data.

For all of these reasons, the "catchall exemption" under Government Code section 6255, subdivision (a), applies here and militates against disclosure of this data because the overall public interests in preserving civil liberties and to be safe and secure in their communities are far better served by not subjecting ALPR data to public disclosure pursuant to the CPRA.

Respectfully submitted,

JONES & MAYER

By: 

James R. Touchstone  
Deborah Pernice Knefel  
Attorneys for Amici Curiae,  
California State Sheriff Association  
California Police Chiefs' Association  
California Peace Officers Association

**CERTIFICATE OF SERVICE**

I, Wendy A. Gardea, do hereby affirm I am employed in the County of Orange, State of California. I am over the age of 18 years and not a part to the within action. My business address is 3777 N. Harbor Boulevard, Fullerton, CA 92835. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On April 3, 2017, I served the foregoing document: **SUPPLEMENTAL LETTER BRIEF**, on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope on the persons below as follows:

Court of Appeal of California  
Second Appellate District, Div. 3  
Ronald Reagan State Building  
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Los Angeles, CA 90013

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Stanley Mosk Courthouse  
Honorable James C. Chalfant  
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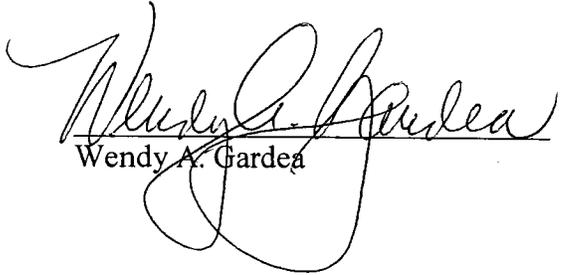
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I deposited the sealed envelopes with the United States Postal Service, with postage thereon fully prepaid. I am a resident of the county where the mailing occurred. The envelope was placed in the mail at Fullerton, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and corrected and that this document was executed on April 3, 2017.

  
Wendy A. Gardea