

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2384CV02560

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.

vs.

MASSACHUSETTS STATE POLICE

**MEMORANDUM OF DECISION AND ORDER ON PARTIES' CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

The plaintiff, American Civil Liberties Union of Massachusetts, Inc. (ACLU), seeks records from the Massachusetts State Police (MSP) pertaining to Automatic License Plate Readers (ALPRs). Based on MSP's refusal to provide certain requested records, ACLU filed the instant complaint, asserting violations of the Public Records Law, G. L. c. 66, § 10A. Now before the Court are the parties' cross motions for summary judgment. Following a hearing and careful consideration of the parties' arguments, the plaintiff's motion for summary judgment [Paper No. 9] is **ALLOWED** and the defendant's cross-motion for summary judgment [Paper No. 13] is **DENIED**.

BACKGROUND

In August 2023, ACLU submitted a public record request for information concerning MSP's use of ALPR technology and associated databases. MSP did not respond. ACLU filed a complaint on November 9, 2023, alleging violations of public records law G. L. c. §§ 10, 19 (count I) and for declaratory judgment pursuant to G. L. c. 231A (count II). MSP turned over documents responsive to ACLU's public record request on December 23, 2023, including contracts, agreements, brochures, training materials, policies, procedures, and data captured by the cameras. MSP also withheld requested information regarding camera locations and "audit

logs,” citing exemptions under G. L. c. 4, § 7, Twenty-sixth (n) (security exemption) and (f) (investigatory exemption).¹ In support of its decision to withhold these records, MSP has offered the Affidavit of Lt. Ryan Walczak of the MSP’s Division of Homeland Security within the Technical Services Section (Walczak Affidavit).

RELEVANT FACTS

The undisputed facts established in the record and pertinent to the cross motions for summary judgment, with all reasonable inferences drawn in the light most favorable to the non-moving party, are as follows:

MSP’s ALPR system uses cameras that are stationary, police vehicle-mounted, or handheld to continuously and indiscriminately scan the license plates of every vehicle driving by the camera. ALPR cameras are located in outdoor, public spaces. The system has optical character recognition software that automatically translates images of license plates into machine-readable text. The ALPR system creates a record that includes a picture of the vehicle’s license plate, time, date, and location of the capture, and the text of the license plate number. Information recorded by the cameras can be searched and reviewed. ALPR systems can generate real-time alerts about vehicles passing a camera. MSP can submit the data collected into regional or nationwide law enforcement databases and can share their data with outside law enforcement agencies.

ALPR audit logs contain information regarding the date, time, and nature of the system query. ALCUM’s August 2023 request expressly exempted “the license plate number or other identifying information regarding the plate queried.”

¹ In its initial response to ALCUM’s records request, MSP also invoked the exemption under G. L. c. 4, § 7, Twenty-sixth (b) (internal rules and practices exemption). MSP failed to include this exemption in its opposition and cross motion for summary judgment. At the hearing, MSP informed the Court that it was no longer pursuing the application of this exemption.

DISCUSSION

I. STANDARD OF REVIEW

Summary judgment is appropriate if there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. See Mass. R. Civ. P. 56; *American Family Life Assurance Co. of Columbus v. Parker*, 488 Mass. 801, 804 (2022). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue. *Pederson v. Time, Inc.* 404 Mass. 14, 17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of their case at trial. See *Flesner v. Technical Communications Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). A court reviewing a motion for summary judgment must "draw all reasonable inferences in the light most favorable to the nonmoving party." *Drakopoulos v. U.S. Bank Nat'l Ass'n*, 465 Mass. 775, 777 (2013), quoting *Premier Capital, LLC v. KMZ, Inc.*, 464 Mass. 467, 474-475 (2013).

II. EXCEPTIONS TO PUBLIC RECORD LAW

The public records law, G. L. c. 66, § 10 (a), requires the government to release upon request materials that fall under the definition of public records. G. L. c. 4, § 7, Twenty-sixth. There is a statutory presumption of disclosure. G. L. c. 66, § 10A (d)(1)(iv) ("a presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld . . ."). Accordingly, "the statutory exemptions [from the definition of public records] must be strictly and narrowly construed." *Globe Newspaper Co. v. District*

Attorney for the Middle Dist., 439 Mass. 374, 380 (2003). See *Boston Globe Media Partners, LLC v. Department of Pub. Health*, 482 Mass. 427, 432 (2019).

It is uncontested that ACLUM's record request concerns records falling within the general definition of "public records." MSP has invoked two exemptions in withholding certain records sought by ACLUM: exemption (n), colloquially known as the "security exemption," and exemption (f), the "investigatory exemption."

Exemption (n) exempts from the definition of public records,

"records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security."

G. L. c. 4, § 7, Twenty-sixth (n).

The "animating principle" underlying the adoption of exemption (n) was "protecting the public from terrorist attacks in a post-September 11, 2001, world[.]" *People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources*, 477 Mass. 280, 288-289 (2017) ("PETA"). The first consideration is whether, and to what degree, the record sought resembles the records listed as examples in the statute. The touchstone of this inquiry is whether, and to what degree, the record is one a terrorist "would find useful to maximize damage," and in that sense jeopardize public safety. *Id.* at 289.

The second consideration looks to whether disclosure of the record is "likely to jeopardize public safety." G. L. c. 4, § 7, Twenty-sixth (n). Because the records custodian must exercise "reasonable judgment" in making that determination, the primary focus on review is whether the custodian has provided sufficient "factual heft" to conclude that a reasonable person

would agree with the custodian's determination given the context of the particular case. *PETA*, 477 Mass. at 290.

These two considerations must be analyzed together, because there is an inverse correlation between them. *Id.* The Supreme Judicial Court cautioned, “as the resemblance between the record sought and the listed examples in exemption (n) decreases, the custodian’s burden for demonstrating ‘reasonable judgment’ increases,” so that “when the requested record bears little or no resemblance to the listed examples, the custodian’s burden for demonstrating that it exercised ‘reasonable judgment’ in determining that disclosure of the record is ‘likely to jeopardize public safety’ will be at its highest.” *Id.* at 290-291. “[A] court should review the custodian's determination de novo.” *Id.* at 291.

Exemption (f) exempts from the definition of public records, “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” G. L. c. 4, § 7, Twenty-sixth (f). Exemption (f) does not shield all investigatory materials created by police from disclosure. See *Boston Globe Media Partners, LLC v. Department of Criminal Justice Info. Servs.*, 484 Mass. 279, 290 (2020). See also *Globe Newspaper Co. v. Police Comm’r of Boston*, 419 Mass. 852, 864-865 (1995) (holding that statements of police officers compiled during internal affairs and criminal investigations were not subject to investigatory exemption). It protects only those materials which necessarily must be compiled out of public view. See *Bougas v. Chief of Police of Lexington*, 371 Mass. 59, 61 (1976) (affirming Superior Court finding that police reports and citizen letters at issue were properly withheld).

As the Supreme Judicial Court has explained, exemption (f):

“is aimed at the avoidance of premature disclosure of the Commonwealth’s case prior to trial, the prevention of the disclosure of confidential investigative techniques, procedures, or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusion” (quotation and citation omitted).

Mack v. District Attorney for the Bristol Dist., 494 Mass. 1, 13 (2024).

III. Cross-Motions for Summary Judgment

Both parties seek summary judgment regarding whether MSP improperly withheld records containing ALPR camera locations and audit logs as exempted under G. L. c. 4, § 7, Twenty-sixth (n) and (f). I address both exemptions below and conclude that neither exemption applies.

i. ALPR Camera Locations

a. Security Exemption

In *PETA*, the Supreme Judicial Court construed the scope of exemption (n) and chose a narrow interpretation with guidance from the legislative history. 477 Mass. at 288. The Court considered a letter written by Acting Governor Swift, who proposed the exemption, in which she explained the need to carve a narrow exemption to public records for “certain records pertaining to state and local government's ability to protect its resources as well as other sensitive infrastructure.” 477 Mass at 289 (referencing Letter from Acting Governor Swift to Senate and House of Representatives, June 26, 2022). The Executive Office of Public Safety described exemption (n) as encompassing records of “the type that terrorists would find useful to maximize damage, such as threat assessments, security plans and structural documents depicting critical infrastructure.” *Id.* (referencing Memorandum, Executive Office of Public Safety, September 5, 2002). *Id.*

MSP argues that records of camera locations fall under the protection of the security exemption because such records are “blueprints . . . [or] schematic drawings.” MSP contends that the camera locations could be used to generate a map of all ALPR cameras in the Commonwealth. Narrowly construing exemption (n), as I must, I find that the requested records “bear[] little or no resemblance to the listed examples” as they are not the type that a terrorist would find useful to maximize damage. As it bears little resemblance to the listed examples, MSP’s burden for demonstrating that the disclosure would “likely to jeopardize public safety” is high. *Id.* at 290-291.

In support of its assertions that disclosure of the ALPR camera location records would likely jeopardize public safety, MSP has submitted an affidavit authored by MSP Lieutenant Ryan Walczak (the Walczak Affidavit). In the Walczak Affidavit, Lieutenant Walczak asserts that public knowledge of ALPR camera locations could assist bad actors in perpetrating crimes. Such criminals could alter their route of travel when transporting weapons, explosives, and other contraband to avoid detection by ALPR cameras. MSP argues in its brief that terrorists could use the location data to avoid cameras and avoid capture for as long as possible to maximize damage. This scenario is possible, but speculative. MSP has not provided evidence nor compelling argument that this scenario is the *likely* consequence of releasing the records sought. *PETA*, 477 Mass. at 282 (exemption (n) “require[s] consideration of the *likely* consequences of releasing the records sought” [emphasis added]).

Further, the ALPR cameras are located outdoors and are visible to the public. In fact, there are crowd-sourced web sites revealing the locations of ALPR cameras. See, e.g., DeFlock the USA, Flock & ALPR Cameras in Massachusetts, <https://deflocktheusa.com/flock-cameras/massachusetts> (map purporting to show the locations of 1,172 ALPR cameras in

Massachusetts). Even the Supreme Judicial Court has revealed the locations of some ALPR cameras in a decision concerning data collected from the cameras. See *Commonwealth v. McCarthy*, 484 Mass. 493, 494 (2020) (ALPR cameras located “on both sides of the Sagamore and Bourne bridges”).

At the hearing, MSP raised the issue of individuals destroying or disabling ALPR cameras if the camera locations become known.² The potential for an increase in vandalism does not make the location data exempt to the public record law without a strong showing of jeopardizing public safety. MSP has provided examples of ALPR camera data being used to locate people suspected of crimes, people believed to be armed and dangerous, and missing and vulnerable people. There is no doubt that ALPR camera data is a valuable law enforcement tool and disabling these cameras would hinder law enforcement objectives. This does not, however, bring the records into the realm of exemption (n). Therefore, MSP as the custodian of the records has not satisfied its burden.

b. Investigatory Exemption

ALCUM asserts that MSP has not demonstrated a lawful exemption to production of the camera records location under exemption (f). Exemption (f) was invoked by the custodian, and ALCUM argued in its brief why that exemption does not apply to these records. MSP has not briefed exemption (f) as a justification for withholding camera location records in its opposition and cross-motion for summary judgment [Paper No. 13]. Nonetheless, I will address this exemption briefly.

² Such vandalism may be done by a criminal intending to avoid detection by law enforcement but may also be done as a form of protest against state surveillance. I understand MSP’s concerns about law enforcement tools being destroyed, and I am aware anecdotally of several examples of individuals charged for destroying ALPR cameras.

Exemption (f) prevents the disclosure of “investigatory materials necessarily compiled out of the public view.” G.L. c. 4, § 7, Twenty-sixth (f). MSP must show that the records were necessarily compiled out of public view and that their disclosure “would probably so prejudice the possibly of effective law enforcement.” *Globe Newspaper*, 419 Mass. at 858. “[T]here is not blanket exemption provided for records kept by police department solely because they are involved in investigatory work...[rather], the potential prejudicial effect of disclosure on effective law enforcement is to be considered on a case-by-case basis.” *Id.* at 859. MSP has not satisfied either prong required for lawful withholding of camera location records under exemption (f) and, even without their briefing, I am satisfied from the record before me that the investigatory exemption does not exempt camera location data from disclosure.

ii. ALPR Audit Logs

In its August 2023 request for records, ALCUM requested records “showing how many times, by whom, and for what reasons the ALPR system or database was queried.” ALPR audit logs contain information regarding the date, time, and nature of the system query. ALCUM’s request expressly exempted “the license plate number or other identifying information regarding the plate queried.” MSP denied ALCUM’s request, invoking exemptions (n) and (f) in withholding the records.

a. Security Exemption

In invoking exemption (n) to withhold ALPR audit logs, MSP asserts that if this information were disclosed publicly, it would enable a terrorist to determine whether their identity was known to law enforcement, if they were subject to an investigation, if a license plate or vehicle associated with them was known to law enforcement, and the nature of the search inquiry.

Once again, I start the analysis by considering whether the records sought resemble the examples listed in the statute. I conclude that the APLR audit logs do not resemble any of the listed examples. Next, I assess whether the custodian has met its increased burden of demonstrating that the custodian exercised “reasonable judgment” in determining that disclosure of the record is “likely to jeopardize public safety.” MSP has not suggested a pattern or practice in its queries that, if disclosed, would help a terrorist evade apprehension and maximize damage. I find that MSP has not met its burden under the security exemption.

b. Investigatory Exemption

Exemption (f) is intended avoid premature disclosure of the Commonwealth’s case prior to trial and to protect the parts of the investigative process that depend on confidentiality: confidential investigative techniques and sources, citizens’ willingness to speak freely to investigators, and investigators’ ability to candidly record their observations, hypotheses and interim conclusions.” *Mack*, 494 Mass. at 13; *Bougas*, 371 Mass. at 62. For a record custodian to prove by a preponderance of the evidence that a record is exempt under exemption (f), the custodian must provide “insight as to the confidential nature of the contents.” *Rahim v. District Attorney for Suffolk Dist.*, 486 Mass. 544, 553 (2020), quoting *Matter of a Subpoena Duces Tecum*, 445 Mass. 685, 690 (2006).

ALPR audit logs record system queries by law enforcement, including date, time, inquiring officer, and the nature of the query. MSP asserts that the disclosure of the records would reveal investigative techniques, specific investigative patterns, enforcement priorities, and system capabilities and limitations. MSP has not provided a factual basis or sufficient insight in support of this argument. I do not find that these records reveal “confidential investigative techniques and sources,” nor would the disclosure of these records impact “citizens’ willingness

to speak freely to investigators.” However, audit logs could conceivably contain entries that would “prematurely disclose the Commonwealth’s case prior to trial” which may support withholding under (f). However, concerns about premature disclosure must be evaluated narrowly and on a case-by-case basis. The withholding of certain log entries as premature would not be indefinite.³

The application of the investigatory exemption does not contemplate a balancing test. The inquiry is whether the materials requested are “investigatory materials necessarily compiled out of the public view,” and, if so, whether the agency resisting disclosure has demonstrated that their release “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” Even if I had found that the ALPR audit logs generally were the type of investigatory materials protected from public disclosure, the prejudice to the possibility of effective law enforcement is speculative.⁴

MSP has not shown how releasing the audit logs, *without* the license plate number or other identifying information regarding the plate queried, would prejudice effective enforcement of the law. MSP argues that the release of the audit logs would reveal the type and nature of query, and the reason for the query, which, “if disclosed would enable a criminal actor to determine whether their identity, or that of an associate, was known to law enforcement, if they were the subject of an investigation.” ACLUM specifically excluded license plate numbers and other identifying information regarding the plate queried in its public records request, which addresses the concern of a bad actor learning that they were the subject of an investigation. The

³ MSP did not suggest that any of the audit logs that it withheld under exemption (f) were part of an ongoing investigation which allows me to conclude that this provision does not apply to the records at issue in this matter. I mention ongoing investigations as a possible basis for the temporary withholding of audit log entries in the future.

⁴ Because there is no assertion of withholding records based on an existing ongoing investigation, I do not address the prejudice prong of the analysis as it applies to open investigations.

existence of some exempt information in a document will not “justify cloture as to all of it,” *Reinstein v. Police Comm’r of Boston*, 378 Mass. 281, 290 (1979), because “the right to access extend[s] to any nonexempt ‘segregable portion’ of a public record.” *Id.* at 287–288. See also *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 436 Mass. 378, 383 (2002).

IV. MSP MOTION TO STRIKE EXHIBITS

MSP has moved to strike ten of ACLUM’s exhibits asserting that they are inadmissible hearsay. These exhibits were not offered for the truth of the matter asserted. They were offered to show that the public already has considerable information about the presence and use of ALPR cameras in the Commonwealth, and that there is public interest regarding use of this technology. The motion to strike is **DENIED**.

V. ORDER

For the foregoing reasons, the Court hereby **ORDERS**:

- A. Plaintiff’s Motion for Summary Judgment is **ALLOWED**.
- B. Defendant’s Cross Motion for Summary Judgment is **DENIED**.
- C. Defendant’s Motion to Strike is **DENIED**.



Keren E. Goldenberg
Justice of the Superior Court

DATED: September 2, 2026