

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2384CV02560

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

MASSACHUSETTS STATE POLICE,

Defendant.

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Pursuant to G.L. c. 66, § 10A, Mass. R. Civ. P. 56, and Superior Court Rule 9A, Plaintiff American Civil Liberties Union of Massachusetts (“ACLUM”) respectfully asks this Court to grant summary judgment and order Defendant Massachusetts State Police (“MSP”) to promptly produce previously-withheld records responsive to ACLUM’s August 2023 request for public records related to the location and use of automatic license plate reader (“ALPR”) technology in the Commonwealth of Massachusetts.

MSP collects the information captured by ALPR technology, including license plate numbers with the time, date, and location of every vehicle passing by. Such data is often pooled into regional or nationwide databases shared by law enforcement. The Supreme Judicial Court (“SJC”) recognized that prolific use of ALPR technology to track the travels of vehicles in the Commonwealth implicates potential privacy concerns and/or violations of the constitutional right against unreasonable searches. *Commonwealth v. McCarthy*, 484 Mass. 493, 506-08 (2020)

(“*McCarthy*”) (“With enough cameras in enough locations, the historic location data from an ALPR system in Massachusetts would invade a reasonable expectation of privacy . . .”).

The potential for ALPR technology to be used to infringe federally- or state- protected rights has increased since *McCarthy*.¹ For example, the data MSP collects may be shared with law enforcement agencies in other locales where the right to abortion has been restricted. Statement of Undisputed Materials Facts (“SF”), ¶¶ 17-19. Law enforcement in those locales could use the ALPR data to prosecute those who come to Massachusetts to access reproductive healthcare unavailable in their state. *Id.* & SF, ¶ 79; Declaration of Marie A. McKiernan (“Decl.”), ¶¶ 29-30, Exs. 22-23 (APPX-350-362). This is not mere speculation—MSP has recognized its use of Vigilant Solutions’ (“Vigilant”) ALPR system; Vigilant “sells access to its database of more than 5 billion license plate scans collected across the country, including 1.5 billion reads provided by law enforcement agencies.” Decl., ¶¶ 2-3, Exs. 1-2 (at APPX-010); SF, ¶¶ 13-16.² MSP’s use of Vigilant also raises concerns about undermining the protections of the Massachusetts Shield Law, M.G.L. c. 147, § 63(b), which bars Massachusetts police from providing data or assistance to out-of-state agencies regarding investigations into the provision of lawful reproductive or gender-affirming healthcare services under Massachusetts law. SF, ¶ 80; Decl., ¶ 34, Ex. 25 (APPX-368).

In view of *McCarthy*’s “recogni[tion] that the widespread use of ALPRs . . . could implicate constitutional protections,” 493 Mass. at 512, the additional post-*McCarthy* concerns about ALPR data collection and sharing, and a desire to protect against potential misuse of

¹ See e.g., <https://data.aclum.org/2025/10/07/flock-gives-law-enforcement-all-over-the-country-access-to-your-location/> (Last accessed October 21, 2025).

² Through Vigilant, MSP can “automatically share their collection of license plate readers with outside law enforcement partners that are also part of the network,” including states with severe abortion restrictions. Decl., ¶¶ 3-5, Exs. 2-4 (APPX-007-051); SF, ¶¶ 17-19.

ALPR data, ACLUM requested records about ALPR technology. MSP withheld certain records responsive to ACLUM's request citing Exemptions (b), (f), and (n) of the Massachusetts Public Records Law ("Public Records Law"), G.L. c. 4, §§ 7 Twenty-sixth (b), (f), and (n). However, the Public Records Law presumes disclosure, so the statutory exemptions cited by public entities to refuse disclosure "must be strictly and narrowly construed." *Bos. Globe Media Prtnrs. v. Dep't of Crim. Just. Info. Servs.*, 484 Mass. 279, 281 (2020) ("*Boston Globe*"). As detailed below, MSP stretches the narrow exemptions beyond their intended purposes to inaptly shield the requested records from disclosure—records pertaining to publicly located cameras within the state, data observed and recorded from cars traversing public roadways, and use of the same. The public nature of the requested records and their contents, and the absence of any rationale explaining the sensitivity or confidentiality of such information, necessitate an order mandating their disclosure. As such, ACLUM respectfully requests that the Court grant its motion.

FACTUAL AND PROCEDURAL BACKGROUND

ALPR technology uses cameras to continuously and indiscriminately scan the license plate of every vehicle driving by the camera. SF, ¶ 4; Comp., ¶ 2; Ans., ¶ 2 (admitted). MSP characterizes ALPR cameras as overt, covert, or vehicle-mounted. SF, ¶ 5; Decl., ¶ 6, Ex. 5 (Attachments Training Materials at APPX-053-054). Regardless, the ALPR cameras are located within the public and gather data from vehicles in the public. *Id.* (depicting ALPRs in public). *see also* SF, ¶¶ 6, 7; Decl., Ex. 6 (Combined Trainings REDACTED at APPX-070, 076, 080, 094, 122, 129, 148, 150, 155, 179, 181, 210) (depicting ALPRs cameras on utility/light poles). ALPR technology records information, generating real-time alerts about vehicles that pass each camera's lens, and allows review of the recorded data. SF, ¶¶ 9, 11, 12; Comp., ¶ 4; Ans., ¶ 4 (relevant portions admitted). ALPR cameras combine with optical character recognition software to automatically translate images of license plates into machine-readable text. SF, ¶ 8; Comp., ¶

2; Ans., ¶ 2 (admitted); Decl. ¶ 8, Ex. 7 (APPX-212-221) (MSP General Order No. TRF-11).

They create a record that includes a picture and the text of the vehicle’s license plate, and the time, date and location of the capture. SF, ¶ 10; Comp., ¶ 2; Ans., ¶ 2 (admitted).

There are serious concerns about both the reliability and the constitutionality of MSP’s use of ALPR technology. For example, in December 2020, MSP temporarily halted the use of ALPR technology due to flaws in the way the date and time data was recorded. SF, ¶ 21; Comp., ¶ 6; Ans., ¶ 6 (admitted in relevant part). That same month, the Massachusetts Executive Office of Public Safety and Security (“EOPSS”) released a memorandum documenting this failure (“EOPSS Memo”), noting that five and a half years of ALPR data “should not be relied upon in the absence of information supporting the accuracy of that date and time.” SF, ¶¶ 22-23; Comp., ¶ 6, Ex. 2; Ans., ¶ 6 (admitted in relevant part). In April 2020, the SJC recognized that the Commonwealth’s use of ALPR technology could implicate constitutional protections against unreasonable searches and seizures. SF, ¶¶ 24-25; Comp., ¶¶ 8-9, Ex. 2; *McCarthy*, 484 Mass. 493, 507-08. Specifically, the Court cautioned:

[w]ith enough cameras in enough locations, the historic location data from an ALPR system in Massachusetts would invade a reasonable expectation of privacy and would constitute a search for constitutional purposes. . . . ALPRs circumvent traditional constraints on police surveillance power by being cheap (relative to human surveillance) and surreptitious.

Id. at 506 (internal citation omitted). The Court reasoned that “*where the ALPRs are placed matters ALPRs near constitutionally sensitive locations – the home, a place of worship, [or a reproductive health clinic] etc. – reveal more of an individual’s life and associations than does an ALPR trained on an interstate highway.*” *Id.* at 507 (emphasis added).

Given the constitutional concerns raised by the SJC and the public’s interest in information regarding the prolific use and technological failures of ALPR systems within the state, ACLUM sent public records requests to EOPSS and the Department of Criminal Justice

Information Services (“CJIS”) (together, “the Agencies”) in 2020 concerning the state’s use of ALPR technology. SF, ¶¶ 27-28; Comp., ¶¶ 22-23, Exs. 4-5; Ans., ¶¶ 22-23 (admitted in relevant part). Having received no response, in December 2022, ACLUM filed a lawsuit in Suffolk Superior Court, *ACLUM v. EOPSS, et al.*, Civil Action No. 2284CV02815, alleging that the Agencies failed to comply with the requirements of the Public Records Law, G.L. c. 66 (“Agencies Lawsuit”). SF, ¶ 29; Comp., ¶ 24, Ex. 2; Ans., ¶ 24 (admitted in relevant part). On February 10, 2023, the Agencies filed their answer, asserting, for the first time, that MSP was the custodian of the ALPR database. SF, ¶¶ 30-31; Comp., ¶ 25; Ans., ¶ 25 (admitted in part). Thereafter on February 21, 2023, ACLUM sent a public records request to MSP regarding the ALPR database (“ACLUM’s February 2023 Request”). SF, ¶ 37; Comp., ¶ 26, Ex. 1. On June 5, 2023, in response to interrogatories served upon them, the Agencies identified MSP as the sole custodian of relevant ALPR records. SF, ¶ 32; Comp., ¶ 27, Ex. 6 at 4, 6, Ex. 7 at 4. On June 8, 2023, MSP confirmed via letter that it is the custodian of the ALPR database, providing a printout showing total reads and hits captured in the ALPR database as of June 7, 2023, and citing exemptions purporting to preclude disclosure of certain requested records including audit logs from the database. SF, ¶ 33; Comp., ¶ 28, Ex. 1 at Ex. B; Ans., ¶ 28 (admitted in part). On June 13, 2023, EOPSS provided additional documents to ACLUM related to the use of ALPRs. SF, ¶ 34; Comp., ¶ 29. As a result, ACLUM and the Agencies stipulated to dismissal of the lawsuit. SF, ¶¶ 35-36; Comp., ¶¶ 30-31, Ex. 8; Ans., ¶¶ 30-31.

Thereafter, on August 16, 2023, the ACLUM submitted a public records request to MSP concerning the state’s use of ALPRs and any associated databases (hereinafter “ACLUM’s August 2023 Requests”), superseding ACLUM’s February 2023 Request. Decl., ¶ 31, Ex. 24 (APPX-363-366); SF, ¶¶ 38-41; Comp., ¶¶ 1, 31, Ex. 1; Ans., ¶¶ 1, 31 (admitted in relevant

part). The ACLUM's August 2023 Requests sought, among other documentation, records including those showing the "[l]ocations of cameras which feed into (or populate) the ALPR System or Database" ("ALPR Camera Locations") and those showing how many times, by whom, and for what reasons the ALPR System or Database was queried ("ALPR Audit Logs"). Decl., ¶ 31, Ex. 24 (APPX-363-366) (Request Nos. 1(d) and 3, and 5, 7, respectively); SF, ¶ 41. Not having received any response, on November 9, 2023, ACLUM filed this action against MSP for failure to comply with its obligations under G.L. c. 66, § 10 to timely respond to ACLUM's August 2023 Requests. SF, ¶¶ 42-43; Comp., ¶¶ 11-13; Ans., ¶¶ 11-13 (admitted in part).

On December 22, 2023, ACLUM received a response from MSP concerning the ACLUM's August 2023 Requests ("MSP's December 2023 Response"). SF, ¶ 47; Decl., ¶¶ 9, 10, Ex. 8 (APPX-222-229). MSP denied ACLUM's Requests for documents pertaining to the ALPR Camera Locations and ALPR Audit Logs (together the "Withheld Records") under G.L. c. 4, §7, cl. 26 (f), (n)—the terrorism and investigative exemptions, respectively. SF, ¶¶ 48-51; Decl., ¶ 9, Ex. 8 (APPX-222-229). MSP also denied ACLUM's Requests for the ALPR Audit Logs under Exemption (b), the internal rules and practices exemption. SF, ¶ 56; Decl., ¶ 9, Ex. 8 (APPX-222-229). ACLUM concurrently received MSP's production of documents responsive to other of to the ACLUM's August 2023 Requests spanning 2021-2023 ("Produced Records").³ SF, ¶ 48. MSP redacted information in the Produced Records pertaining to the ALPR Camera Locations and Audit Logs ("Improper Redactions"). SF, ¶ 50; Decl., ¶¶ 12-13, Ex. 9 (APPX-230-241). MSP relied on the same rationale for failing to disclose the Withheld Records and Improper Redactions. SF, ¶ 50; Decl., ¶ 9, Ex. 8 (APPX-222-229).

³ MSP needed more time to review records, later producing records from 2017-2020 on February 20 and 21, 2024 (part of the "Produced Records"). SF, ¶ 58; Decl., ¶ 9, Ex. 8 (APPX-222-229).

In support of its citation of Exemption (n), MSP asserted that ALPR Camera Locations records “relate to security and safety of persons and would reveal security measures and threat preparedness that a terrorist would find useful to maximize damage” and “would likely jeopardize public safety.” Decl., ¶ 9, Ex. 8 (at APPX-225, 226, 228); SF, ¶¶ 52-53. Similarly, MSP asserted that the ALPR Audit Logs could reveal “details relating to system access, capabilities, security measures, and potentially reveal the location of cameras and patterns of investigations” which “could be used by a terrorist to circumvent security measures by revealing sensitive details of the system and the ability to access data.” *Id.* In support of its citation of Exemption (f), MSP asserted that records concerning the ALPR Camera Locations “may reveal investigative techniques, sources and methods not subject to public release.” Decl., ¶ 9, Ex. 8 (at APPX-225, 226, 228); SF, ¶¶ 54-55. MSP also asserted without citation or identification that the ALPR Audit Logs “may reveal investigative techniques, sources and methods not subject to public release.” *Id.* In support of its citation of Exemption (b), MSP asserted that the ALPR Audit Logs purportedly concern “internal personnel rules and practices,” which if disclosed “would risk the circumvention of statutes and/or regulations” without citation to any statute or regulation that would allegedly be impacted. SF, ¶ 57; Decl., ¶ 9, Ex. 8 (at APPX-227).

On March 22, 2024, ACLUM wrote to MSP regarding MSP’s deficient reasoning, or lack thereof, for claiming exemptions and implementing the Improper Redactions (“Improper Redaction Letter”) in its Produced Records. SF, ¶¶ 59-60; Decl., ¶ 13, Ex. 9 (APPX-230-241). Specifically, ACLUM noted that the Improper Reactions were implemented without citation to any specific exemption or reasoning, redacted publicly available information, and that MSP was internally inconsistent with what information was redacted. *Id.* ACLUM sent MSP another letter that same day identifying document production deficiencies and specifically addressing MSP’s

failure to produce the Withheld Records (“Document Deficiency Letter”). SF, ¶¶ 61-63; Decl., ¶ 14, Ex. 10 (APPX-242-248). In the Document Deficiency Letter, ACLUM explained why MSP’s citation of Exemptions (f), (n), and (b) to justify the withholding of documents was improper. *Id.* Specifically, ACLUM explained that neither the ALPR Camera Locations nor ALPR Audit Logs were akin to the types of records exempt from disclosure under Exemption (n). *Id.* In addition, any dangers cited by MSP justifying withholding the ALPR Camera Locations under the terrorism exemption were risks inherent in placing cameras in public, not in the disclosure of documents reflecting the same. *Id.* ACLUM also explained that the mere fact that the Withheld Records may relate to investigations was insufficient to justify withholding them under Exemption (f), as the exemption is not meant to provide a blanket preclusion of production and MSP failed to provide adequate explanation of how this compilation of publicly available information would prejudice law enforcement. *Id.* Finally, ACLUM noted that MSP did not and could not plausibly argue that the ALPR Audit Logs pertained to employment decisions. *Id.*

In response, on May 22, 2024, MSP maintained its refusal to produce the Withheld Records and lift the Improper Redactions (“MSP’s May 2024 Supplemental Response”). SF, ¶¶ 64-69; Decl., ¶ 15, Ex. 11 (APPX-249-273). On April 10, 2025, ACLUM served discovery requests on MSP to clarify what ALPR systems MSP uses. SF, ¶ 73; Decl., ¶ 19, Ex. 12 (APPX-274-283). MSP responded to those requests on May 28, 2025. SF, ¶ 74; Decl., ¶ 20, Ex. 13 (APPX-284-287).

LEGAL STANDARD

Summary judgment is appropriate when the record shows that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Mass. R. Civ. P. 56(c). Public Records Law presumes “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 in accordance with state or federal law.” G.L. c. 66, § 10(d)(1)(iv). Statutory exemptions “must be strictly and narrowly construed.” *Boston Globe*, 484 Mass. at 432. A custodian’s determination whether to disclose or withhold a record is reviewed de novo. *People for the Ethical Trtmt. of Animals v. Dep’t of Agric. Res.*, 477 Mass. 280, 291 (2017) (“*PETA*”).

ARGUMENT

I. MSP Has Not Demonstrated Lawful Exemption Under Exemption (n)

MSP’s claimed exemptions far exceed the intended statutory scope of Exemption (n). Exemption (n) “carv[es] out *a very narrow exemption* to the definition of public records for those materials pertaining to public safety including threat assessments, security plans and certain records depicting critical infrastructure.” *PETA*, 477 Mass. at 289 (emphasis added).⁴ There is a two-step process for analyzing whether Exemption (n) applies to a given record. *Id.* at 288. The first step (“Step One”) is determining “whether, and to what degree, the record sought resembles the records listed as examples in the statute” and considering “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 examples listed in the statute are “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 . . .” G.L. c. 4, § 7 26(n). The second step (“Step Two”) requires determining “whether the

⁴ It was enacted as part of an act intended to help protect the public from terrorist attacks post-September 11, 2001. *PETA*, 477 Mass. at 288.

[records] 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. The two prongs are inversely correlated: the more closely the record sought resembles the records codified in Exemption (n) in Step One, the lower the burden on the custodian to demonstrate that they acted with reasonable judgement under Step Two. *Id.*

A. The Withheld Records Are Not Like Those Enumerated by Statute

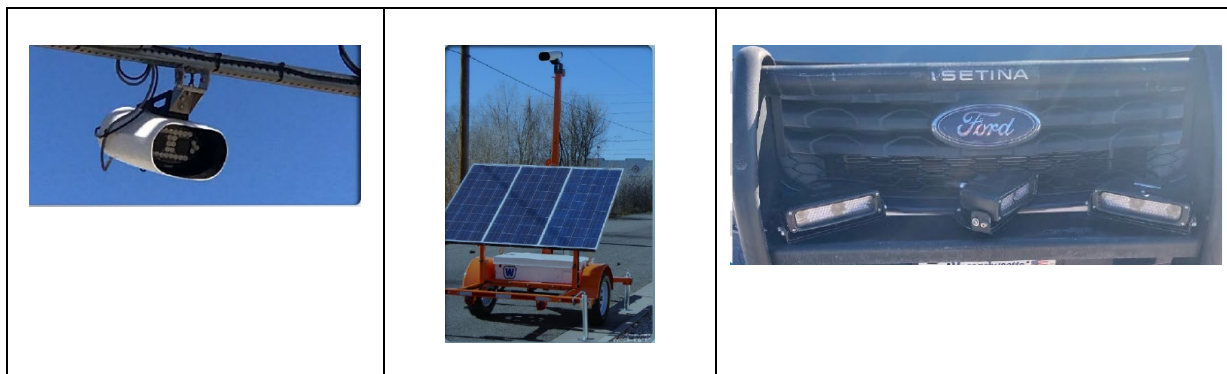
MSP has not met its burden to demonstrate that the requested documents reflecting the ALPR Camera Locations and the ALPR Audit Logs, resemble the records prohibited from disclosure by Exemption (n). As noted above, the exemption statute lists explicit categories of documents which are exempted from disclosure, such as “blueprints” and “schematic drawings.” G.L. c. 4, § 7 26(n). Neither the ALPR Camera Locations nor the ALPR Audit Logs are akin to the “blueprints” or “schematic drawings” or other records enumerated in the Exemption (n).

1. The ALPR Camera Locations Are Not Like the Enumerated Records

a. The ALPR Cameras Are Located in and Visible to the Public

The ALPR Camera Locations are not “internal” structural or security elements, as ALPR cameras are located outdoors in order to monitor vehicle traffic. SF, ¶ 7; Decl., ¶ 7, Ex. 6 (APPX-059-211). Moreover, even if MSP contends that the aggregate set of camera locations is like a “blueprint” or “schematic”—a position MSP did not take in its correspondence with ACLUM—the aggregate set of locations is still not a blueprint of the type the statute is concerned with—blueprints or schematics of specific types of locations and infrastructure that are sensitive or obscured from public knowledge. *See PETA*, 477 Mass. 280, at 289 (noting Exemption (n) was intended to shield “certain records pertaining to state and local government’s ability to protect its resources as well as other sensitive infrastructure” without “the risk of automatic public disclosure.”). The Commonwealth’s use of the ALPR technology is not a

secret. *McCarthy* noted the use of ALPRs on “both sides of the Sagamore and Bourne bridges” (484 Mass. at 495) and MSP’s Produced Records demonstrate that these cameras are overtly visible to the public:



SF, ¶ 6; Decl., ¶¶ 6-7, Ex. 6 (Combined Trainings REDACTED, at APPX-129). Even “covert” cameras are located in the public where they can collect the data from cars traversing on public roadways. SF, ¶¶ 5-7; Decl., ¶¶ 6-7, Ex. 6 (APPX-059-211); Comp., ¶ 4; Ans., ¶ 4 (relevant portions admitted). In reality, the data collected by ALPR cameras could be gathered by an individual sitting at an intersection with a notebook, marking down the time, date and license plate number of cars passing by. *McCarthy*, 484 Mass. 493, 508 (“It is an entirely ordinary experience to drive past a police officer in a cruiser observing traffic on the side of the road, and, of course, an officer may read or write down a publicly displayed license plate number.”). As such, records pertaining to the ALPR Camera Locations fail to relate to any “*internal* layout and structural elements” within the Commonwealth. G.L. c. 4, § 7 26(n) (emphasis added).

b. ALPR Camera Location Records Do Not Confer Security

MSP asserts that the ALPR Camera Locations records “relate to security and safety of persons and would reveal security measures and threat preparedness that a terrorist would find useful to maximize damage and . . . likely jeopardize public safety.” SF, ¶ 52; Decl., ¶ 9, Ex. 8 (at APPX-225, 226, 228). MSP further asserts that “ALPR cameras play a critical role in the

Department's response to threats and criminal activities and are an important part of the Department's security infrastructure" the disclosure of which "would jeopardize public safety by enabling a terrorist or other individual with criminal or malicious intent to damage, destroy, or circumvent the ALPR system." SF, ¶ 65; Decl., ¶ 15, Ex. 11 (at APPX-253). MSP's reasoning fails for multiple reasons.

First, the ALPR Camera Locations do not provide security akin to walls, passwords, locks or other target hardening infrastructure. Rather, they merely capture limited data about individual vehicles crossing roadways, creating a record of the same. SF, ¶¶ 4-11; Comp., ¶ 4; Ans., ¶ 4 (relevant portions admitted). The request for the ALPR Camera Locations does not necessitate disclosure of all protective surveillance equipment used by the state. Instead, the request was narrowly drafted to seek information about a specific set of equipment that is used for the specific purpose of reading publicly-visible license plates, and ACLUM made this request in an effort to address questions the SJC specifically raised in *McCarthy*. See 484 Mass. at 506.

Second, MSP does not explain how the disclosure of ALPR Camera Locations could increase the vulnerability of critical infrastructure to terrorism. The existence of surveillance infrastructure does not deter terrorists; the Boston marathon bombing, for example, was captured by innumerable cameras. SF, ¶ 75; Decl., ¶¶ 21-22, Exs. 14-15 (APPX-288-297). Moreover, terrorists often want their actions to be publicized as widely as possible, proceeding with their attacks despite the knowledge they may be caught. SF, ¶ 76; Decl., ¶¶ 21-23, Ex. 14-16 (APPX-288-301). Thus, there is no reason to believe that the release of publicly available information, such as the location of cameras located within the public, would aid a terrorist in maximizing damage. Even assuming, *arguendo*, that revealing the location of covert cameras would lead to the potential destruction of some small number of them by a terrorist, MSP has failed to explain

or demonstrate why this would maximize the damage done by a terrorist to anything other than the cameras themselves.

Third, MSP cannot rely on one possible purpose of ALPR cameras to transform the nature of the Requested Records to those shielded by Exemption (n). In other words, the camera system itself may be used to protect the types of blueprints or schematics enumerated by statute, but the system itself does not become one of those exempted records absent being named in the statute, which it is not. Regardless of the utility of the ALPR cameras, the records of their locations do not rise to the level of records that pertain to the internal layout and structural elements impacting the safety and security of infrastructure within the Commonwealth. The purported dangers on which MSP relies in its assertion of Exemption (n)—the location, vandalism or disablement of ALPR cameras by bad actors—are dangers inherent in having cameras deployed in public places, and are not the dangers associated with the public disclosure of records about said cameras. SF, ¶¶ 6-7; Decl., ¶¶ 6-7, Exs. 5-6 (APPX-052-211).

The SJC has emphasized that “*where the ALPRs are placed matters*” to one’s constitutional rights to privacy. *McCarthy*, 484 Mass. at 507. Querying a system for an out-of-town plate near reproductive health centers, for example, “reveal[s] more of an individual’s life and associations than does an ALPR trained on an interstate highway.” *Id.* Thus, the production of records demonstrating the ALPR Camera Location is imperative for determining whether MSP’s use of this technology is violating constitutional rights of those traveling public roadways in the Commonwealth. These concerns and the public’s right to access cannot be overridden by unsubstantiated assertions by MSP for withholding such records.

c. The ALPR Audit Logs Are Not Like the Enumerated Records

The ALPR Audit Logs are not similar to the records exempt from disclosure under Exemption (n). MSP asserts that the disclosure of “information regarding queries [of the ALPR

system] would reveal details relating to system access, capabilities, security measures, and potentially reveal the location of cameras and patterns of investigations.” SF, ¶ 53; Decl., ¶ 9, Ex. 8 (at APPX-226) (MSP’s December 2023 Response). These assertions ring hollow.

First, the potential revelation of the ALPR Camera Locations is not enough to preclude disclosure under Exemption (n). *See* §§ I.A.1-I.A.2., *supra*. Moreover, ACLUM explicitly exempted security measures or personal passwords for accessing the ALPR system(s) and any license plate information or other identifying information from its request. SF, ¶ 40; Comp., Ex. 1. In addition, the capabilities of the ALPR system(s) and technology are publicly known, as evidenced by ALPR vendors’ public-facing marketing statements. SF, ¶ 77; Decl., ¶¶ 24-27, Ex. 17-20 (APPX-302-338). Thus, MSP’s stated concern about “reveal[ing] details” (Decl., ¶ 9, Ex. 8 (at APPX-226)) of ALPR capabilities cannot justify withholding records under Exemption (n)’s narrow protections.

MSP further asserts that the “release of data relating to the operations of the camera system, including the dates and times of camera activity, would reveal sensitive security information including but not limited to location of cameras, information known to law enforcement, and potentially enable a terrorist or criminal actor in evading or causing damage to ALPR infrastructure.” SF, ¶ 67; Decl., ¶ 15, Ex. 11 (at APPX-254) (MSP’s May 2024 Supplemental Response). As detailed above, the location of the cameras and the information collected by the cameras cannot suffice for exemption of disclosure because the cameras and the information they gather is visible to and located within the public. *See* § I.A.1.a., *supra*. And MSP has not suggested that there is some pattern or practice to these queries that, if disclosed, would help a terrorist evade detection. Unsupported speculation on MSP’s part “is insufficient to create a genuine issue of fact.” *Sullivan v. Liberty Mut. Ins. Co.*, 60 Mass. App. Ct. 1102, 798

N.E.2d 1046 (2003). The requested ALPR Audit Logs are distinct from the exempt records enumerated by the statute and their disclosure would not jeopardize public safety. Accordingly, MSP has failed to show the records are analogous to those subject to Exemption (n) or that would maximize damage done by a terrorist under Step One. *PETA*, 477 Mass. at 286.

B. MSP Fails to Demonstrate the Reasonableness of Its Claimed Exemptions

MSP's cursory and incomplete rationale for its assertion of Exemption (n) fails to provide sufficient justification for withholding the Requested Records. Under Step Two, MSP was required to provide "sufficient factual heft . . . to conclude that a reasonable person would agree with the custodian's determination." *PETA*, 477 Mass at 290. Here, where the records sought do not closely resemble the types of records enumerated in Exemption (n) (*see* §§ I.A.1.a-I.A.1.c., *supra*), MSP bore a higher burden to demonstrate the reasonableness of its decision to withhold the Requested Records. *PETA*, 477 Mass. at 290. MSP has failed to meet that burden.

In MSP's December 2023 Response it recited the legal standards, concluding that "[t]he Department has determined that the requested records relate to security and safety of persons and would reveal security measures and threat preparedness that a terrorist would find useful to maximize damage and, therefore, their release would likely jeopardize public safety." SF, ¶ 52; Decl., ¶ 9, Ex. 8 (at APPX-225, 226, 228). This recitation without explanation does not satisfy the inquiry at Step Two. *PETA*, 477 Mass. at 290. In MSP's May 2024 Supplemental Response, MSP asserted that ALPR cameras play a critical role in the response to criminal activities and that releasing records would reveal their locations given "rapid advances in artificial intelligence and photographic analysis." SF, ¶ 66; Decl., ¶ 15, Ex. 11 (at APPX-254). This reasoning is also insufficient. As noted above, at least some of MSP's ALPR cameras are overtly positioned in the public. Thus, their location has already been revealed by MSP. SF, ¶ 6; Decl., ¶¶ 6-7, Exs. 5-6 (APPX-052-211). As to covert ALPR cameras, while the cameras may be "covert", any image

inadvertently capturing such a camera, such as that captured by Google Street Views,⁵ could still be analyzed by AI or other tools to reveal the presence of an ALPR camera. SF, ¶ 78; Decl., ¶ 28, Ex. 21 (APPX-339-349). Regardless, MSP’s speculation does not bring the requested records any closer to the enumerated documents. MSP has not acted with reasonable judgment in withholding the Requested Records.

II. MSP Has Not Demonstrated Lawful Exemption Under Exemption (f)

MSP’s assertion of Exemption (f) to withhold production of the Withheld Records is rooted only in the general use of ALPR technology in investigations. Exemption (f) prevents the disclosure of “investigatory materials necessarily compiled out of the public view.” G.L. c. 4, § 7 Twenty-sixth (f). To withhold such records, MSP must demonstrate at a threshold that the documents were necessarily compiled out of the public view. Then, MSP must demonstrate that the disclosure of the requested records “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” *Globe Newspaper Co. v. Police Comm’r of Bos.*, 419 Mass. 852, 858 (1995) (“*Globe*”). “[T]here is no blanket exemption provided for records kept by police departments 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.” *Globe*, 419 Mass. at 859. MSP’s general use of ALPR technology is insufficient to prohibit disclosure of the Withheld Records under Exemption (f). As discussed *infra* §II.A, the ALPR System does not compile information outside of the public view, so Exemption (f) cannot apply. Furthermore, as discussed *infra* §II.B, even assuming the Withheld Records contained information compiled outside the public view, MSP has failed to show that their disclosure would prejudice effective law enforcement.

⁵ See <https://www.google.com/streetview/how-it-works/> (Last accessed October 3, 2025).

A. MSP Admits that the ALPR System Compiles Data in Public View

MSP's Answer to the Complaint (¶¶ 2, 4) admits that the ALPR cameras compile information as vehicles pass by on public roads. SF, ¶¶ 4, 46. As explained in *Globe*, 419 Mass. at 858, Exemption (f) seeks "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 conclusions" (emphasis added). ALPR technology is not a confidential investigative technique. It is visible and known to the public, as is the information compiled by ALPR technology. Thus, MSP's citation of Exemption (f) appears to be an attempt to improperly assert a "blanket exemption" solely because the Requested Records may be used in police investigations. *Bougas*, 371 Mass. at 65; *Globe*, 419 Mass. at 859. MSP's assertions without more, cannot substantiate the invocation of Exemption (f). *Globe*, 419 Mass. at 859.

B. Disclosure of the Requested Records Would Not Prejudice Law Enforcement

The disclosure of the ALPR Camera Locations or the ALPR Audit Logs would not prejudice the possibility of effective law enforcement, and MSP has shown nothing to the contrary. MSP concludes that "the disclosure of [ALPR Camera Locations] . . . may reveal investigative techniques, sources and methods not subject to public release," but fails to explain why. SF, ¶¶ 36-40; Decl., ¶ 5, Ex. 8 (at APPX-226). Such generalized assumptions are insufficient to justify withholding the records under exemption (f). *Globe*, 419 Mass. at 859.

MSP has not substantiated any assertion that records pertaining to the ALPR Camera Locations are sensitive such that disclosure would thwart effective law enforcement. It is publicly known that MSP has been utilizing ALPR cameras for years—at least as early as 2020 when the highly publicized *McCarthy* opinion noted the use of ALPR technology and

constitutional concerns arising from its use. SF, ¶¶ 3, 26. At least as to overt cameras, MSP has not and cannot demonstrate the “confidential nature of the contents.” *Rahim v. Dist. Att’y for Suffolk Dist.*, 486 Mass. 544, 553, 159 N.E.3d 690, 699 (2020). As to covert cameras, as MSP itself flagged, the use of street imaging technology by companies such as Google, which is publicly available, has already left open the possibility of AI or other photographic technologies leading to the identification of such cameras located in the public. SF, ¶ 57; Decl., ¶ 28, Ex. 21 (APPX-339-349). Thus, any prejudice to investigative techniques is not inherent by the disclosure of the requested records, rather it is inherent given the location of cameras.

To the extent MSP points to the potential for criminals to evade capture if ALPR Camera Locations were disclosed, a criminal could already identify the location of the cameras on public roadways and thereby disable or evade them. This is inherent in placing cameras on public roads. In addition, should a terrorist or criminal want to evade detection, they could simply damage, hide or obscure their license plates. In short, MSP has failed to provide a rationale as to why the ALPR Camera Locations records would prejudice effective law enforcement.

As to the ALPR Audit Logs, MSP asserts that “[r]evealing the activity in the ALPR database by date, time and user would undermine law enforcement investigations and jeopardize law enforcement efforts where license plate information is of significant import” with no explanation. SF, ¶ 68. It is already known that MSP uses ALPR systems for investigating cases. Comp., ¶ 6, Ex. 2 (EOPSS Memo); SF, ¶ 22. As MSP acknowledges, ACLUM has not asked for case or personally identifiable information of people whose information has been queried. SF, ¶ 40; Decl., ¶ 9 Ex. 8 (APPX-222-229) (MSP December 2023 Response). “In order 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.*

Dist. Att’y for Suffolk Dist., 486 Mass. 544, 553 (Mass. 2020). MSP has provided no such insight. Further, MSP’s assertion of Exemption (f) here is inconsistent with its productions to date—namely, MSP has already provided data regarding the frequency of use of the system by providing the total hits, queries, and number of cameras.⁶ SF, ¶ 49.

MSP has failed to demonstrate how the ALPR Audit Logs would prejudice the possibility of effective law enforcement. Asserting Exemption (f) here is both unsubstantiated and erodes public confidence in MSP and its law-abiding use of ALPR technology – a result antithetical to the goals of public records law. *Boston Globe*, 484 Mass. at 281 (“In enacting the public records law, the Legislature recognized that ‘[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner’ . . . and that ‘greater access to information about the actions of public officers and institutions is increasingly . . . an essential ingredient of public confidence in government.’”) (internal citations omitted).

III. Withholding Is Not Lawful Under Exemption (b) or Its Federal Analog

MSP’s failure to produce the ALPR Audit Logs under Exemption (b) is unlawful as the records do not pertain to internal personnel rules and practices of MSP. Exemption (b) exempts materials “related solely to internal personnel rules and practices of the government unit” from disclosure. The SJC opined that “personnel information” means data “useful in making

⁶ Massachusetts police departments previously produced audit logs pertaining to the use of an ALPR system under Public Records Law. SF, ¶ 81; Decl., ¶33, Ex. 26 (at APPX-373-374). These audit logs indicated that a Texas officer queried the national Flock ALPR database, which included records from Massachusetts departments, looking for a woman who had self-managed an abortion (SF, ¶ 82; Decl., ¶34, Ex. 27 (APPX-377-378)), demonstrating a potential violation of the Massachusetts Shield Act. These audit logs were produced despite guidance from a Massachusetts Chiefs of Police Association memo that cautioned Exemption (f) might apply to the logs but required a “clear showing” of prejudice to effective law enforcement. SF, ¶ 83; Decl., ¶35, Ex. 28 (at APPX-382). The production of the logs by the police suggests that they would have been unable to make such a “clear showing.” MSP has also failed to make a clear showing here.

employment decisions regarding an employee.” *Wakefield Tchrs. Ass’n v. Sch. Comm.*, 431 Mass. 792, 798 (2000). The United States Supreme Court has similarly interpreted Exemption 2 to the federal Freedom of Information Act (“FOIA”), which informs the interpretation of Exemption (b) even though Exemption 2 is not applicable to this public records request:

[the] use of the term ‘personnel’ in [the phrase ‘personnel rule or practice’] connotes not that the file or department or practice/rule is for personnel, but rather that the file...is about personnel—i.e., that it relates to employee relations or human resources...[A]ll the rules and practices referenced in Exemption 2They concern the conditions of employment in federal agencies—such matters as hiring and firing, work rules and discipline, compensation and benefits...[for example] matters related to pay, pensions, vacations, hours of work, lunch hours, parking, etc.

Milner v. Dep’t of the Navy, 562 U.S. 562, 578 (2011). The ALPR Audit Logs do not contain information useful in making employment decisions, and MSP has not made nor substantiated any claims that they do. SF, ¶ 58. If the ALPR Audit Logs reveal unauthorized access or abuse of queries to the ALPR database—misconduct that may or may not impact employment—the ALPR Audit Logs are not the type of record meant to be shielded from disclosure by this exemption. In other words, while the ALPR Audit Logs may have implications for employment, such documents are not records “related solely to internal personnel rules and practices” of MSP.

MSP argues that the ALPR Audit Logs would “essentially frustrate the ‘anti-circumvention’ protections afforded under both state and federal law.” SF, ¶ 57; Decl., ¶ 9, Ex. 8 (at APPX-227). In so doing, MSP relies on *Crooker v. Bureau of Alc., Tob. & Firearms*, 670 F.2d 1051 (D.D.C. 1981). However, the Supreme Court abrogated *Crooker* in *Milner*, holding that “consistent with the plain meaning of the term ‘personnel rules and practices,’” Exemption 2, like Exemption (b) here, “encompasses only records relating to issues of employee relations and human resources.” 562 U.S. at 581. The ALPR Audit Logs are not such records. Nor would their disclosure thwart “necessary governmental functions” as required for exemption from disclosure. G.L. c. 4, § 7, Twenty-sixth (b).

CONCLUSION

For the foregoing reasons, ACLUM respectfully asks the Court to grant ACLUM's motion for summary judgment and order MSP to produce the requested records to ACLUM.

Respectfully submitted,

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By its attorneys,

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