

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 IN OPPOSITION TO DEFENDANT’S
CROSS-MOTION FOR SUMMARY JUDGMENT, IN OPPOSITION TO
DEFENDANT’S MOTION TO STRIKE,
AND IN REPLY IN SUPPORT OF SUMMARY JUDGMENT**

I. INTRODUCTION

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”) hereby (1) opposes Defendant Massachusetts State Police’s (“MSP”) Cross-Motion for Summary Judgment; (2) replies in support of ACLUM’s Motion for Summary Judgment; and (3) opposes MSP’s Motion to Strike certain of ACLUM’s exhibits.

Lacking any legal argument to show that it has met its burden to justify withholding records, MSP instead resorts to gamesmanship, shifting its rationales for withholding information and supporting its new arguments with a self-serving and speculative affidavit that provides no actual *evidence* to justify MSP’s position. But MSP’s unsupported speculation about the possible damage from the disclosure of the records at issue does not outweigh the public’s

interest in this records, particularly given the constitutional concerns recognized by the Supreme Judicial Court that motivated ACLUM's request in the first place—namely, that “[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.” Commonwealth v. McCarthy, 484 Mass. 493, 506 (2020); SUMF, ¶ 25 (undisputed). MSP fails to adduce sufficient *factual* evidence as a matter of law to show that Exemptions (n) or (f) to the Public Records Law apply in this case, and MSP's effort to rely on speculation in lieu of facts should be rejected. The undisputed *facts* establish that summary judgment should enter for ACLUM, that the records at issue should be disclosed, even if MSP's Motion to Strike is granted, which it should not be.

II. MSP'S SHIFTING RATIONALES AND DELAY TACTICS UNDERCUT ITS ARGUMENTS FOR WITHHOLDING INFORMATION

MSP claims that it is entitled to summary judgment because the record allegedly shows that MSP “exercised reasonable judgment” in choosing to withhold the Automatic License Plate Reader (“ALPR”) Camera Location data and ALPR Audit Logs at issue (together the “Withheld Records”). MSP Mem. at 1. But the history of this case strongly suggests that MSP simply applied a blanket withholding policy that MSP is now trying to justify retroactively to this Court. Applying such a blanket policy is not “reasonable judgment” (to the extent MSP exercised any “judgment” at all).

As noted in ACLUM's Memorandum in Support of its Motion for Summary Judgment (“ACLU Mem.”), ACLUM originally requested records regarding ALPR Camera Locations and ALPR Audit Logs from two other agencies of the Commonwealth, EOPSS and CJIS, *in 2020*. See ACLU Mem. at 4-5. ACLUM requested records from EOPSS and CJIS because it understood based on publicly-available information that those were the agencies responsible for

maintaining ALPR data, an understanding the SJC itself shared. See McCarthy, 484 Mass. at 494 (“cameras owned and maintained by the State police feed this information into a database maintained by the Executive Office of Public Safety and Security (EOPSS)”); SUMF, ¶ 22 (undisputed) (noting that EOPSS released a memo about ALPR camera failures). Only after ACLUM filed suit after receiving no response to its initial requests did EOPSS and CJIS assert, for the first time, that MSP was the custodian of the ALPR database from which the audit logs could be obtained. ACLU Mem. at 5. Based on this information, ACLUM dismissed its lawsuit against EOPSS and CJIS and sent a public records requests to MSP for the records in dispute here in August of 2023. SUMF, ¶¶ 38-41.

In response to ACLUM’s August 2023 request, MSP asserted that it was withholding the ALPR Camera Location and ALPR Audit Logs on the basis of Exemptions (n), (f), **and** (b). See SUMF, ¶¶ 48-51, 56. Nowhere in its response to the ACLUM’s request did MSP provide any of the alleged factual justifications that MSP now seeks to introduce via the Affidavit of Detective Lieutenant Ryan Walczak (“Walczak Affidavit” or “Walczak Aff.”)¹; in fact, MSP provided no factual justification **at all**, but simply invoked the language of the relevant exemptions with no justification. SUMF, ¶ 47; Decl.², ¶¶ 9, 10, Ex. 8 (APPX-222 to APPX-229). Nor did MSP provide any factual justification in any of its multiple subsequent communications to ACLUM before this lawsuit was filed, even though ACLUM sent MSP a letter in 2024 specifically asking

¹ The “Affidavit of Detective Lieutenant Ryan Walczek” begins on page 389 of the Joint Appendix. However, the affiant self-identifies and signs the affidavit as Lieutenant Ryan “Walczak” within the document. As such, ACLUM will refer to the affidavit as the “Walczak Affidavit” herein.

² References to “Decl.” within this memorandum refer to the Declaration of Marie McKiernan in support of ACLUM’s Motion for Summary Judgment executed on January 30, 2026.

the MSP to explain MSP's justification for applying these exemptions. SUMF, ¶¶ 64-69; Decl., ¶ 15, Ex. 11 (APPX-249 to APPX-273).

After ACLUM filed this lawsuit and before ACLUM moved for summary judgment, the parties met and conferred as required under Rule 9A(a)(1) on November 25, 2025. Supp. Decl.³, ¶ 2. During this meet-and-confer, MSP's counsel asked for additional time to determine whether MSP would still assert Exemptions (n), (f), and (b), which led to the parties filing a joint motion to modify the briefing schedule on November 26, 2025. *Id.*, ¶¶ 2-3. On January 29, 2026, after the two-month extension period expired, MSP confirmed that it was maintaining all three Exemptions. *Id.*, ¶ 4. Based on this understanding, ACLUM moved for summary judgment challenging MSP's withholding of Exemptions (n), (f), and (b). *See* ACLUM Mem. at 9-16, 16-19, 19-20, respectively; Supp. Decl., ¶ 5. After ACLUM served its motion, MSP again asked for more time to respond, leading to yet another extension of the schedule. Supp. Decl., ¶ 6; *see* C.A. No. 2384-CV-02560 Docket, Joint Motion for New Scheduling Order, filed February 23, 2026, endorsed March 4, 2026. But when MSP finally served its memorandum on March 16, 2026, MSP dropped Exemption (b) and advanced arguments justifying Exemptions (n) and (f), supported by the Walczak Affidavit, *for the very first time*. Supp. Decl., ¶ 7.

MSP's above-described history of delay and shifting justifications strongly suggests that MSP did not apply reasonable judgment when withholding records in response to ACLUM's requests, but instead withheld the records without having any factual basis for doing so. This "withhold first, justify later" approach is antithetical to the purpose of the Public Records Law,

³ References to "Supp. Decl." within this memorandum refer to the Supplemental Declaration of Marie McKiernan in support of Plaintiff's Opposition to Defendant's Cross-Motion for Summary Judgment and Reply in Support of ACLUM's Motion for Summary Judgment executed on April 9, 2026.

which is to “give the public broad access to governmental records” so that the public may protect its “interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner” and so that the public may have “confidence in government.” Boston Globe Media Partners v. Dep’t of Criminal Justice Information Servs., 484 Mass. 279, 281 (2020) (citations omitted). It is also wasteful of this Court’s resources, requiring the public to resort to litigation to get explanations that agencies should be able to provide (if those explanations are legitimate) in response to public records requests. There is no reason why MSP could not have articulated its rationale (flawed as it may be) for withholding the Withheld Records in its response to ACLUM’s public records request, especially given that Lt. Walczak has been in his current role as MSP’s ALPR Coordinator and Technical Service Executive Officer since July of 2023. *See* Walczak Aff., ¶¶ 2-3.

ACLUM first requested the Withheld Records in *May of 2020*, expecting to receive a response in the 10 business days required by statute. SUMF, ¶ 27; G.L. c. 66 § 10(a). The public – on whose behalf ACLUM submitted its requests – has now waited roughly *six years* for the requested information, or roughly *150 times the permitted period*. Thus, even if MSP’s arguments to this Court had any legal and factual basis (and they do not, as discussed below), this Court should not reward MSP’s conduct by entertaining explanations that MSP could have offered years ago.

III. THE REQUESTED RECORDS DO NOT FALL WITHIN THE “VERY NARROW” CARVE OUT OF EXEMPTION (N)

Exemption (n) to the Public Records Law “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.” People for the Ethical Treatment of Animals v. Dep’t of Agric. Res., 477 Mass. 280, 289 (2017) (“PETA”)

(emphasis added). MSP argues that Exemption (n) applies because disclosure of information about ALPR locations (either by providing the locations, or by providing audit logs containing location information) could allow bad actors to cause harm in some way, such as by “transporting weapons, explosives, or other contraband.” MSP Mem. at 10. MSP’s only support for its claims about potential harms from disclosure of ALPR Camera Locations is the Walczak affidavit. *See, e.g.*, MSP SUMF, ¶¶ A 41-42 (citing Walczak Aff.). However, MSP’s reliance on the Walczak Affidavit at this late stage – having withheld records from the ACLUM for *six years* with no previous explanation (*see supra* Section II) – is improper, and the Affidavit should be given no weight at all. Furthermore, even if the affidavit is considered, it should be accorded very little weight, because it provides only unsupported speculation in lieu of facts. Furthermore, MSP’s argument for deferring to the speculation expressed in the Walczak affidavit has no basis in *Massachusetts* law and misstates the *Indiana* law on which MSP relies. The Walczak Affidavit thus cannot support withholding information under Exemption (n), and the record therefore requires summary judgment in ACLUM’s favor on this Exemption.

A. The Speculative Walczak Affidavit is Procedurally Improper and Legally Irrelevant

To justify withholding under Exemption (n), MSP must provide “sufficient *factual* heft” to enable this Court to “conclude that a reasonable person would agree with” MSP’s determination that the Exemption applies. PETA, 477 Mass. at 290 (emphasis added). MSP claims that the “lengthy [Walczak] [a]ffidavit . . . provides this Court with substantial information and ‘sufficient factual heft’ to allow the Court to view the risks through the eyes of an expert.” MSP Mem. at 8. But as explained below, the Walczak Affidavit is a procedurally improper affidavit submitted by MSP long after the close of fact discovery and solely for the purpose of avoiding summary judgment in ACLUM’s favor; this Court should therefore give no

weight to the Affidavit's allegations when deciding the parties' summary judgment motions. Alternatively, to the extent the Court considers the Affidavit at all, the Affidavit should be given very little weight. While the Affidavit is indeed "lengthy," it provides no "*factual* heft" to support MSP's arguments, but instead provides hefty *speculation* backed by no facts. And MSP's argument that this Court should simply defer to the affidavit's unsupported speculation because the speculation is filtered "through the eyes of an expert" has no basis in law. Thus, even if the statements in the Walczak Affidavit are considered, they do not suffice to meet the legal standard for showing an exemption from the Public Records Law.

MSP's Memorandum makes the following (purportedly) factual claims regarding the harm that could arise from releasing ALPR camera locations or from releasing audit logs showing the camera locations:

- "[K]nowledge of where ALPR cameras are located, how frequently they are used, and how the Department deploys them, could assist such actors in transporting weapons, explosives, or other contraband. SUMF ¶ A41." (MSP Mem. at 10)
- "Terrorists seeking to cause harm could, while having quick access to precise ALPR camera locations, preemptively vandalize or otherwise impair the operation of cameras along their proposed route. SUMF ¶ A37." (*Id.*)
- Information in the audit logs "is valuable to a terrorist or other criminal actors, as it would allow them to alter plans and operations, evade detection, or conceal evidence based on data known to law enforcement. SUMF ¶¶ A44 - A45, A55, A60-A61, A62." (*Id.* at 13)

All the above-referenced paragraphs from MSP's additional statement of facts that MSP cites in support of its claims rely on corresponding paragraphs the Walczak Affidavit. *See* MSP SUMF, ¶¶ A41, A37, A44-45, A55, A60-62.

However, the Walczak Affidavit should not be credited because it contradicts MSP's prior statements and is offered only for the purpose of avoiding summary judgment against MSP. As noted *supra* Section II, MSP twice sent letters to ACLUM stating that MSP was withholding the Withheld Records – once in its initial response to ACLUM's August 2023 Request and again when ACLUM pushed MSP to further explain its claimed exemptions. Decl., ¶ 31, Exhibit 24 (APPX-363 to APPX-366); *Id.*, ¶ 15, Exhibit 11 (APPX-249 to APPX-273). In both letters, MSP regurgitated language from the statutory exemptions for disclosure *without* providing any factual bases for its withholding of the ALPR Camera Locations and ALPR Audit Logs. After having twice refused to provide factual justifications for withholding the records, MSP should not now be permitted to change its rationales only after ACLUM has served its summary judgment papers, as this would be akin to submitting a sham affidavit during summary judgment briefing that contradicts deposition testimony. See Brinkman v. Norfolk Cnty. Sheriff's Off., Mass. Super. Ct., No. 1982-CV-00931, at *1 (Aug. 4, 2025) (“Plaintiffs affidavit either seeks to bring more detail to prior testimony that was vague, introduce new facts which were foreclosed during deposition testimony, simply make bare assertions or conclusory statements unsupported by the record or repeat prior facts already in the record. This practice, which seems to be occurring more and more often in summary judgment cases, is impermissible.”).

Additionally, giving any weight to the Walczak Affidavit would also unfairly prejudice ACLUM, since ACLUM had no reason to believe based on its correspondence with MSP that MSP would be offering testimony from Lt. Walczak and thus could not arrange to depose him

prior to moving for summary judgment. See Cardoso v. Martin, Mass. Super. Ct., No. 2173-cv-00199, at *1 (Sept. 9, 2024) (“Disclosure of the plaintiff’s expert witness was late and deprived the defendants of the opportunity to retain their own experts prior to moving for summary judgment.”). To the extent the Court is inclined to treat the Walczak Affidavit’s speculative statements as statements of fact that go to MSP’s burden to provide factual heft, the Court should permit ACLUM to depose Lt. Walczak prior to ruling on the parties’ summary judgment motions. See Mass. R. Civ. P. 56(f).

Even if the Walczak Affidavit is considered, it is entitled to little weight because it offers pure speculation, not facts. The above-discussed Walczak Affidavit paragraphs on which MSP relies cite no facts at all; for example, while the affidavit makes statements about what “could” happen (e.g., ¶ 41) or what Lt. Walczak’s “opinion” is (e.g., ¶ 44), the affidavit cites no examples of such events occurring. To the extent the cited paragraphs of the Walczak affidavit are viewed as assertions of fact and not mere expressions of opinion or speculation, such bare assertions of fact without any evidentiary support cannot support MSP’s motion for summary judgment, nor can they create a genuine issue of fact to defeat MSP’s motion for summary judgment. See Mass. R. Civ. P. 56(e) (“Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence”); Aronson v. Commonwealth, 401 Mass. 244, 252-53 (1987) (denying Commonwealth’s motion for summary judgment on claim where motion was supported by affidavits that were “almost entirely conclusory in nature” and “lack[ed] the specificity necessary. . . as a matter of law” to meet the Commonwealth’s

burden); Ng Bros. Constr., Inc. v. Cranney, 436 Mass. 638, 648 (2002) (a bare assertion or conclusory statement in an affidavit is insufficient to create a disputed fact).⁴

In an apparent attempt to make up for its lack of supporting facts, MSP argues that there is an “[i]mplicit . . . understanding that the untrained eye may be unable to evaluate, without more, how the information could be exploited to achieve the goal of harming the public’s safety.” MSP Mem. at 7. MSP cannot identify any source of this “implicit understanding” in Massachusetts law, but instead relies on an Indiana case, Sullivan v. Nat’l Election Defense Coal., 182 N.E.3d 859, 872-74 (Ind. Ct. App. 2022). *See* MSP Mem. at 7. But to the extent Sullivan has any persuasive value here at all, it undercuts MSP’s position, because Sullivan rejected the same type of argument based on conjecture that MSP advances here.

In Sullivan, the Indiana court stated that:

[T]he public agency cannot simply rely on its own assessment of the documents and the likely risks and consequences of disclosure or a conclusory or speculative statement that disclosure has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. Instead, it must describe *how* a vulnerability might be exposed and public safety threatened by disclosure. And where, as here, the agency alleges that the implications of the documents are not apparent to the untrained eye or that individual documents can be aggregated and processed to identify and exploit technical and social network vulnerabilities... the agency must *demonstrate*, not just state, that there is, in fact, more than meets the eye (quotation and citation omitted).

Sullivan, 182 N.E.3d at 873-74. The Sullivan court ultimately found that the state failed to meet the burden of demonstrating the terrorism exemption applied under Indiana state law because the state’s proffered affidavit contained “several sweeping pronouncements about election infrastructure and security” but “lack[ed] an explanation of the public safety risk posed by

⁴ Notably, MSP’s letter asserting exemption (n) did not provide any of the bare assertions now encompassed by Lt. Walczak’s affidavit. Decl., Ex. 8 (APPX-222 to APPX-229).

disclosure” or, where the risk was explained, failed to show “*how* the withheld documents could be used to threaten public safety.” *Id.* at 874 (emphasis original).

Likewise, here, the Walczak Affidavit contains statements about harmful actions that someone could take with knowledge of ALPR camera locations without providing any evidence of how those actions could be accomplished *at all*, much less any evidence that those harms are “likely,” as the law requires. See PETA, 477 Mass. at 282 (Exemption (n) “require[s] consideration of the *likely* consequences of releasing the record sought” [emphasis added]). For example, MSP claims that knowledge of ALPR camera locations could assist bad actors “in transporting weapons, explosives, or other contraband.” MSP Mem. at 10. But it is undisputed that ALPR cameras only capture external features of vehicles such as license plate, color, or make/model. SUMF, ¶¶ 9-10 (undisputed); MSP SUMF, ¶ A22. ALPR cameras cannot detect what a vehicle is carrying, so knowledge of ALPR locations has no bearing on what can be transported. MSP also claims that terrorists could “preemptively vandalize or otherwise impair the operation of cameras along their proposed route.” MSP Mem. at 10. But MSP provides no explanation of how this could be done at all, much less how knowledge of the camera locations could make a difference in someone’s ability to interfere with them.⁵ As for MSP’s claim that information in the audit logs would allow bad actors to “alter plans and operations, evade detection, or conceal evidence based on data known to law enforcement” (MSP Mem. at 13),

⁵ To the extent MSP’s concern is with physical vandalism of the cameras, such vandalism would require a person to access cameras that are located in public places (*see* ACLU SUMF, ¶¶ 6-7), and MSP has provided no explanation of why such public vandalism could not be detected and stopped. To the extent MSP is concerned about electronic disruption through remote means, MSP has not explained how knowledge of camera locations would make a difference in a terrorist’s ability to disrupt cameras. If, *e.g.*, some hypothetical electromagnetic jamming means were used (and MSP has provided no evidence that such means exist), MSP has provided no evidence that a terrorist would need to know the camera location for the jamming to be effective.

MSP again offers no explanation of how knowledge of camera locations increases the risk of such potential alteration, evasion, or concealment, nor any evidence of how such alteration, evasion, or concealment increases the risk to public safety. Moreover, MSP's argument ignores the fact that ACLUM has asked for the ALPR Audit Logs to be produced with license plates and other personally identifying information redacted, which reduces the risk of a hypothetical bad actor even knowing of an investigation. SUMF, ¶ 38 (undisputed); Decl., ¶ 31, Exhibit 24 (APPX-363 to APPX-366).

B. MSP Has Not Provided the “Factual Heft” Necessary for Exemption (n)

Having offered nothing but the unsupported speculation in the Walczak Affidavit, MSP cannot meet its burden under the two-step PETA framework (see PETA, 477 Mass. at 288) to justify Exemption (n) with respect to either the camera locations or the audit logs.

The first step (“Step One”) of the PETA test 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” (quotation omitted). 477 Mass. 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 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.

As explained in ACLUM’s Memorandum, under PETA Step One, the Withheld Records do not resemble the examples listed in the statute, and MSP is therefore not entitled to a lower burden at Step Two. See ACLUM Memo at 10-15. MSP’s Memo does not directly address Step One of the PETA test, but it does emphasize the words “security measures” and “any other records” language when quoting the language of Exemption (n). See MSP Mem. at 6-7. To the extent MSP contends that it has a lower burden at Step Two because the withheld documents resemble the records codified in the Exemption, this contention is unsupported by the record. ALPR cameras can certainly be used for *surveillance*; indeed, the concern about the use of ALPR technology for unconstitutional mass surveillance, which the SJC itself has raised, is what motivated ACLUM’s request in the first place. See McCarthy, 484 Mass. at 506-08 (“With enough cameras in enough locations, the historic location data from an ALPR system in Massachusetts would invade a reasonable expectation of privacy . . .”). But MSP offers nothing but unsupported speculation about how withholding ALPR Camera Locations and ALPR Audit Logs contributes to *security*, as discussed *supra* Section III.A.

Moreover, MSP cannot evade this distinction simply by ignoring the “any other records relating to” language from the statute, as this would expand that language into a limitless exemption in a manner the SJC has rejected. Specifically, in PETA, the SJC explained that “while the class of records that may qualify for exemption (n) is open, and not closed, we must interpret the ‘any other records’ clause as embracing only those records that, when released, are ‘likely to jeopardize public safety’ in a similar way to one of the examples listed in exemption (n).” 477 Mass. at 288. Here, as discussed above, there is no *factual* support in the record (as

opposed to speculation) for the proposition that the release of the ALPR camera locations or the redacted audit logs are likely jeopardize public safety. While MSP has cited examples where the existence of the ALPR cameras has contributed to public safety (see MSP Mem. at 10), these examples do not show that release of the requested information about the cameras would detract from public safety.

Because MSP has not shown and cannot show that the records at issue resemble the records codified in Exemption (n) in Step One, it has a higher burden under Step Two to provide “sufficient factual heft” to show that it reasonably withheld the records. PETA, 477 Mass. at 290. MSP does not meet this burden because it provides no facts at all, as discussed *supra* Section III.A. The Walczak Affidavit’s speculation about what *could* happen in some unexplained way is insufficient to meet MSP’s burden of showing that disclosure of the Withheld Records is “*likely* to jeopardize public safety.” G. L. c. 4, § 7, Twenty-sixth (n); see also PETA, 477 Mass. at 282 (Exemption (n) “require[s] consideration of the *likely* consequences of releasing the record sought”). Moreover, as discussed *supra* Section II, any factual heft MSP may be deemed to have provided is undercut by MSP’s failure to articulate any of these facts in response to ACLUM’s public records request.

IV. THE WITHHELD RECORDS DO NOT MEET THE STATUTORY REQUIREMENTS OF HAVING BEEN “NECESSARILY COMPILED OUT OF THE PUBLIC VIEW” AND WOULD NOT “PREJUDICE THE POSSIBILITY OF EFFECTIVE LAW ENFORCEMENT” UNDER EXEMPTION (F)

Exemption (f) “aims ‘at the prevention of the disclosure of *confidential* investigative techniques, procedures, or sources of information’” (emphasis added). Globe Newspaper Co. v. Police Comm'r of Bos., 419 Mass. 852, 859 (1995) (“Globe”), quoting Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976) (“Bougas”). ALPR technology is not confidential. Rather, it is a well-known, well-publicized investigative tool, and MSP concedes as much. MSP

concedes that ALPR cameras and technology are “widespread law enforcement investigative tools” (MSP Mem. at 3).⁶ MSP concedes that ALPR cameras are located outdoors (SUMF, ¶7, undisputed) in the public (SUMF, ¶ 6, undisputed), and are visible individually (MSP Mem. at 11) to the public. MSP concedes that it is “possible that an individual may be able to traverse all the public ways in the Commonwealth to locate ALPR cameras.” MSP Mem. at 9. And MSP concedes that ALPR technology is marketed “on the internet to the public regarding their capabilities, functionalities, and uses.” SUMF, ¶ 77 (undisputed). Even the Supreme Judicial Court has publicly noted the location of at least some of these ALPR cameras within the Commonwealth. McCarthy, 484 Mass. at 495. Thus, the Withheld Records are not the types of records that Exemption (f) aims to shield from disclosure. Bougas, 371 Mass. at 62.

Since the data generated by ALPR cameras is necessarily compiled *within* the public view, MSP has not and cannot demonstrate the threshold requirement that the Withheld Records are “necessarily compiled out of the public view.” Globe, 419 Mass. at 858 . In Globe, the Supreme Judicial Court held that “statements of police officers compiled during internal affairs and criminal investigations were not subject to the investigatory exemption” in part because summaries of the same were already publicly available. Mack v. Dist. Att’y for Bristol Dist., 494 Mass. 1, 14 (2024). The same rationale applies here. The ALPR cameras are located within the public view and, more importantly, the data the ALPR cameras compile is within the public view, and could in fact be compiled by members of the public themselves. SUMF, ¶¶ 6, 7, 9 (undisputed); *see* MSP Mem. at 9, 11 (conceding that “data collected by ALPR could, hypothetically speaking, be gathered by an individual . . . making their own notes”). Thus, it is

⁶ MSP attempts to represent its use of ALPR technology as limited to criminal investigations (MSP Mem. at 3-4). Not so. ALPR cameras indiscriminately collect data about every vehicle that passes by a lens, a fact which MSP concedes. SUMF, ¶ 4 (undisputed).

indisputable that the ALPR Camera Location records are not “necessarily compiled out of the public view.” Globe, 419 Mass. at 858.⁷

The ALPR Audit Logs similarly fall outside the scope of Exemption (f). To the extent these logs contain data collected by ALPR cameras and technology – data that is naturally compiled from or within the public view – this data cannot suffice to meet the threshold requirement that the data be *necessarily* compiled out of the public’s view. Id. at 858. MSP points to additional information in the ALPR Audit Logs (*e.g.*, associated case numbers or investigation-specific data) (MSP Mem. at 14) that supplements the ALPR camera data within the ALPR database to argue this supplemental information is compiled outside of the public’s view. That, however, is immaterial given the ACLUM’s 2023 Records Request for the audit logs expressly exempted “the license plate number or other identifying information regarding the plate queried.” SUMF, ¶¶ 39-40 (undisputed).⁸ In other words, any investigation-specific information necessarily compiled outside the public’s view (*i.e.*, data supplemented in the ALPR Audit Logs) is not subject to ACLUM’s request and cannot serve as the basis for withholding these records. As the Supreme Judicial Court has held, “[t]hat some exempt material may be found in a document or report of an investigatory character does not justify cloture as to all of it.” Reinstein v. Police Comm’r of Bos., 378 Mass. 281, 290 (1979); see also Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 436 Mass. 378, 383 (2002) (“To the

⁷ MSP fails to present any argument or evidence independent of its reasoning pertaining to ALPR Audit Logs to substantiate its invocation of Exemption (f) for the ALPR Camera Location records.

⁸ To the extent MSP points to the disclosure of “hot lists” thwarts effective law enforcement (*see* SUMF, ¶ A51), it is irrelevant as ACLUM’s August 2023 Request did not seek disclosure of hot lists.

extent that only a portion of a public record may fall within an exemption to disclosure, the nonexempt ‘segregable portion’ of the record is subject to public access.”).

Even if the Withheld Records passed the threshold of containing some information necessarily gathered outside of the public’s view (which for the reasons stated above, they do not), disclosure of ALPR Camera Locations and redacted ALPR Audit Logs could not possibly thwart the “possibility of effective law enforcement [so] that such disclosure would not be in the public interest.” Globe, 419 Mass. at 858. ACLUM’s request for the ALPR Audit Logs is narrowly tailored to garner information regarding how many searches are taking place, by whom, and for what reasons. SUMF, ¶¶ 39-40 (undisputed). None of that discloses any investigation-specific information that could alert a specific person that they are being watched by law enforcement or jeopardize any investigations. Nor does MSP provide any factual evidence to the contrary to meet its burden of proof. Rather, MSP provides bare assertions in the Walczak Affidavit mirroring the language in its memorandum. *Compare* MSP Mem. at 5, *with* SUMF, ¶¶ A59, A60. This is insufficient to meet MSP’s burden. Aronson, 401 Mass. at 252-53 (denying Commonwealth’s motion for summary judgment where motion supported by “almost entirely conclusory” affidavits).

Moreover, the lack of adequate guardrails surrounding law enforcement’s use of ALPR technology heightens the public’s need to have access to information to assess whether the potential constitutional concerns raised in *McCarthy* are realized. MSP is fully aware that the Supreme Judicial Court expressly recognized that the use of ALPR technology could implicate constitutional protections against unreasonable searches and seizures. SUMF, ¶ 24 (undisputed). And MSP is aware that the Supreme Judicial Court explicitly tied these concerns to the location of the ALPR cameras and the historical data that could be used and queried in the ALPR system.

SUMF, ¶ 25 (undisputed). Moreover, MSP does not dispute that the Commonwealth of Massachusetts lacks any statute expressly regulating law enforcement’s use of ALPR technology. SUMF, ¶ 20 (undisputed). Nor does MSP dispute that the Massachusetts Shield Act prohibits Massachusetts police from providing information (such as ALPR data) or assistance to out-of-state agencies regarding investigations into the provision of reproductive or gender affirming healthcare services that would have been lawful if provided in Massachusetts. SUMF, ¶ 80 (undisputed). Yet, MSP continues to withhold the records the Supreme Judicial Court noted are central to the public’s concern over the unregulated use of ALPR technology.

MSP relies on the existence of its policies and ALPR training (SUMF, ¶¶ A33-35; APPX-393, Walczak Aff., ¶¶ 33-35) to suggest that there is no potential abuse of the ALPR cameras and database. But the McCarthy decision expressly noted that while “[d]etailed policy guidelines for police use of ALPRs well may be a ‘good idea,’ . . . their existence or lack thereof does not determine the constitutional question” of whether a search and seizure has occurred under the Fourth Amendment. 484 Mass. at 510, quoting Riley v. California, 573 U.S. 373, 398 (2014).

MSP also relies on a bare assertion in the Walczak Affidavit that MSP does not automatically share its data with outside agencies; this assertion is the basis of MSP’s dispute with ¶ 17 of the SUMF. See Walczak Aff., ¶ 65. However, this assertion is unsubstantiated by any documents produced to date.⁹ Nor does the assertion that MSP does not automatically share data alleviate the possibility that the data is shared by other mechanisms, such as in response to a

⁹ Notably, the August 2023 Records Request expressly requested “[r]ecords pertaining to companies that provide ALPR software, hardware, and data tools used or accessed by the MSP, including but not limited to contracts, agreements” Decl., ¶ 31, Exhibit 24 (APPX-363 to APPX-366). Thus, if there was documentation concerning automatic sharing of ALPR data or a prohibition of the same, MSP should have pointed to it to substantiate this bare assertion.

subpoena by other states, federal agencies, or federal courts. Absent production of the ALPR Audit Logs (with necessary redactions of confidential or sensitive information), the public has no way to determine whether law enforcement is “carrying out their duties in an efficient and law-abiding manner.” Globe, 419 Mass. at 858.

In sum, both the ALPR Camera Locations and the ALPR Audit Logs fall outside the scope of Exemption (f). As a result, the production of the Withheld Records is mandated here where the public’s interest in disclosure outweighs the government’s interest in purported secrecy rooted in a well-known, non-confidential investigative technique and the ACLUM’s request expressly exempts the disclosure of sensitive, investigation-specific information within the records. Indeed, MSP does not dispute that local Massachusetts police departments contemplated whether Exemption (f) was applicable to distinct ACLUM public records request for ALPR audit logs and ultimately produced the audit logs. See SUMF, ¶¶ 81, 83 (undisputed).

V. ACLUM’S OPPOSITION TO MSP’S MOTION TO STRIKE

MSP’s motion to strike should be denied. MSP moves to strike several of ACLUM’s exhibits (Exhibits 2, 4, 14-16, 21-23, 26 and 28)¹⁰, asserting that the exhibits are inadmissible hearsay. MSP Mem. at 16-18. However, these exhibits were not offered for the truth of the matter asserted. Rather, these exhibits were offered for context. “Out of court statements offered not for their truth but ‘offered only for context,’ do not constitute hearsay.” Harmon v. Boston Med. Ctr., U.S. Dist. Ct., No. 22-11856, at *4 (D. Mass. Nov. 18, 2024), quoting United States v. Bailey, 270 F.3d 83, 87 (1st Cir. 2001) (cleaned up); see Mass. Guide to Evid., § 801 at 225; § 1119 at pg. 406 (2025 Edition). These articles all point to information the public has about

¹⁰ Notably, MSP failed to request that the Court strike the corresponding disputed statement of facts (SUMF, ¶¶ 15-16, 18-19, 76, 78-79, 82).

potential misuses of ALPR technology by law enforcement. In conjunction with the McCarthy decision, these exhibits provide the context for the public’s interest and ACLUM’s motivation for filing the August 2023 Public Records Request concerning MSP’s use of ALPR technology. Harmon, No. 22-11856, at *4, quoting Bailey, 270 F.3d at 87_ (“For example, an out-of-court statement might be offered to show that the declarant had certain information, or entertained a specific belief, or spoke a particular language; or it might be offered to show the effect of the words spoken on the listener (e.g., to supply a motive for the listener's action). Id. (cleaned up).”). As a result, MSP’s motion to strike should be denied. Even if, however, MSP’s motion to strike is granted, ACLUM’s motion and remaining exhibits and statements of fact are sufficient to demonstrate that summary judgment should enter for ACLUM, because they show that MSP cannot meet its burdens to justify withholding the Withheld Records. None of the facts disputed by either ACLUM or MSP are material to the determination of the parties’ cross motions.

CONCLUSION

For the foregoing reasons, ACLUM respectfully asks the Court to grant ACLUM’s motion for summary judgment, deny MSP’s cross-motion, deny MSP’s motion to strike, and order release of the subject records.

Respectfully submitted,

American Civil Liberties Union of
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By its attorneys,

Dated: April 10, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2026, a true copy of the above document was served was served by email upon counsel for Defendant Massachusetts State Police:

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