

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
Civil Action No. \_\_\_\_\_

AMERICAN CIVIL LIBERTIES UNION OF  
MASSACHUSETTS, INC.,

Plaintiff,

v.

EXECUTIVE OFFICE OF PUBLIC SAFETY  
AND SECURITY, and DEPARTMENT OF  
CRIMINAL JUSTICE INFORMATION  
SERVICES,

Defendants.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) seeks public records from Defendants Executive Office of Public Safety and Security (“EOPSS”) and Department of Criminal Justice Information Services (“CJIS”) (collectively, the “Agencies”) pertaining to the Agencies’ use of Automatic License Plate Reader (“ALPR”) technology and associated databases. Further, ACLUM seeks a declaration that, to the extent the Agencies failed to design or acquire systems which allow for the exportation of the requested ALPR records in response to public records requests, the Agencies have violated the Public Records Law, G.L. c. 66, § 19.

2. ALPR technology uses stationary, police vehicle-mounted, or handheld cameras to continuously and indiscriminately scan the license plates of every vehicle driving by the cameras’ lens. ALPR cameras are combined with optical character recognition software that automatically translates images of license plates into machine readable text. They create a record

that includes a picture of the vehicle's license plate, the time, date, and location of the capture, and text of the vehicle's license plate number.

3. These records are retained in local, state, and/or regional databases. Based on the Commonwealth's practices, tens of millions of these records may be retained at any given time. For example, in 2020, the Commonwealth retained a repository of statewide ALPR data of over 133 million records. Exhibit C at 2.

4. ALPRs enable the government to continually track and record the movements of any and all vehicles that pass each camera's lens. They allow the government to receive real-time alerts about any such vehicle's movements and to easily review a vehicle's historical movements in the past twelve months.

5. Unlike 16 states,<sup>1</sup> the Commonwealth lacks any statute expressly regulating law enforcement's use of ALPRs. No statute in Massachusetts currently requires police to obtain a warrant or court order before accessing license plate reader data.<sup>2</sup> The scant information available implies widespread use of ALPR technology without any meaningful oversight since its first use in Massachusetts in 2008.<sup>3</sup>

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<sup>1</sup> *Automated License Plate Readers: State Statutes*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Feb. 3, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/state-statutes-regulating-the-use-of-automated-license-plate-readers-alpr-or-alpr-data.aspx> (last visited Dec. 13, 2022).

<sup>2</sup> Ángel Díaz and Rachel Levinson-Waldman, *Automatic License Plate Readers: Legal Status and Policy Recommendations for Law Enforcement Use*, BRENNAN CENTER FOR JUSTICE (Sept. 10, 2020), <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations> (last visited Dec. 13, 2022).

<sup>3</sup> Shawn Musgrave, *Big brother or better police work? New technology automatically runs license plates ... of everyone*, Boston.com (April 9, 2013), <https://www.boston.com/news/local-news/2013/04/09/big-brother-or-better-police-work-new-technology-automatically-runs-license-plates-of-everyone> (last visited Dec. 13, 2022).

6. This is particularly troublesome given that ALPR technology has proven to be unreliable. In December 2020, the Massachusetts State Police (“MSP”) temporarily halted the use of ALPRs due to flaws in the way date and time data was recorded.<sup>4</sup> EOPSS released a memorandum documenting this failure (a true and correct copy of which is attached hereto as Exhibit A), 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.” Exhibit A at 1. Even before this problem began, police themselves had reported that ALPRs “provided false information” among other “problems with the technology.”<sup>5</sup>

7. Given the breadth of the Commonwealth’s use of ALPRs, the lack of oversight for this practice, and its well-documented technological failures, the public has an interest in information regarding this invasive technology.

8. Indeed, the Supreme Judicial Court has recognized that the Commonwealth’s use of ALPR technology could implicate constitutional protections against unreasonable searches and seizures. *Commonwealth v. McCarthy*, 484 Mass 493, 507-08 (2020).

9. Specifically, *McCarthy* noted 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,” emphasizing

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<sup>4</sup> Matt Rocheleau, *After finding glitch, Massachusetts suspends use of controversial camera system that lets police track cars*, BOSTON GLOBE (Dec. 23, 2020, 6:51 PM), <https://www.bostonglobe.com/2020/12/23/metro/after-finding-glitch-massachusetts-suspends-use-controversial-camera-system-that-lets-police-track-cars> (last visited Dec. 13, 2022).

<sup>5</sup> Neal Simpson, *Controversial license plate readers see little use in southeastern Mass.*, THE PATRIOT LEDGER (Nov. 2, 2014, 9:04 AM), <https://www.patriotledger.com/story/news/crime/2014/11/02/controversial-license-plate-readers-see/36031664007> (last visited Dec. 13, 2022).

that “[t]he one-year retention period indicated in the EOPSS retention policy certainly is long enough to warrant constitutional protection.” 484 Mass. at 506.

10. The public needs access to records regarding the Commonwealth’s use of ALPRs to ensure that courts throughout the Commonwealth have the information necessary to accurately assess whether a criminal defendant’s constitutional protections have been violated.

11. In the interest of achieving this critical transparency, on May 4, 2020, ACLUM sent public records requests to the Agencies seeking, *inter alia*, records of the statewide repository of ALPR records and legal memoranda, guidance, or policy statements demonstrating how policies and practices were impacted or affected by the *McCarthy* ruling. ACLUM sent a second request to the Agencies on October 16, 2020, seeking, *inter alia*, logs maintained by either CJIS or EOPSS that record “all transactions made by CJIS user agencies.”

12. Despite multiple follow-up attempts and discussions, to date, the Agencies have not provided records responsive to several of these requests. Instead, the Agencies have provided a variety of explanations, including their belief that the technology they acquired to store the ALPR records may not allow for the exportation of the requested data, and the assertion of certain exemptions that ACLUM disputes apply; they have also made a variety of promises, including to provide sample documents and run proposed searches, that at the time of filing remain unfilled.

13. Because the Agencies have not complied with their obligations under G.L. c. 66, § 10 to search for or produce records responsive to ACLUM’s public records requests, and because the Agencies’ own assertions regarding the ALPR database show that the Agencies did not comply with the statutory obligations of G.L. c. 66, § 19 when acquiring or designing the ALPR database, ACLUM now files this action to obtain the missing records and to seek

declaratory relief as to Defendants' obligations to timely produce responsive records and maintain a proper database under the Public Records Law ("PRL").

### **JURISDICTION AND VENUE**

14. Jurisdiction and venue are proper in this Court pursuant to G.L. c. 66, § 10A(c), G.L. c. 212, § 4, G.L. c. 214, § 1, and G.L. c. 231A, § 1.

### **PARTIES**

15. Plaintiff ACLUM is a nonprofit membership organization with a principal place of business in Boston dedicated to the protection of civil rights and civil liberties. To advance the interests of open government, ACLUM works to shed light on law enforcement practices to preserve and extend constitutional rights.

16. Defendant EOPSS is an agency of the Commonwealth of Massachusetts and a custodian of the records ACLUM seeks. Its principal place of business is in Boston, Suffolk County, Massachusetts.

17. Defendant CJIS is an agency of the Commonwealth of Massachusetts and a custodian of the records ACLUM seeks. Its principal place of business is in Chelsea, Suffolk County, Massachusetts.

### **FACTUAL BACKGROUND**

18. The public has an interest in access to public records about the Commonwealth's use of ALPR technology, but there is currently little publicly-available information about the use of the technology or what safeguards, if any, are in place.

19. The scant information that is available demonstrates that the Commonwealth currently uses its ALPR system to create and store tens of millions of records identifying the time, date, and location of vehicles throughout the Commonwealth, all with little-to-no oversight or review.

20. The ability of law enforcement officers to find any resident in real-time or to monitor their movements without a warrant, over a period spanning an entire year—potentially including (among countless other applications) to track protesters exercising their free speech rights—implicates federal and state constitutional protections against unreasonable searches and seizures and freedom of speech.

21. The need for the public to have detailed information regarding the ALPR system has become all the more important given the Supreme Court’s recent *Dobbs v. Jackson Women’s Health* decision. Since *Dobbs*, numerous states throughout the country have banned or severely limited abortion care for their residents. ALPR systems now pose an even greater privacy threat, as law enforcement and private individuals in states hostile to abortion care may seek access to location data demonstrating that motorists traveled to the Commonwealth for reproductive care in order to use that evidence for civil and criminal penalties.<sup>6</sup> While Massachusetts has already taken steps to generally guard against information requests related to legally protected healthcare in the Commonwealth, greater public access to information about the ALPR system—including how the information is stored and who has access to it—is necessary to inform Massachusetts lawmakers about whether any additional legislative steps are necessary.<sup>7</sup>

22. As set forth below, ACLUM submitted two public records requests to help shed light on the potentially invasive use of this technology.

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<sup>6</sup> Thor Benson, *The Danger of License Plate Readers in Post-Roe America*, WIRED (Jul. 7, 2022 7:00 AM), <https://www.wired.com/story/license-plate-reader-alpr-surveillance-abortion/> (last visited Dec. 13, 2022).

<sup>7</sup> Dave Maass, *Automated License Plate Readers Threaten Abortion Access. Here’s How Policymakers Can Mitigate the Risk*, ELECTRONIC FRONTIER FOUNDATION (Sept. 28, 2022), <https://www.eff.org/deeplinks/2022/09/automated-license-plate-readers-threaten-abortion-access-heres-how-policymakers> (last visited Dec. 13, 2022).

**A. ACLUM's First Requests (May 4, 2020)**

23. On May 4, 2020, ACLUM submitted identical public records requests to EOPSS and CJIS seeking records concerning the Commonwealth's use of ALPR technology and associated databases ("First Requests"). A true and correct copy of the First Requests is attached hereto as Exhibit B.

24. As is relevant to this Complaint, Request No. 5 of the First Requests asked for: "Records showing the total number of ALPR records submitted to the statewide repository since its creation, if possible broken down by submitting agency." Exhibit B at 3. Request No. 14 asked for: "Records pertaining to the Commonwealth's implementation of the ruling in *Commonwealth v. McCarthy*, including any legal memoranda, guidances, or policy statements that show how policies and practices were impacted or affected by the ruling." *Id.*

25. After the statutory deadline for production had passed, the Agencies responded to the First Requests on July 17, 2020 ("Agencies' First Response"). A true and correct copy of the Agencies' First Response is attached hereto as Exhibit C. The Agencies blanketly asserted exemptions under G.L. c. 4, § 7 clauses 26(b), (f), and (n) against Request No. 5 and further asserted that no responsive records existed in response to Request No. 14. Exhibit B at 2-3. To date, the Agencies have not produced records responsive to Request Nos. 5 and 14.

26. On October 16, 2020, ACLUM sent a letter in response to the Agencies' First Response ("Follow-up Letter"). A true and correct copy of the Follow-up Letter is attached hereto as Exhibit D.

27. With respect to Request No. 5, the Follow-up Letter asked the agency to confirm whether responsive records existed or whether assertion of these exemptions was hypothetical. Further, the Follow-up Letter informed the Agencies that courts construe the cited exemptions narrowly, that there is a presumption that such records are public, and that any segregable, non-

exempt portions of records responsive to Request No. 5 of the First Requests should be produced. Exhibit D at 3.

28. With respect to Request No. 14, the Follow-up Letter requested confirmation that no communications, including email, or other records regarding the *McCarthy* decision existed. Exhibit D at 2-3.

**B. ACLUM'S Second Requests (October 16, 2020)**

29. On October 16, 2020, ACLUM submitted an additional public records request to the Agencies ("Second Requests"). A true and correct copy of the Second Requests is attached hereto as Exhibit E). The Second Requests sought records identified or alluded to in the Agencies' First Response.

30. As is relevant to this Complaint, Request No. 3 of the Second Requests asked for "[a]ny and all 'Transaction Log' maintained by either DCJIS or EOPSS that records 'all transactions made by CJIS user agencies.' This includes, but is not limited to, any logs referred to in Section 6.0 of the 'Massachusetts Department of Criminal Justice Information Services Global Justice and Public Safety User Agreement.'" Exhibit E at 2. The identified CJIS User Agreement, attached hereto as Exhibit F, had been provided to ACLUM by the Agencies in response to Request No. 11 of the First Requests.

31. On November 12, 2020, the Agencies responded to confirm receipt of the requests. Subsequently, ACLUM emailed the Agencies at least three times seeking information as to the status of their requests without any further communications from the Agencies. ACLUM further followed up by letter on February 18, 2022. A true and correct copy of this letter is attached hereto as Exhibit G.



**C. The Agencies' Second Response (March 14, 2022) and the Parties' Follow-Up Discussion (March 29, 2022)**

32. On March 14, 2022, the Agencies responded to the October 16 Follow-up Letter and Second Requests ("Agencies' Second Response"). A true and correct copy of the Agencies' Second Response is attached hereto as Exhibit H.

33. In an attempt to resolve the remaining issues, the Parties discussed the Agencies' Second Response by telephone on March 29, 2022, which ACLUM memorialized by letter to the Agencies on April 1, 2022 ("April 1, 2022 Letter"). A true and correct copy of the April 1, 2022 Letter is attached hereto as Exhibit I.

***Request No. 5 of the First Requests***

34. The Agencies' Second Response asserted that no responsive records existed regarding Request No. 5 of the First Requests, which sought a record showing the total number of ALPR records submitted to the statewide repository. Exhibit H at 4. However, in response to Request No. 6 of the First Requests, the Agencies' Second Response stated that the ALPR database contained 21,837,452 records as of March 14, 2022. *Id.* at 2.

35. During the March 29 discussion, ACLUM stated that the record responsive to Request No. 5 was the same ALPR database that the Agencies used to determine the number of records in response to Request No 6. ACLUM therefore requested production of the database with appropriate redactions for personally identifiable information as well as other exempted information.

36. In response, the Agencies claimed that they would be unable to produce any records due to technological limitations that the Agencies' counsel maintained were imposed by the ALPR database itself. Exhibit I at 1. Specifically, the Agencies claimed that it may not be possible to export the data at all. The Agencies made this claim despite data export being a

common and fundamental function of virtually every available database management system. Further, the Agencies claimed that all relevant information relating to each ALPR database scan (“Scan Record”) is stored in a single “free-text field.” Exhibit I at 1. According to the Agencies, unlike most databases where each Scan Record would include separate fields for each item of information, such as an Excel spreadsheet with multiple columns, the Scan Records would be jumbled together in a single text field, such as an Excel spreadsheet with a single column. Therefore, per the Agencies’ claims, even if they could export the data, they would be unable to redact a particular column or columns.

37. Under G.L. c. 66 § 19, which sets requirements for the technological capabilities of state agency electronic record keeping systems and databases to ensure the preservation of public records, agencies are required to “ensure, to the extent feasible, that the system or database is capable of providing data in a commonly available electronic, machine readable format.” G.L. c. 66 § 19(a).

38. During the March 29 discussion, the Agencies asserted that the Scan Records in the ALPR database are preserved in a manner that does not meet these statutory requirements, thereby thwarting the public’s ability to obtain public records.

39. Further, the Agencies stated that submitting agencies (*e.g.*, local police departments) do not use a standard format for inputting data into the ALPR database. Exhibit I at 1. As a result, the Agencies contended that they would need to manually review each record for redaction. In response, ACLUM requested sample Scan Records to better understand how the ALPR database works and whether there were ways to narrow or reduce the burden on the Agencies. The Agencies agreed to provide those sample Scan Records. *Id.* at 2.

40. At the time of this filing, despite multiple follow up attempts, the Agencies have not provided these sample Scan Records to ACLUM.

41. To date, more than two years after ACLUM submitted the First Requests, the Agencies have failed to produce a single responsive record with respect to Request No. 5.

***Request No. 14 of the First Requests***

42. With respect to Request No. 14 of the First Requests, which sought information regarding Defendants' policies post-*McCarthy*, the Agencies' Second Response asserted that the request was overly broad, unduly burdensome, and "would likely be withheld" under attorney-client privilege and common interest doctrines. However, the Agencies invited ACLUM to provide "specific search parameters" to assist in narrowing the request. Exhibit H at 3-4.

43. In response to this invitation, ACLUM provided the following search terms to narrow the request: ("McCarthy" and ("ALPR" or "License Plate Reader" or "LPR")) during the March 29 discussion. Exhibit I at 4. The Agencies agreed to conduct a search using these search terms. *Id.*

44. At the time of this filing, despite multiple follow up attempts, the Agencies have not provided ACLUM the results of that search.

45. To date, more than two years after ACLUM submitted the First Requests, the Agencies have failed to adequately search for records responsive to Request No. 14 and have failed to produce a single responsive record with respect to this request.

***Request No. 3 of the Second Requests***

46. The Agencies' Second Response asserted that they do not maintain records responsive to Request No. 3 of the Second Requests which sought transaction logs showing access to the state ALPR database. Exhibit H at 5.

47. During the March 29 discussion, ACLUM pointed out that the User Agreement—which the Agencies provided as a record “pertaining to the statewide repository or access to its data”—requires CJIS to maintain an “audit log of all transactions.” Exhibit F at 3; Exhibit I at 4. Further, ACLUM noted that database management systems create and store logs by default.<sup>8</sup> Exhibit I at 4. In response, the Agencies agreed to determine if their system created these automatic logs. *Id.*

48. At the time of this filing, despite multiple follow up attempts, the Agencies have not informed ACLUM whether their system created automatic logs.

49. To date, more than two years after ACLUM submitted the Second Requests, the Agencies have failed to adequately search for records responsive to Request No. 3 and have failed to produce a single responsive record with respect to this request.

### **CLAIMS FOR RELIEF**

#### **COUNT I: Violations of the Public Records Law – G.L. c. 66, §§ 10, 19**

50. ACLUM incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

51. The Public Records Law strongly favors disclosure by creating a presumption that all government records are public records.

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<sup>8</sup> See, e.g., <https://learn.microsoft.com/en-us/sql/relational-databases/logs/the-transaction-log-sql-server?view=sql-server-ver16> (last visited Dec. 13, 2022) (Microsoft SQL Server transaction log), [https://docs.oracle.com/cd/E57185\\_01/OEPAG/epma\\_transaction\\_logs.html](https://docs.oracle.com/cd/E57185_01/OEPAG/epma_transaction_logs.html) (last visited Dec. 13, 2022) (Oracle’s various standard transaction logs), <https://dev.mysql.com/doc/refman/5.7/en/server-logs.html> (last visited Dec. 13, 2022) (MySQL’s various standard log files).

52. Under the Public Records Law, the Agencies were required to respond to ACLUM's requests within ten business days, to conduct an adequate search for responsive documents, and to demonstrate application of any exemptions. G.L. c. 66, § 10(a)-(b).

53. ACLUM's requests reasonably describe the public records sought.

54. The Agencies have possession, custody, or control of the public records requested by ACLUM.

55. The Agencies have wrongfully withheld records responsive to Requests Nos. 5 and 14 of the First Requests and Request No. 3 of the Second Requests in contravention of the Public Records Law, including by failing to conduct an adequate search, failing to produce responsive records, and failing to abide by G.L. c. 66, § 19 requiring agencies to acquire systems or databases that facilitate that production of public records.

56. ACLUM is entitled to injunctive relief requiring the Agencies to promptly produce the requested records. G.L. c. 66, § 10A(c)-(d).

57. ACLUM is entitled to injunctive relief prohibiting the Agencies from charging any fee for the production of the records sought. G.L. c. 66, §§ 10(e), 10A(c)-(d).

58. ACLUM is entitled to an award of reasonable attorney fees and costs. G.L. c. 66, § 10A(d)(2)

### **COUNT II: Declaratory Judgment – G.L. c. 231A**

59. ACLUM incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

60. There is an actual controversy between ACLUM and Defendants regarding the production of requested records.

61. Pursuant to G.L. c. 231A and the PRL, ACLUM is entitled to a declaration that the records responsive to Request Nos. 5 and 14 of the First Requests and Request No. 3 of the Second Requests are public records within the meaning of G.L. c. 66, § 10, that their release is required by law, that Defendants have no right to withhold such records, that Defendants have violated the PRL by their failure to timely produce responsive records to ACLUM's requests, and that the Agencies violated G.L. c. 66, § 19 by failing to acquire or design an ALPR database which allows the exportation of its data in response to a public records request.

### **PRAYER FOR RELIEF**

**WHEREFORE**, ACLUM requests that this Court:

1. Issue a declaratory judgment that the records ACLUM has requested are public records within the meaning of G.L. c. 66, § 10, that their release is required by law, and that the Agencies violated G.L. c. 66, § 19 by failing to acquire an ALPR database which allows the exportation of its data in response to a public records request;
2. Enter permanent injunctions pursuant to G.L. c. 66, § 10A(d)(iii) requiring the Agencies to disclose the requested records to ACLUM;
3. Enjoin the Agencies from charging ACLUM search, review, or duplication fees for processing the requests;
4. Award ACLUM its costs and attorneys' fees in bringing this action; and
5. Grant such other relief as the Court deems just and proper.

Dated: December 13, 2022

By its attorneys,

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