2d Civ. No. B259392

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION THREE

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent,

COUNTY OF LOS ANGELES, and the LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and the CITY OF LOS ANGELES, and the LOS ANGELES POLICE DEPARTMENT,

Real Parties in Interest.

Los Angeles County Superior Court, Case No. BS143004
Honorable James C. Chalfant, Judge Presiding

APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 4 MEDIA ORGANIZATIONS FOR PERMISSION TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS AND *AMICI CURIAE* BRIEF

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (CAL. RULES OF COURT, RULE 8.208)

Pursuant to California Rule of Court 8.208, *amici* make the following disclosures:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

Californians Aware is a nonprofit organization with no parent corporation and no stock.

California Newspaper Publishers Association is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California.

Los Angeles Times Communications LLC is a subsidiary of Tribune Publishing Company. Tribune Publishing Company is publicly held. Oaktree Tribune, L.P. owns 10 percent or more of Tribune Publishing Company's stock.

The McClatchy Company is publicly traded on the New York Stock Exchange under the ticker symbol MNI. Contrarius Investment Management Limited owns 10% or more of the common stock of The McClatchy Company.

DATED: February 10, 2015 Respectfully submitted,

REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS

By: _____
Katie Townsend

Counsel for *Amici Curiae*

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Pursuant to California Rule of Court 8.200 (c), the Reporters Committee for Freedom of the Press, Californians Aware, California Newspaper Publishers Association, Los Angeles Times Communications LLC, and The McClatchy Company respectfully request permission to file the attached brief as *amici curiae* in support of Petitioners.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated nonprofit association of reporters and editors that works to safeguard the First Amendment's guarantee of a free and unfettered press, and the public's right to be informed, through the news media about the government. The Reporters Committee has provided guidance and research in First Amendment and freedom of information litigation since 1970.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501 (c) (3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

The California Newspaper Publishers Association is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

Los Angeles Times Communications LLC publishes the *Los Angeles Times*, the largest metropolitan daily newspaper in the country. The *Los Angeles Times* operates the website www.latimes.com, a leading source of national and international news.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 30 daily newspapers and related websites as well as numerous community newspapers and niche publications. The McClatchy Company is owner of *The Sacramento Bee*, *The Fresno Bee*, *The Modesto Bee*, *Merced Sun-Star* and *The (San Luis Obispo) Tribune*.

The arguments of the aforementioned media organizations (hereinafter, "*amici*") will assist the Court in deciding this matter.[1] As representatives and members of the news media who routinely rely on the PRA to gather information concerning government agencies and officials in order to report it to the public, *amici* have a unique understanding of the potential impact of any decision limiting public access. Among other things, they are well-positioned to inform the Court of the numerous, significant news stories concerning law enforcement in communities throughout California that would go unreported were the press unable to obtain information from state and local law enforcement agencies.

Accordingly, *amici* respectfully request that the Court permit them to submit the attached brief in support of Petitioners.

DATED: February 10, 2015

Respectfully submitted,

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

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[1] Pursuant to California Rule of Court 8.200(c)(3), undersigned counsel certify that this brief was not authored in whole or in part by any party or any counsel for a party in the pending appeal, and that no person or entity other than *amici* made any monetary contribution intended to fund the preparation or submission of this brief.

By: _____
Katie Townsend

Counsel for *Amici Curiae*

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONERS

I. INTRODUCTION

In California, "access to information concerning the conduct of the people's business is a fundamental and necessary right" guaranteed by statute, and by California's Constitution. (*See* Gov't Code, § 6250; Cal. Const., art. I, § 3 subd. (b).) California's Public Records Act (the "PRA"), Gov't Code, § 6250, *et seq.*, is the means by which the press and the public exercise that fundamental right, which is rooted in the recognition that a functioning democratic government must be open to public scrutiny. The PRA is thus a powerful mechanism for ensuring "the accountability of government to the public." (*Register Div. of Freedom Newspapers Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901 ("*Freedom Newspapers*").)

The Petition pending before this Court presents two issues concerning the interpretation of the PRA with significant ramifications for the right of the press and the public to access information about how state and local law enforcement agencies are conducting "the people's business." (Gov't Code, § 6250.) For the reasons articulated by Petitioners, and set forth herein, both issues should be resolved in favor of public access. (*See* Cal. Const., art. I, § 3, subd. (b)(2) (expressly requiring that the right of access in the PRA be "broadly construed," and any limitation on public access be "narrowly construed").) *Amici* write separately to address the impact upon

the press of the Superior Court's holding that records collected and thereafter maintained within a police database are exempt from disclosure, even when the records are not gathered for or used in connection with a specific criminal investigation. (*See* Pet. at 4; *see also* Order at 13–14.)

Journalists regularly and necessarily rely on requests for information made under the provisions of the PRA to report on the actions of state and local government officials and agencies, including law enforcement agencies. Any ruling that exempts from disclosure law enforcement records unrelated to any investigation of a specific crime on the ground that the records are "investigatory" is a novel construction that flies in the face of the constitutional and statutory obligation to construe exemptions to public disclosure narrowly. This interpretation of the PRA would prevent journalists and reporters from obtaining information about how law enforcement agencies collect and aggregate information on citizens.

Moreover, because journalists and reporters rely on the PRA to obtain this and other information about law enforcement practices, in order to keep the public informed, public interest also weighs in favor of disclosing the records at issue in this case. Within the last few years alone, journalists have used records obtained from California law enforcement agencies under the PRA to write stories about police misclassification of violent crimes, the impact of race on police stops, and the high number of court summonses issued by school police to youth. Stories like these, which are

discussed in more detail below, exemplify how journalists rely on the PRA to report on law enforcement activities, and bring matters of crucial importance to the attention of the public.

For the reasons set forth herein, *amici* urge this Court to grant the relief sought by Petitioners.

II. ARGUMENT

A. The Superior Court's broad interpretation of the "investigatory records" exemption in section 6254(f) is contrary to the express language of the PRA, the California Constitution, and binding precedent.

As the California Supreme Court has stated, "[i]mplicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–52 ("*Block*").) The PRA was enacted for "the explicit purpose of 'increasing freedom of information' by giving the public 'access to information in possession of public agencies.'" (*Id.*, citations omitted). "*Maximum disclosure* of the conduct of governmental operations was to be promoted by the Act." (*Id.*, citations omitted; emphasis added.)

Accordingly, under California law, "[a]ll public records are subject to disclosure unless the [PRA] expressly provides otherwise." (*American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 67, citations omitted ("*ACLU*").) Any express limitation on the public's right of access under the PRA must be "construed narrow-

ly." (*Id.*; *see also* Cal. Const., art. I, § 3 subd. (b)(2).)[2] Subdivision (f) of section 6254 provides an exemption for certain "records of complaints to, or investigations conducted by . . . or any investigatory or security files compiled by any state or local police agency."[3]

Petitioners requested, pursuant to the PRA, all license plate scans conducted during a one-week period in the County of Los Angeles using Automated License Plate Recognition ("ALPR") technology. The Los Angeles Police Department ("LAPD") has 242 mobile ALPR cameras mounted in patrol cars. (Order at 13.) The ALPR cameras photograph the license plates of other cars on the roads and automatically compare them to "hot lists." (Order at 5.) If the scanned plate matches an entry on a "hot list," which can include AMBER Alerts, sex offenders, and stolen vehicles, the ALPR system user is alerted and may stop the vehicle. (*Id.*) Petitioners'

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[2] While agencies may adopt regulations regarding procedures for making records and information available to the public, such regulations must be consistent with the PRA, and "reflect the intention of the Legislature to make the records accessible to the public." (Gov't Code, § 6253(a)–(b).)

[3] This exemption is not a prohibition on the disclosure of such records. To the contrary, state and local law enforcement agencies may make such records available to the public. (*See Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656 (stating that the "14 categories of disclosure-exempt material" identified in section 6254 "do not prevent an agency from opening its records to public inspection (unless some other statute forbids it"; the exemptions "are permissive, not mandatory; they permit nondisclosure but do not prohibit disclosure").)

request for ALPR data was denied in its entirety. Real Parties in Interest contend that all the ALPR data sought by Petitioners is exempt from disclosure under section 6254(f) as a "record of investigation," regardless of whether it matches an entry on a "hot list." (County of Los Angeles, Opp. to Pet. for Writ of Mandate, 7.)

The Superior Court properly rejected the assertion that the ALPR data is an "investigatory file." (Order at 10; see *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440 ("*Deukmejian*"); *Uribe v. Howie* (1971) 19 Cal.App.3d 194 ("*Uribe*").) It erred, however, in holding that all the ALPR data sought by Petitioners are "records of investigations," and thus exempt from the PRA's disclosure requirements. (Order at 13–14.) The Superior Court's incredibly "broad" interpretation of the scope and purported "nature" of the investigatory records exemption under section 6254(f) violates the PRA and California's Constitution. (*Id.*)

The California Constitution requires that the "investigatory records" exemption be interpreted narrowly. In 2004, California voters approved Proposition 59, enshrining the public's right of access in California's Constitution, and mandating—as a matter of state constitutional law—that access to government information afforded under the PRA be construed "broadly." (*See* Cal. Const., art. I, § 3 subd. (b)(2).) Likewise, an exemption under the PRA must be "narrowly construed if it limits the right of access." (*Id.*) California appellate courts have viewed that constitutional

amendment as an "endorse[ment]" of the strong "policy of transparency" underpinning the PRA. (*ACLU, supra*, 202 Cal.App.4th at p. 67 n.2.)

Section 6254(f) provides that the "records of investigation" of a local police force may be withheld from disclosure. The statute does not define "records of investigation," but the California Supreme Court has previously held that the "records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred." (*Haynie v. Superior Ct.* (2001) 26 Cal.4th 1061, 1071 ("*Haynie*").) *Haynie* distinguished these exempt records from "inquiries of citizens for purposes related to crime prevention and public safety that are unrelated to either civil or criminal investigations," which must be disclosed. (*Ibid.*) In repudiating the notion that a record may be exempt from disclosure simply because it is related to "crime prevention and public safety," the Supreme Court in *Haynie* recognized that "to shield everything law enforcement officers do from disclosure" would defeat the purpose of the PRA. (*Ibid.*)

Despite the Supreme Court's decision in *Haynie*, the Real Parties in Interest argue that the definition of a "record of investigation" for purposes of section 6254(f) "make[s] no distinctions between inquiries undertaken to investigate a specific complaint . . . or simply observing public places to make sure no crime occurs within the officer's view." (Cty. of Los Angeles, Opp. to Pet., 7.) Yet "[o]bserving public places to make sure no crime

occurs" is not an investigation of a past or present crime. It is a form of crime prevention and, thus, under *Haynie*, records of these "observations" are not exempt from disclosure under the PRA.

Caselaw preceding *Haynie* also supports a narrow construction of section 6254(f). In *Uribe*, the Court of Appeal, Fourth Appellate District, examined the exemption for "investigatory files." (*Uribe*, *supra*, 19 Cal. App.3d at pp. 212–13.) The *Uribe* court concluded that under section 6254(f), investigatory files could be exempt from disclosure "only when the prospect of enforcement proceedings is concrete and definite." (*Id.* at p. 212.) Although the investigatory file exemption is distinct from the investigatory records exemption, the logic of *Uribe* is applicable here; *Uribe* counseled that section 6254(f) should not be read so as "to create a virtual carte blanche for the denial of public access to public records," because this perverse result "could not have been the intent of the Legislature." (*Id.* at p. 213.)

Eleven years later, the California Supreme Court rejected a similarly expansive reading of the "intelligence information" exemption in section 6254(f). (*Deukmejian*, *supra*, 32 Cal.3d at p. 449.) In *Deukmejian*, the Supreme Court rejected a reading of section 6254(f) that would exempt "all information which is reasonably related to criminal activity," reasoning that such a broad interpretation would "effectively exclude the law enforcement function of state and local governments from any public scrutiny under the

California Act, a result inconsistent with its fundamental purpose." (*Id.*, quotation marks omitted.)

Here, the Superior Court erred in concluding that the ALPR data sought by Petitioners is exempt from disclosure as a record of investigation because it is collected while law enforcement is purportedly "looking for stolen cars and other evidence of crime." (Order at 13.) *Haynie*, *Deukmejian*, and *Uribe* all make clear that an expansive reading of 6254(f) conflicts with legislative intent and the purpose of the PRA. Moreover, the California Constitution obligates courts to "construe narrowly any statute limiting the people's right of access to public records." (*International Federation of Professional & Technical Engineers, Local 21, AFL–CIO v. Superior Court* (2007) 42 Cal.4th 319, 348 (conc. & dis. opn of Kennard, J).) But the Real Parties in Interest urge, and the Superior Court accepted, use of a "broad" definition of "investigation" for purposes of determining whether the records at issue are exempt from disclosure. (Cty. of Los Angeles, Opp. to Pet., 8.) If the definition of "investigation" is read to include "looking for stolen cars and other evidence of crime," on a city-or county-wide basis, nearly every record in the possession of the police would constitute a "record of investigation." This definition of "investigation" is far too vague and expansive to pass constitutional muster. In order to construe the exemption under section 6254(f) "narrowly," as required by the Cali-

fornia Constitution, the definition of a "record of investigation" must also be narrow.

The Superior Court compounded this error when it held that even data collected *randomly* and not clearly in connection with *any* investigation could be exempt because of "the broad nature of the exemption for law enforcement investigatory records." (Order at 15.) In support of this proposition, the Superior Court cited a 1993 case characterizing the exemption in section 6254(f) as "broad." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 348.) But the plain language of the 2004 amendment to the California Constitution requires a narrow reading of any exemption that would limit public access. (*See* Cal. Const., art. I, § 3 subd. (b)(2).)

The statutory language of section 6254(f)(2) also supports a definition of "investigation" that is far narrower than the one urged by Real Parties in Interest. Under that provision, state and local law enforcement agencies must make public, among other things, the following information about records exempt from disclosure under section 6254(f)—"except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation":

> [T]o the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circum-

> stances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. . . .

(Gov't Code, § 6254(f)(2).)

A reasonable reading of the definition of "investigation" would take into account the specific characteristics of an "investigation" that section 6254(f)(2) outlines. Specifically, section 6254(f)(2) envisions "the successful completion of the investigation or a related investigation," an objective that cannot reasonably be fulfilled if the definition of "investigation" encompasses ongoing, general efforts by law enforcement to "look[] for stolen cars and other evidence of crime." Additionally, section 6254(f)(2) lists specific information about "crimes alleged or committed or any other incident investigated," supporting an interpretation of the term "investigation" linked to a specific crime or reported incident that has already occurred. Applying the interpretive canon of *noscitur a sociis*, "the meaning of a word may be enlarged or restrained by reference to the object of the whole clause in which it is used;"[4] any interpretation of section 6254 should limit the definition of "investigation" to an inquiry about specific crimes alleged or committed that is capable of being completed. Such a reading would be consistent with both the purpose of the PRA and the constitutional "rule of

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[4] (*Dyna-Med, Inc. v. Fair Employment & Housing Com.*, 43 Cal.3d 1379, 1391 n.14.)

interpretation" specific to the interpretation of the PRA's exemptions. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166.)

Likewise, the plain language of the exemption requires that the requested records be "records of investigation" *at the time they are requested.* As the Superior Court found, "ALPR's immediate investigative use is its ability to almost immediately identify vehicles that are stolen, wanted, or associated with an AMBER Alert." (Order at 6.) Because ALPR data can also provide a historical record of a given vehicle's location over a long period of time, however, Real Parties in Interest argue that the data has potential, future investigative value as well. (*See* City of Los Angeles, Opp. to Pet., 14.) Indeed, Real Parties in Interest assert that ALPR data is "only used *prospectively* for criminal investigation." (Cty. of Los Angeles, Opp. to Pet., 10.) But under California law, law enforcement's bare assertion that information may have potential, inchoate future value in some future investigation does not turn that information into a "record of investigation" at the time the request is made. The plain language of the exemption compels the reading that an entry in a database cannot be a "record of investigation" if that investigation does not yet exist. The PRA does not exempt from disclosure records that may potentially be useful to an investigation months, or even years, after they are requested.

As a result, the trial court's ruling that the PRA exempts all the ALPR data from disclosure because of "the broad nature of the exemption

for law enforcement investigatory records" is erroneous. (Order at 14.) In order for a record to be withheld under section 6254(f)'s "investigatory records" exemption, an investigation must exist at the time the records are requested, and the records must relate to an investigation into a specific violation or the "commission of the violation and its agency." (*Haynie*, *supra*, 26 Cal.4th at p. 1061.) To expand the definition of "investigation" as the Real Parties in Interest urge this Court to do would allow law enforcement to assert vague and illusory objectives to shield information from public view and effectively subvert the presumption of openness that the PRA codifies. A reading of section 6254(f) that allows all records related to "crime prevention" to be exempt from disclosure is in direct conflict with the constitutional and statutory requirement that exemptions to the PRA's disclosure requirements be construed narrowly.

B. The public interest served by disclosure outweighs any interest in nondisclosure.

1. The information that Real Parties in Interest assert as a basis for withholding ALPR data is public under authority cited by the Real Parties in Interest.

The Superior Court also held that the ALPR records are exempt from disclosure under section 6255, which exempts records if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure." (Gov't Code, § 6255(a)). It concluded that while the public had an interest in both disclosure and nondisclosure, "a balancing

of the public interests works in favor of non-disclosure." (Order at 17.) In support of that conclusion, the Superior Court reasoned that "ALPR data can be used to follow the deployment and patrol patterns of law enforcement." (Order at 14.) Thus, even if records relevant to ongoing investigations were redacted, it determined, revealing patrol patterns could "compromise ongoing investigations." (Order at 17.)

Given that Real Parties in Interest repeatedly emphasize in their briefing to this Court that drivers have no expectation of privacy in license plates or vehicle exteriors located in plain view, their contention that the public interest weighs against the disclosure of information that could reveal "patrolling patterns" of marked police cars is surprising. (Cty. of Los Angeles, Opp. to Pet., 22.) The same logic that Real Parties in Interest apply to argue that the collection of ALPR data is not a Fourth Amendment violation undercuts the argument that information concerning where and when marked police vehicles patrol public streets needs to be concealed. Indeed, neither Real Parties in Interest nor the Superior Court cite any authority for maintaining the secrecy of "patrolling patterns." The Superior Court thus erred in considering this a factor weighing against disclosure.

2. Construing "investigatory records" under section 6254(f) to exempt all ALPR data from disclosure will impair the ability of the press to keep the public informed about the conduct of government.

The public interest weighs in favor of disclosure because broadly limiting the ability of the press and the public to access data collected by law enforcement under the PRA would have a drastic, damaging effect on the ability of the press to perform its fundamental role of keeping citizens informed about the actions of their government. Reporters in California, like reporters around the nation, routinely rely on freedom of information laws like the PRA to access governmental records and information in order to bring important issues to the attention of the public. Journalists are increasingly relying on freedom of information laws to gain access to large datasets in order to identify trends and systemic issues. This is particularly true when it comes to reporting on the activities of law enforcement. Withholding data like ALPR records would significantly impede California journalists' ability to report on important matters of public concern.

As the Petition details, extensive reporting on ALPR data has provoked public debate nationwide, and prompted some jurisdictions to establish new or different rules governing the retention of such data. (Pet. for Writ of Mandate, 37–38.) For instance, in 2013, Cyrus Farivar, a journalist in the Bay Area, filed PRA requests in multiple counties for the ALPR data pertaining to his own vehicle. (Cyrus Farivar, *The cops are tracking my*

car—and yours, Ars Technica (July 18, 2013, 9:00 A.M.), http://bit.ly/1AgwGbR.) The responses to the fourteen requests Farivar filed varied widely, from responses that a county did not possess ALPR readers to claims of exemption under section 6254(f). Farivar reported that the LAPD and Los Angeles County Sheriff's Department—Real Parties in Interest in this case—claimed the requested records were exempt. (*Id.*) Farivar wrote, "It's a bit hard to understand how as a law-abiding citizen, asking for my own data constitutes either an 'investigation,' a 'record of intelligence information or security procedure,' or an 'investigatory or security file.'" (*Id.*) Just weeks ago, the Oakland Police Department provided eight days of ALPR data in response to another PRA request by EFF. (Jeremy Gillula and Dave Maass, *What You Can Learn from Oakland's Raw ALPR Data*, Electronic Frontier Foundation (Jan. 21, 2015), http://bit.ly/1BIowul.) Reporters analyzing the data noted that vehicles were more likely to be photographed in low-income areas. (Darwin Bond-Graham, *Drive a Car in Oakland? Your Movements Are Being Tracked by the Oakland Police, Especially if You're in a Low-Income Area*, East Bay Express (Jan. 23, 2015), http://bit.ly/1II1w2w.) The disclosures have also prompted additional discussion of the need for appropriate retention and dissemination policies relating to ALPR data. (*See, e.g.*, Colin Wood, *How Are Police Departments Using License Plate Reader Data?* Government Technology (Jan. 23, 2015), http://bit.ly/1DdKFzP.)

The implications of this case go beyond the potential for law enforcement to abuse any one tool or method, however. Exempting records not associated with any specific investigation from disclosure as "investigative records" would work an unwarranted expansion of that exemption that could encourage law enforcement agencies to refuse disclosure in other contexts as well. California journalists rely on the PRA to gain access to public records and information in connection with day-to-day reporting, as well as more in-depth and investigative stories. Because journalists rely on access to law enforcement records under the PRA in order to report and write news stories on important issues of public concern, the public interest weighs in favor of disclosure.

Petitioners correctly emphasize news stories showing the potential for abuse of ALPR and other surveillance technologies by Real Parties in Interest. (Pet.'s Reply Br. at 18–21.) Yet, as illustrated by several other recent reports by members of the California and national media, there are numerous examples of powerful, important news stories that were possible only because of journalists' access to large datasets maintained by state and local law enforcement agencies.

In August 2014, the *Los Angeles Times* reported that the LAPD had misclassified over 1,000 violent crimes over a one year period between 2012 and 2013, resulting in inaccurate information being presented to the public regarding the crime rate in Los Angeles. (Ben Poston & Joel Rubin,

LAPD Misclassified Nearly 1,200 Violent Crimes as Minor Offenses, L.A. Times (Aug. 9, 2014, 6:04 PM), http://lat.ms/1lT9MBW.) The investigative journalism that exposed these errors was only possible because of "the California Public Records Act, [through which the *Los Angeles Times*] obtained computerized crime data for more than 94,000 incidents recorded by the Los Angeles Police Department in the year ending Sept. 30, 2013." (Ben Poston & Joel Rubin, *LAPD's misclassified incidents: How we reported this story*, L.A. Times, (Aug. 9, 2014, 6:04 PM), http://lat.ms/1ul6ucf.) It was only by examining the information that they obtained through the PRA that the journalists were able to determine that there had been widespread misclassification of violent crimes. (*Id.*) After the reporters questioned the LAPD about the underreporting of violent crimes, the police department took steps to improve the accuracy of its reporting. (Poston & Rubin, *LAPD Misclassified Nearly 1,200 Violent Crimes as Minor Offenses*, *supra*.)

The Los Angeles school police also recently came under public scrutiny as a result of data obtained under the PRA that was analyzed and reported on by researchers and journalists. This data, "obtained as a result of a public records request," showed that the school police issued more than 33,500 court summonses to youths between 10 and 18 over a three year period from 2009-2011. (Susan Ferriss, *School discipline debate reignited by new Los Angeles Data*, The Center for Public Integrity, (Apr. 24, 2012,

3:56 PM), http://bit.ly/1osjI19; Vanessa Romo, *LA School Police ticket more than 33,000 students, many are middle schoolers*, 89.3 KPCC Southern California Public Radio, (April 27, 2012), http://bit.ly/1qEDkn7.) Almost a quarter of those citations were issued to middle school students, with some being issued to students as young as seven years old. The data obtained through the PRA request also showed that black and Latino students were given a disproportionate number of tickets compared to white students, and that the citations were concentrated in low-income areas. (Susan Ferriss, *Los Angeles school police citations draw federal scrutiny*, The Center for Public Integrity, (May 21, 2012, 6:00 AM), http://bit.ly/1lTalf9.)

The information that was obtained highlighted a trend of police and court involvement in minor events that used to be handled by school officials: an incident as minor as a school ground scuffle over a basketball game resulted in a 12 year old being arrested and taken away in handcuffs to be fingerprinted and photographed at the local police station. (*Id.*) After the extent of police involvement was revealed, students and parents held protests, eventually leading to discussions between the police and the community. (*See id.*) That information has become an important source of facts in an ongoing conversation that most recently has resulted in Los Angeles school officials deciding to change its policies. (*See* Jennifer Medina, *Los Angeles to Reduce Arrest Rate in Schools*, The New York Times, (Aug.

18, 2014), http://nyti.ms/1wfTJ1S.) Under the new policy, law enforcement will no longer give citations for minor incidents. (*See id.*)

The *Orange County Register* obtained records revealing that a program allowing police to seize money and assets from people suspected of criminal activity had generated $688 million for California police between 2000 and 2013. (Tony Saavedra and Keegan Kyle, *Watchdog: Police face new rules when seizing money from drug suspects*, Orange County Register (Jan. 20, 2015), http://bit.ly/1DuUkQn.) Under the program, the police could take money and property from those suspected of drug activity, even if they were never charged or convicted of a crime. (*Id.*) According to forfeiture documents obtained by the *Register* under the PRA, "Orange County's drug task force received 8 percent of all California agencies, $53 million during the 13-year-period. The Anaheim Police Department alone received 3 percent, with $21.7 million." (*Id.*) Orange County spent $1 million of the amount collected on "informants and drug buys." (*Id.*) Officials with the drug task force argued that the seizures were not made randomly, but "as a result of investigations." (*Id.*) The documents released under the PRA also showed that, under the program, police in various jurisdictions would pull over cars under surveillance "under the guise of a traffic stop," then take "large amounts of money" from the cars, even if no drugs were present. (*Id.*)

Another California media organization recently obtained and analyzed information it obtained under the PRA to report on the relationship between police stops in San Francisco and race. "[I]n response to a public records request," a reporter was able to obtain information on the race of persons stopped by the San Francisco police from January to December of 2013, a 12 month period. (Vivian Ho, *Police rarely analyze, share racial data on stops*, SFGate (Aug. 19, 2014, 8:04 AM), http://bit.ly/1nL9jgO.) The story showed that while San Francisco police were collecting stop data, they did not have the resources to analyze it. *Id.* It was up to the reporter who requested the data to scrutinize the numbers and inform the public that African American drivers made up 17% of stops, while only comprising 6% of the city's population. *Id.* Without the reporter's PRA request, and her ability to obtain a year's worth of data in response to that request, the analysis of stops conducted by the San Francisco police department would not have been possible.

If law enforcement agencies are permitted to withhold documents related to crime prevention or evidence gathering under the PRA, many important stories like these will not be possible. This would undercut the entire rationale of the PRA: ensuring "the accountability of government to the public." (*Freedom Newspapers*, *supra*, 158 Cal.App.3d at p. 901.)

III. CONCLUSION

For the reasons set forth herein, *amici* respectfully urge this Court to grant the relief requested by Petitioners.

DATED: February 10, 2015

Respectfully submitted,

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, we hereby certify that this brief contains 4,726 words, including footnotes. In making this certification, I have relied on the word count function of the computer program used to prepare the brief.

DATED: February 10, 2015

Respectfully submitted,

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

By: _____
Katie Townsend

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I am employed by the Reporters Committee for Freedom of the Press, and am a member of the bar of this Court. My business address is 1156 15th St. NW, Suite 1250, Washington, D.C., 20005. I am over the age of 18, and not a party to the above-captioned action.

On February 10, 2015 I served the foregoing document entitled

APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 4 MEDIA ORGANIZATIONS FOR PERMISSION TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS AND *AMICI CURIAE* BRIEF

on the following parties by placing true and correct copies thereof in sealed envelopes with postage fully prepaid, in the United States mail at Washington, D.C., addressed as follows:

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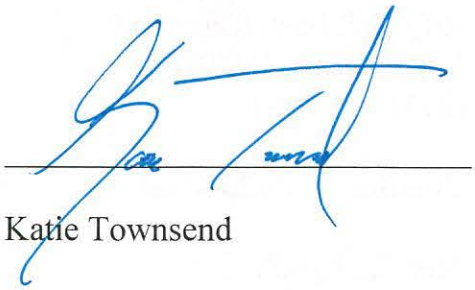
Service of the **APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 4 MEDIA ORGANIZATIONS FOR PERMISSION TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS AND *AMICI CURIAE* BRIEF** was also made on the California Supreme Court on this date in accordance with Cal. Rules of Court, rule 8.212(c)(2)(A) by filing an electronic copy thereof on the following website:

http://www.courts.ca.gov/2dca-efile.htm

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 10, 2015



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