



VIA EMAIL

Attorney General Rob Bonta
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January 31, 2024

Re: Response to the Office of the Attorney General's Information Bulletin on the Sharing of ALPR Information by California Law Enforcement Agencies

Dear Attorney General Bonta,

We are writing to commend your recent Information Bulletin¹ clarifying that California Civil Code § 1798.90.55(b) (also known as "SB 34") "does not permit California [Law Enforcement Agencies ("LEAs")] to share [Automated License Plate Reader ("ALPR")] information with private entities or out-of-state and federal agencies."

Unfortunately, we have identified dozens of California LEAs that continue to share ALPR information with out-of-state agencies in violation of the law, including several that have expressly rejected the law as clarified by the Attorney General's Office. We have provided a list of these agencies in Section II below. We urge your office to explore all potential avenues to ensure that state and local LEAs immediately comply with the Information Bulletin.

The Electronic Frontier Foundation ("EFF"), American Civil Liberties Union of Northern California, and American Civil Liberties Union of Southern California (collectively here, "ACLU") have advocated for California LEAs to halt the illegal practice of sharing ALPR information out of state for years. We are deeply concerned that the information could be shared with agencies that do not respect California's commitment to civil rights and liberties and are not covered by California's privacy protections.² We highlight our key policy concerns with the use

¹ OAG Information Bulletin, *California Automated License Plate Reader Data Guidance*, No. 2023-DLE-06 (Nov. 1, 2023) <https://oag.ca.gov/system/files/media/2023-DLE-06.pdf>.

² See, e.g., *Lagleva v. Doyle (License Plate Surveillance)*, AMERICAN CIVIL LIBERTIES UNION (Jun. 2, 2022) <https://www.aclunc.org/our-work/legal-docket/lagleva-v-doyle-license-plate-surveillance>; *Civil Liberties Groups Demand California Police Stop Sharing Drivers' Location Data With Police In Anti-Abortion States*, ELECTRONIC FRONTIER FOUNDATION (May 25, 2023) <https://www.eff.org/press/releases/civil-liberties-groups-demand-california-police-stop-sharing-drivers-location-data>.

and sharing of ALPR information in Section I of this letter.

Finally, we understand that your office received a letter from three California law enforcement associations that put forth an alternative interpretation of SB 34. We strongly urge your office to reject that proposed interpretation and have outlined the compelling legal arguments in favor of your office’s existing interpretation in Section III below.

I. EFF and ACLU Remain Committed to Stopping the Illegal Sharing of ALPR Information with Out-of-State and Federal Agencies.

ALPR technology is a powerful surveillance system that can be used to invade the privacy of individuals and violate the rights of entire communities. ALPR systems collect and store location information about drivers that can be built into a database that reveals sensitive details about where individuals work, live, associate, worship, seek medical care, and travel.³ As with other surveillance technologies, police often disproportionately deploy license plate readers in communities experiencing poverty and historically overpoliced communities of color, regardless of crime rates.⁴ ALPR information has also been shared with immigration authorities such as Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”) to identify, detain, and deport immigrant community members.⁵

Further, since the Supreme Court overturned⁶ *Roe v. Wade*,⁷ ALPR information is even more vulnerable to exploitation against those seeking, providing, and facilitating access to abortion.⁸ In anti-abortion jurisdictions, driver location information collected by California-based ALPRs can be used by law enforcement agencies to closely monitor abortion clinics, the vehicles seen around them, and the movements of abortion seekers and providers.⁹ Sharing ALPR information also threatens those obtaining or providing abortions in California, given anti-

³ See, e.g., *Automatic License Plate Readers*, ELECTRONIC FRONTIER FOUNDATION (Mar. 29, 2023) <https://www.eff.org/sls/tech/automated-license-plate-readers>; *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans’ Movements*, AMERICAN CIVIL LIBERTIES UNION (July 2013) <https://www.aclu.org/issues/privacy-technology/you-are-being-tracked>.

⁴ Dave Maass and Jeremy Gillula, *What You Can Learn from Oakland’s Raw ALPR Data*, ELECTRONIC FRONTIER FOUNDATION (Jan. 21, 2015) <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>; Barton Gellman and Sam Adler-Bell, *The Disparate Impact of Surveillance*, THE CENTURY FOUNDATION (Dec. 21, 2017) <https://production-tcf.imgix.net/app/uploads/2017/12/03151009/the-disparate-impact-of-surveillance.pdf>; see also, e.g., Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, THE ATLANTIC (Apr. 22, 2016) <https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/> (summarizing data indicating that Oakland Police Department deployed ALPRs “disproportionately often in low-income areas and in neighborhoods with high concentrations of African-American and Latino residents”).

⁵ Saira Hussain and Adam Schwartz, *EFF Files New Lawsuit Against California Sheriff for Sharing ALPR Data with ICE and CBP*, ELECTRONIC FRONTIER FOUNDATION (Oct. 19, 2021) <https://www.eff.org/deeplinks/2021/10/eff-files-new-lawsuit-against-california-sheriff-sharing-alpr-data-ice-and-cbp>.

⁶ See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

⁷ 410 U.S. 113 (1972).

⁸ Johana Bhuiyan, *How expanding web of license plate readers could be ‘weaponized’ against abortion*, THE GUARDIAN (Oct. 6, 2022) <https://www.theguardian.com/world/2022/oct/06/how-expanding-web-of-licenseplate-readers-could-be-weaponized-against-abortion>.

⁹ Dave Maass, *Automated License Plate Readers Threaten Abortion Access. Here’s How Policymakers Can Mitigate the Risk*, ELECTRONIC FRONTIER FOUNDATION (Sep. 28, 2022) <https://www.eff.org/deeplinks/2022/09/automated-license-plate-readers-threaten-abortion-access-heres-howpolicymakers>.

abortion states' plans to criminalize and prosecute those who seek or assist in out-of-state abortions.¹⁰ The same risks are true for people seeking gender-affirming care in California, given some states' plans to criminalize and prosecute those who go out of state to receive this medical care.¹¹

EFF and ACLU are committed to stopping the sharing of ALPR information with out-of-state and federal agencies and have engaged in several initiatives to achieve this aim. In 2021, we sued the Marin County Sheriff's Office for violating SB 34 upon discovering that it was sharing ALPR information with hundreds of out-of-state and federal agencies.¹² Marin County settled in 2022 and agreed to permanently stop sharing license plate and location information with agencies outside of California, in compliance with SB 34.¹³

A months-long investigation by EFF revealed that over 70 California LEAs were sharing ALPR information with out-of-state agencies.¹⁴ EFF and ACLU notified 73 California LEAs across 22 counties that they were violating SB 34 as a result of this illegal sharing of ALPR information and demanded that they end their practices of doing so.¹⁵ We also gave your office notice of these letters. While many agencies responded that they would modify their sharing practices pursuant to SB 34, many other agencies either refused to do so or failed to respond altogether.

II. Despite the Attorney General's Information Bulletin, Many California Police Agencies Still Refuse to Change their ALPR Information Sharing Practices.

After the promulgation of your SB 34 Information Bulletin, we followed up with noncompliant agencies in receipt of our earlier letters to reiterate that their sharing practices violate the law, and that they were acting in direct contradiction to the official position of the Attorney General's Office. Many agencies have still failed to comply with the law.

¹⁰ See, e.g., Caroline Kitchener and Devlin Barrett, *Antiabortion lawmakers want to block patients from crossing state lines*, WASHINGTON POST (June 30, 2022) <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/>; *Idaho Governor Signs 'Abortion Trafficking' Bill Into Law*, ASSOCIATED PRESS (Apr. 6, 2023) <https://apnews.com/article/idaho-abortion-minors-criminalization-b8fb4b6feb9b520d63f75432a1219588>; Josh Moon, *Alabama AG: state may prosecute those who assist in out-of-state abortions*, ALABAMA POLITICAL REPORTER (Sep. 15, 2022) <https://www.alreporter.com/2022/09/15/alabama-ag-state-may-prosecute-those-who-assist-in-out-of-state-abortions/>.

¹¹ See, e.g., Maya Yang, *Idaho bill that criminalizes medical trans youth treatments passes house*, THE GUARDIAN (Mar. 10, 2022) <https://www.theguardian.com/us-news/2022/mar/10/idaho-bill-trans-youth-treatment-ban-passes-house>.

¹² *Lagleva v. Doyle (License Plate Surveillance)*, AMERICAN CIVIL LIBERTIES UNION (Jun. 2, 2022) <https://www.aclunc.org/our-work/legal-docket/lagleva-v-doyle-license-plate-surveillance>.

¹³ See *id.*

¹⁴ *Civil Liberties Groups Demand California Police Stop Sharing Drivers' Location Data With Police In Anti-Abortion States*, ELECTRONIC FRONTIER FOUNDATION (May 25, 2023) <https://www.eff.org/press/releases/civil-liberties-groups-demand-california-police-stop-sharing-drivers-location-data>.

¹⁵ See *id.*

The following agencies have either refused to stop sharing ALPR information with other states' agencies, or failed to respond to our requests:

- Antioch Police Department
- Buena Park Police Department
- Burbank Police Department
- Chino Police Department
- Cypress Police Department
- Desert Hot Springs Police Department
- El Centro Police Department
- El Dorado County Sheriff's Office
- Fontana Police Department
- Hemet Police Department
- Hercules Police Department
- Imperial County Sheriff's Office
- Imperial Police Department
- La Habra Police Department
- La Palma Police Department
- Laguna Beach Police Department
- Madera Police Department
- Menifee Police Department
- Merced Police Department
- Monterey Park Police Department
- Oakley Police Department
- Ontario Police Department
- Orange Police Department
- Palos Verdes Estates Police Department
- Pasadena Police Department
- Pittsburgh Police Department
- Riverside County Sheriff's Department
- Sacramento County Sheriff's Office
- San Bernadino Police Department
- San Bernadino County Sheriff's Department
- Stockton Police Department
- Tracy Police Department
- Tustin Police Department
- Westmorland Police Department
- Westminster Police Department

The following agencies have stated that they intend to stop sharing ALPR information with other states' agencies, but have not yet verified doing so:

- Brawley Police Department
- Garden Grove Police Department
- Hermosa Beach Police Department
- Novato Police Department
- Oxnard Police Department

Finally, the following agencies have verified that they do not share ALPR information with other states' agencies (though some may still be sharing with federal agencies):

- Alhambra Police Department
- Arcadia Police Department
- Beaumont Police Department
- Brentwood Police Department
- Clovis Police Department
- Contra Costa Sheriff's Office
- Downey Police Department
- Escondido Police Department
- Folsom Police Department
- Fountain Valley Police Department
- Gilroy Police Department
- Humboldt County Sheriff's Office
- Kern County Sheriff's Office
- Kings County Sheriff's Office
- Lincoln Police Department
- Lodi Police Department
- Manteca Police Department
- Montebello Police Department
- Murietta Police Department
- Orange County Sheriff's Office
- Palm Springs Police Department
- Rio Vista Police Department
- Ripon Police Department
- San Joaquin County Sheriff's Office
- San Pablo Police Department
- San Rafael Police Department
- San Ramon Police Department
- Seal Beach Police Department
- Simi Valley Police Department

- Torrance Police Department
- Walnut Creek Police Department
- West Covina Police Department
- Woodland Police Department

The above summaries of agency compliance with your SB 34 Bulletin only cover the 73 agencies that EFF and ACLU focused on earlier this year for purposes of our 2023 noncompliance letter and are based on information received from those agencies. Based on this sample, we think it is very likely other agencies in the state remain out of compliance with the law.

III. The Interpretation From Certain Law Enforcement Associations Lacks Merit.

We understand that on November 20, 2023, your office received a response to your Bulletin from three California law enforcement associations, respectively representing sheriffs, police chiefs, and peace officers.¹⁶ We urge you to reject their crabbed interpretation of SB 34’s plain statutory text.

According to the California Supreme Court:

Our role in interpreting statutes is to ascertain and effectuate the intended legislative purpose. We begin with the text, construing words in their broader statutory context and, where possible, harmonizing provisions concerning the same subject. If this contextual reading of the statute’s language reveals no ambiguity, we need not refer to extrinsic sources.

Dr. Leevil, LLC v. Westlake Health Care Ctr., 6 Cal. 5th 474, 478 (2018) (cleaned up).

Here, the text and context of SB 34 are clear: police in California generally cannot share their ALPR data with out-of-state entities.

SB 34 defines a “public agency” as “[i] the state, [ii] any city, county, or city and county, or [iii] any agency or political subdivision of the state or a city, county, or city and county, including, but not limited to, a law enforcement agency.” Cal. Civil Code 1798.90.5(f). This plainly means state and local government here in California. The first clause, “the state,” is singular, and this can only mean the State of California. The second clause refers to our state’s local governments. The third clause refers to agencies (including law enforcement) of our state and local governments.

This plain textual reading of “public agency” at 5(f) is buttressed by the statutory context. SB 34 regulates how entities, including governments, process ALPR data. *See, e.g.*, Cal. Civil Code 1798.51(a) & .53(a) (requiring reasonable security procedures); *id.* at .51(b) & .53(b)

¹⁶ <https://www.eff.org/document/20231120letter-police-associations-california-attorney-general>

(requiring a usage and privacy policy); *id.* at .52(b) (limiting use to purposes in such policy); *id.* at .52(a) (requiring records of access); *id.* at .55(a) (requiring public comment before processing). The California Legislature could not have meant to impose these regulations on state and local governments *outside* California, over which California generally has no authority. Indeed, under the “presumption against extraterritorial applications,” California courts “presume the Legislature did not intend a statute to be operative, with respect to occurrences outside the state ...” *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207 (2011) (cleaned up).

SB 34 next imposes the following data processing limit: “A public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law.” Cal. Civil Code 1798.90.55(b). This plain text is a rule (no sharing ALPR information) with two focused exceptions: sharing is allowed (1) “to another public agency,” or (2) “as otherwise permitted by law.” As explained above, the statutory term “public agency” is limited to California’s state and local government. In Section 55(b), this term is both the subject of the sentence (which entities face sharing limits) and the object (which entities may be shared with). This term must have the same meaning not just in this sentence, but throughout SB 34. *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 979 (1999).

Thus, state and local police in California cannot share their ALPR information with out-of-state police, unless such sharing is “otherwise permitted by law.” This would include, for example, a warrant for ALPR information based on probable cause and particularity. This would not include, as here, dragnet sharing through commercial cloud storage systems.

Given SB 34’s plain text and context, there is no need to examine extrinsic sources. *Dr. Leevil, LLC*, 6 Cal. 5th at 478. If a court nonetheless did so, it would conclude that SB 34’s legislative history reinforces the foregoing. The Bill Analysis for the Assembly Committee on Privacy and Consumer Protection found that vendors like Vigilant Solutions provide thousands of police departments with access to billions of ALPR scans, and quoted as follows a 2009 report by the International Association of Chiefs of Police: “as law enforcement agencies improve their information sharing capabilities, the potential to monitor where and when a particular vehicle has traveled is enhanced,” which “could implicate First Amendment concerns.”¹⁷ Likewise, the Bill Analysis for the Senate Judiciary Committee found that “the accumulation of ALPR locational information into databases that span both time and distance ... threatens to undermine one’s right to privacy,” citing to Justice Sotomayor’s concurring opinion in *United States v. Jones*, 565 U.S. 400 (2012). In other words, the California Legislature intended SB 34 to help solve the problem of dragnet collection and sharing of ALPR data through vendors like Vigilant.

Finally, SB 34 advances sound public policy by banning California’s local and state police from sharing their ALPR data with out-of-state police (unless “otherwise permitted by law”). As explained above, SB 34 places important limits on how California’s state and local police may process ALPR data, but the statute does not place these limits on out-of-state police. Once ALPR data leaves the state, it loses protection. So, the Legislature wisely limited out-of-state sharing.

In sum, the California Department of Justice should stand by its interpretation of SB 34 in

¹⁷ https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB34.

its Bulletin of October 27, 2023. The contrary interpretation of certain police associations lacks merit.

In conclusion, we appreciate your office's statement on SB 34 and your efforts to protect the privacy and civil rights of everyone in California. Nevertheless, it is clear that many LEAs continue to ignore your interpretation of the law by continuing to share ALPR information with out-of-state and federal agencies. This violation of SB 34 will continue to imperil marginalized communities across the country, and abortion seekers, providers, and facilitators will be at greater risk of undue criminalization and prosecution. We urge your office to explore all possible steps to engage non-compliant agencies, including but not limited to those listed above, and encourage them to stop sharing ALPR information with out-of-state and federal LEAs.

If you have any questions, please do not hesitate to reach out to Jennifer Pinsof at ALPR@eff.org.

Sincerely,

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