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JOINT RULES COMMITTEE

June 20, 2019

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The Honorable Rudy Salas
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Re: California Law Enforcement Agencies (Sheriffs, Police, State Agencies)

Dear Chair Salas and Committee Members:

I am writing to respectfully request that the Joint Legislative Audit Committee approve a State audit regarding the extent to which local law enforcement agencies are – or aren't – complying with Senate Bill 34 (2015) regarding automated license plate readers used by law enforcement and data privacy. Although SB 34 became effective on January 1, 2016, many law enforcement agencies across California have not complied with the letter or the spirit of the law, putting undocumented immigrants and other marginalized groups at severe risk of illegal government surveillance. Between 2017 and 2018, the Electronic Frontier Foundation (EFF), ACLU, and the Center for Human Rights and Privacy filed California Public Records Requests with dozens of agencies across the state and identified many deficiencies.

Automated license plate readers (ALPRs) are a form of surveillance technology used by law enforcement and private companies to track the travel patterns of drivers. This technology is comprised of high-speed, computer-controlled camera systems that are typically mounted on street poles, streetlights, highway overpasses, mobile trailers, or attached to police squad cars. ALPRs automatically capture all license plate numbers that come into view, along with the location, date, and time. The data, which includes photographs of the vehicle and sometimes its driver and passengers, is then uploaded to a central server. These databases can be searched to reveal where a vehicle travels, which vehicles have been seen near a particular location, or to produce real-time alerts on the whereabouts of vehicles on watch lists.

ALPR is a form of mass surveillance in the sense that it collects data on every driver, regardless of whether the vehicle is suspected of being connected to a crime. In fact, the California Supreme Court found in 2017 that "The scans are conducted with an expectation that the vast

majority of the data collected will prove irrelevant for law enforcement purposes." Many agencies in California collect tens of millions of license plate scans each year. For example, the Beverly Hills Police Department collected 24.8 million plate scans in 2017, but only .03% of the vehicles were flagged as under investigation at the time of collection. The Sacramento Police Department collected 58.8 million scans in 2017, with only .09% being relevant to a public safety interest at the time of capture.

In aggregate this data has the potential to reveal sensitive information about individuals, such as where they worship, what doctors they visit, and where they sleep at night. While law enforcement no doubt finds this data useful for investigative purposes, this information is easily abused when it is not controlled. Meanwhile, much of the data used by law enforcement is collected by private companies, which is known to then be sold to insurance companies, lenders, and debt collectors with little transparency into how this data may be used.

Responding to concerns about privacy, the California Legislature enacted S.B. 34 in 2015. This measure created some base-level requirements for agencies and private entities that use ALPR, including implementing and publishing usage policies that reflect respect for individuals' privacy and civil liberties. It also requires agencies to maintain detailed logs of when ALPR data is accessed and requires public meetings when government agencies plan to acquire ALPR.

Many agencies that do have policies online have simply uploaded boilerplate policies generated by the company Lexipol. These boilerplate policies serve as an absolute bare minimum level of protection. To make matters worse, some of the boilerplate language does not adequately comply with the statute. As an example, a number of agencies' policies include a boiler plate provision detailing the release and sharing of ALPR data. This provision does not correspond with requirements of 1798.90.51. Furthermore, many agencies that have posted the policies do not follow the policies. Almost all agencies require there be periodic audits of the ALPR usage (a requirement under the law), yet agencies rarely if ever actually conduct such audits. These policies also often require a particular approval process and paper trail for sharing data with other entities.

California Law enforcement agencies are not complying with SB 34's regulations regarding the sharing of such information, in part due to the nature of the database. Section 1798.90.52 lays out the procedures for maintaining who accesses the information as well as guidelines for who is eligible to access such information. Researchers who have filed public records requests have found that agencies routinely share data with hundreds of other agencies without going through the process and without proper safeguards in place to ensure that external agencies abide by the policies approved the originating agency. In some cases, this data may be supplied to agencies with questionable records on civil liberties, including federal agencies such as components of the U.S Department of Homeland Security.

This JLAC request is limited to government agencies using ALPR or accessing ALPR data, and only covers private companies to the extent that they provide ALPR services to law enforcement.

SCOPE OF AUDIT

1. Get an accurate estimate of which law enforcement agencies use automated license plate readers (APLR) and what vendor they use by surveying all California law enforcement agencies.

2. Produce a more extensive audit of the following agencies to determine whether their use of APLR is in accordance with SB 34:

   a. County of Sacramento (Sheriff and Department of Human Assistance)

   b. Los Angeles Police Department

   c. Fresno Police Department

   d. Marin County Sheriff/San Rafael Police Department

      i. Note: This is one ALPR system, but managed by both entities)

   This audit shall include, but not be limited to, examining the following:

   a. Compliance with public hearing requirements in SB 34

   b. Extent to which the agency has proper documentation of access to data within agency, and if that complies with requirements of SB 34

   c. Extent to which the agency has proper documentation of data sharing outside agency, and if that complies with requirements of SB 34

   d. Degree to which the agency policies (if they exist) are followed in practice

   e. Nature of contracts with third party vendors

3. Provide legislative recommendations for further protecting the privacy and civil liberties of California residents.

Sincerely,

Scott Wiener
Senator