



Smile! You're On Camera

Legal Developments and Best Practices for Disclosure and Retention of Public Camera Footage

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Use of AI

- Under Penal Code section 13663, if artificial intelligence is used to summarize camera footage and prepare a report, the report must:
 - Disclose that artificial intelligence was used, and
 - Include a signed statement from an officer that they reviewed the report and verified the facts.

Critical Incident Disclosure

- A video “relates to a critical incident” if it “depicts”:
 - An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or
 - An incident in which the use of force by an officer “resulted in death or great bodily injury.”
 - » Gov. Code § 7923.625

What does “depicts” mean?

- *Sacramento Television Stations Inc. v. Superior Ct.*, ((2025) 111 Cal. App. 5th 984)
- Requester was entitled to receive “(a) *uninterrupted* copies of *all* Roseville PD recordings of the . . . occurrence that were captured during the three-minute window of time when, the City alleges, the entire incident involving firearm discharge by Roseville PD took place, along with (b) ***additional recordings that provide sufficient context to permit an understanding of why the first shot was fired and what happened in the immediate aftermath of the final shot.***”

“Great Bodily Injury”

- The term “great bodily injury” is not defined in the CPRA.
 - The term is defined in the Penal Code for purposes of a sentencing enhancement for felonies that do not have bodily harm as an element.
 - Whether something is “great bodily injury” under the Penal Code is a jury question.

“Great Bodily Injury”

- *City of Fresno v. Superior Court* ((2026) 119 Cal. App 5th 418).

“Because the Legislature chose to use a term with a familiar and well-established legal meaning, in lieu of a different term with its own familiar and well-established meaning, we must conclude the Legislature's choice of term most accurately reflects its intent.”

“Great Bodily Injury”

“As used in this section, ‘great bodily injury’ means a significant or substantial physical injury.”

Pen. Code, § 12022.7 (f)(1)

Scope of Investigative Exemption

- *Castanares v. Superior Court* ((2023) 98 Cal.App.5th 295)
 - Trial court erred in finding that footage from Chula Vista's drone program is categorically exempt under section 7923.600.
 - Instead, the court identified three categories of footage that need to be evaluated differently.

Scope of Investigative Exemption

1. Footage that is “part of an investigatory file”
 - *This footage is categorically exempt from the CPRA*
2. “[I]nstances where officers used a drone to investigate whether a violation of law was occurring or had occurred but did not create a corresponding investigatory file.”
 - *This footage should also be categorically exempt*
3. Other footage, including of using a drone to make a factual inquiry to determine what kind of assistance is required.
 - *This footage is not categorically exempt*

Burden of Production

- In *Castaneres* many hours of drone video footage had to be reviewed and redacted.
- The city argued that due to the cost of production, the public interest in nondisclosure clearly outweighed the public interest in disclosure.
- The Third District held that the city did not meet its burden.
- Takeaway: There is some level of burden that could tip the balance in favor of nondisclosure, but no court has found it yet.

Retention Requirements

- *City of Gilroy v. Superior Court* ((2026) 19 Cal.5th 38)
- “We are unpersuaded that by providing for judicial oversight in the CPRA, the Legislature intended to require the retention of records for three years . . . In essence, the Law Foundation's argument is that the CPRA imposes a records retention requirement because the CPRA allows for litigation. But if litigation is what justifies preservation, then it seems unlikely that the Legislature intended for broad preservation of potentially responsive public documents given that, as the parties here agree, public records requests rarely result in litigation.”

Declaratory Relief

- “[T]he CPRA authorizes declaratory relief that a public agency has violated its provisions even in some circumstances when it is uncontested that there are no existing nonexempt records to disclose.” Declaratory relief was permissible in the *Gilroy* case “because [the declarations] resolve an ongoing dispute about the parties’ respective statutory rights and obligations and thus serve to guide their future conduct.”

Automated License Plate Readers (ALPRs)

- What are ALPRs
- What is required to use them
- What happens when others want access to them
- Penalties and violations for misuse

What are ALPRs?

- “ALPR system” means a searchable computerized database resulting from the operation of one or more mobile or fixed cameras combined with computer algorithms to read and convert images of registration plates and the characters they contain into computer-readable data.
 - Cal. Civ. Code 1798.90.5(d)

Overarching Requirements

- Maintain security procedures and practices
- Implement a usage and privacy policy
- Provide for public comment *before* use
- Operator must maintain a record of access
- Operator must require that ALPR information is only used for authorized purposes
- End user to conduct “routine audits”

Civil Code sec. 1798.90.5 *et seq.*

Security Procedures

- Operational safeguard
 - Training (*required*) and periodic re-training.
 - Limit access and frequently check and correct (Audit).
 - Employ clearly defined **purposes for use and access** and requirements related to documenting.
- Administrative safeguards
 - Multiple supervisor approvals
 - Follow retention policy.
 - Ensure contract with vendor has sufficient safeguards.
- Technical safeguards
 - E.g., two step authentication, pop up notes
- Physical safeguards
 - Use only at certain terminals
 - Locations of the ALPR cameras

Privacy and usage policies

- Policy requirements for both end-users and operators:
 - The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons.
 - The title of the official custodian, or owner, of the ALPR system responsible for implementing this section.
 - A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors.
 - The length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine if and when to destroy retained ALPR information

(Civ. Code 1798.90.51(b)(2); 1798.90.53(b)(2))

Variances in the privacy and usage policies

<u>ALPR operator</u> <u>Civ. Code sec. 1798.90.51(b)(2)</u>	<u>ALPR end-user</u> <u>Civ. Code sec. 1798.90.53(b)(2)</u>
The authorized purposes for using the ALPR system and <u>collecting</u> ALPR information.	The authorized purposes for <u>accessing</u> and using ALPR information.
A description of the job title or other designation of the employees and independent contractors who are authorized to <u>use or access</u> the ALPR system, or to collect ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.	A description of the job title or other designation of the employees and independent contractors who are authorized to <u>access and use</u> ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.
A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.	A description of how the ALPR system will be monitored to ensure the security of the information <u>accessed or used</u> , and compliance with all applicable privacy laws <u>and a process for periodic system audits</u>

Access logging

- Systems must log all access to ALPR data, including the
 - (1) date and time the information is accessed,
 - (2) the license plate number (and other data elements),
 - (3) the user name of the person who accesses the information and the organization with whom the person is affiliated, and
 - (4) the purpose of the query.

Cal. Civ. Code sec. 1798.90.52(a)

Auditing

- Periodic System Audit
 - Not defined – so what to do?
 - What level of auditing is your agency capable of?
 - What level of auditing is your community/council expecting?
 - There is no current authority on how often or what processes is required.
 - Should then be guided by Civ. Code 1798.90.55(b)
 - ensure sharing only to another “public agency” or as permitted by law.

Auditing

- Considerations in creating procedures
 - Who will complete the audit? How often?
 - What to look for in your audits
 - Review of external access
 - Review of internal access
 - Sufficient reasons articulated? Security breaches?
 - Records being purged correctly
 - Final report
 - identify misuses and corrections
 - Celebrate your wins!!!!
 - Proposed updates to policy or procedures
 - when next audit will occur and any special instructions

Retention

- Retention periods vary by agency.
 - Identify a standard retention period
 - 30 days? 1 year?
 - Consider what is actually searched.
 - Identify reasons for keeping longer and when such ALPR information should be destroyed.
 - Investigative material
 - Only keep for as long as reasonably necessary.

Sharing

- Civ. Code 1798.90.55(b)
 - A public agency shall not sell, share, or transfer ALPR information, except to another **public agency**, and only as otherwise permitted by law. For purposes of this section, the provision of data hosting or towing services shall not be considered the sale, sharing, or transferring of ALPR information.
- Public Agency (Civ. Code 1798.90.5(f))
 - means the state, any city, county, or city and county, or 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.

ALPRs and the Public Records Act

- ALPR Information data
 - *American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032
 - Request for all ALPR data from a one-week period. Withheld under “records of investigation” exemption.
 - Held – bulk scans are NOT records of investigation
 - BUT – unaltered data exempt under public interest balancing test due to privacy threats.
 - Court declined to determine whether anonymized data was exempt

ALPRs and the Public Records Act

- Audit Records
 - No duty to create records (Gov. Code 7923.530)
 - No duty to permit public access to [electronic records] records held by any agency to which access is otherwise restricted by statute (Gov. Code, § 7922.580(d)
 - Civ. Code 1798.90.55(b)

ALPRs and the Public Records Act

- Locations of Cameras
 - Some agencies simply disclose.
 - The cameras are in public locations.
 - Some agencies withhold the locations
 - Public interest balancing test (Gov. Code 7922.000)
 - There is public interest in knowing the locations to ensure systems operate effectively and promote public safety
 - Disclosure can undermine effectiveness, enable individuals engaging in unlawful activity to avoid detection, undermining public safety
 - Burden on agency if challenged

ALPRs and Subpoenas

- Subpoenas for ALPR information of specific license plates relevant to litigation.
 - Is person authorized to receive the data requested
 - Civ. Code 1798.90.55(b); DOJ Bulletin
 - Or otherwise authorized by law
 - Is a court order sufficient authorization?

Penalties and violations for misuse

- *Bartholomew v. Parking Concepts, Inc.* (2026)
118 Cal.App.5th 438
 - Private parking garage with automated license plate collection system for parking. Patron sued because operator failed to implement and make public a policy about collection and use of this data.
- *The People of the State of California v. City of El Cajon* (Super. Ct. San Diego County, pending, filed Oct. 3, 2025, Case No. 25CU053437C)
 - DOJ Enforcement – alleges City of El Cajon shared ALPR data with over 100 out of state law enforcement agencies in violation of the ALPR statute.

Penalties and violations for misuse

- *Tan, et al. v. City of San Jose et al.* (Case 5:26-CV-03181-VKD)(Filed 4/15/26)
 - Class Action
- *Secure Justice Inc. v. City of Oakland*
 - Writ of mandate built upon a previous settlement agreement
- Vendor misuse

Best practices

- Hold public meetings
- Establish a well-defined policy
- Verify use and access match policy/law
- Conduct Oversight
- Stay up to date – the public is!
 - Eyesonflock.com; github mapping

Questions?

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