

**STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION**

Katherine Revello and Connecticut Inside Investigator,	)	June 16, 2025
	)	
Complainants,	)	Docket # FIC 2024-0808
	)	
against	)	
	)	
Chief, Police Department, Town of Manchester; Police Department, Town of Manchester; and Town of Manchester,	)	
	)	
Respondents	)	

**COMPLAINANT’S POST-HEARING BRIEF**

**PRELIMINARY STATEMENT**

The Manchester Police Department is watching. Using its fifty-four automated license plate readers (“ALPRs”), it takes a photograph of every vehicle that passes on its city streets, then it uses the ALPR system’s backend—provided by a company called Flock—to extract data from those images. The data extraction process catalogs everything from the vehicle’s make and model to its license plate number and any bumper stickers on the vehicle. Hearing Audio Transcript (“Tr.”) at 6:05-6:35; Compl. Ex. E at 2-3. The ALPRs do not limit themselves to cars, either. They photograph and analyze vehicles of all kinds, from semi trucks to golf carts and bicycles, Tr. at 40:11-40:37; Compl. Ex. E at 3-4, amassing between five and six million lines of data every month, Tr. at 17:37-17:49. The ALPRs capture this data indiscriminately, irrespective of whether the driver is doing anything wrong or is ever suspected of any wrongdoing. Tr. at 1:04:47-1:06:21. In other words, Manchester’s ALPRs create a surveillance dragnet.

The records produced through this dragnet are stored in bulk for thirty days for potential use by the Manchester Police Department (“MPD”) as it goes about its public safety mission. MPD occasionally uses bits of information from the massive database to catch litterers, find missing elders, enforce no-contact orders, and the like. Tr. at 56:53-57:55, 1:06:42-1:08:06. Sometimes, the bulk database is used to investigate crimes. Tr. 57:55-59:36. But that is not the original reason for which the data is “compiled,” nor the principal use of the database.

To characterize Manchester’s entire bulk database as a law enforcement record “compiled in connection with the detection or investigation of crime” would be akin to treating a phone book as a law enforcement record because police officers sometimes use it to look up numbers related to their investigations. Such a sweeping interpretation would stretch the law enforcement exemption far beyond its bounds and betray the core purpose of the Freedom of Information Act: ensuring openness and transparency about how the government is conducting its operations. Such transparency is especially vital in situations like these, where the government is surveilling its citizens in ways that significantly jeopardize their privacy.

Even if the Manchester database could properly be characterized as “compiled in connection” with MPD’s investigative activities, its own testimony establishes that these investigative activities entail significantly more than the investigation of “crimes” as they are defined under Connecticut law: namely felonies and misdemeanors. Conn. Gen. Stat. § 53a-24(a). And in the limited situations where MPD uses its bulk ALPR database to investigate crimes, all the records of those investigations are cataloged elsewhere. Tr. at 1:13:46-1:13:59, 1:15:37-1:15:49. The backend database neither records nor reflects any criminal investigation. Tr. at 1:15:52-1:16:23. Accordingly, Manchester’s invocation of the law enforcement exemption to withhold the ALPR database fails at the threshold.

But that is not the only problem with MPD’s invocation of the law enforcement exemption. There is another equally fatal flaw with its position: Manchester has entirely failed to establish that any subsection of the law enforcement exemption applies. The Department claimed that disclosure would reveal unknown investigative techniques but supplied no testimony regarding what, if any, such unknown investigative techniques would be revealed if Manchester disclosed the requested ALPR data. Instead, it attempted to establish that producing the spreadsheets of ALPR data would be unduly burdensome—an argument not based in any FOIA exemption that also appears to misunderstand both Flock’s capabilities and the FOIA request at issue. Tr. at 19:41-21:56, 1:18:52-1:20:36.

Manchester’s misconceptions have allowed the requested public records to be permanently destroyed while this case is pending. Tr. at 24:26-25:17. The Commission can save future requesters from the same fate by explaining that bulk ALPR data of the type requested here does not qualify for the law enforcement exemption both because it is not “compiled in connection” with the detection or investigation of crime and because its disclosure would not reveal unknown investigative techniques.

### **SUMMARY OF THE RECORD**

Complainant Katherine Revello is an investigative journalist who writes about, among other things, the use of surveillance technology by local police departments. Tr. at 3:28-3:33, 5:35-5:51. On November 15, 2024, she submitted a series of Connecticut Freedom of Information Act (“FOIA”) requests to police departments that had been publicly identified as using ALPRs to surveil drivers in their communities. *See* Tr. at 7:39-7:49, 11:23-11:33. One of these departments was the MPD. Compl. Ex. A. The requests sought “license plate data generated by automated license plate readers in the past 30 days.” *See id.*

The Hartford and University of Connecticut police departments responded promptly and produced spreadsheets of alphanumeric license plate scans from their own backend ALPR databases. Tr. at 11:01-11:41. Many of these spreadsheets consisted of hundreds of thousands of entries, reflecting license plates and vehicle information collected across the requested 30-day period. Tr. 11:21-11:41, 13:19-14:31. The Southington Police Department also produced two reports listing the number of vehicles scanned by the department’s ALPRs during the relevant period. *See* Letter to Commission, May 27, 2025.<sup>1</sup>

MPD, on the other hand, refused to produce any of the requested records. On November 18, 2024, MPD responded that the requested information was “for law enforcement use only and is not for public release.” Compl. Ex. B. When pressed for a specific FOIA exemption, MPD invoked the law enforcement exemption, which applies to records “compiled in connection with the detection or investigation of crime.” Gen. Stat. § 1-210(b)(3); Compl. Ex. B. Specifically, MPD claims that disclosing the requested ALPR data would reveal “investigatory techniques not otherwise known to the general public.” *Id.* § 1-210(b)(3)(E); Tr. at 55:24, 1:17:42-1:17:51 (confirming that MPD asserts only the investigatory techniques exemption). In its pre-hearing communications with Ms. Revello, MPD said nothing about the potential burden of responding to the request, and it never asked her to clarify or narrow it.

Ms. Revello promptly appealed MPD’s denial. On April 30, 2025, the Commission convened an evidentiary hearing, where Ms. Revello testified about her requests, MPD’s refusal to produce the requested records, and the importance of public transparency when police departments deploy surveillance technologies in their communities.

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<sup>1</sup> Many other police departments have yet to respond to the requests.

Ms. Revello also testified about the mass of publicly available information about ALPRs. She testified that she had been able to access significant amounts of information regarding police use of ALPRs generally, and about Manchester's use of Flock specifically. As to general ALPR usage and functionality, Ms. Revello testified that she had been able to gather substantial information through public web resources, including the Electronic Frontier Foundation's "Atlas of Surveillance,"<sup>2</sup> studies conducted by the ACLU, and numerous lawsuits that are currently being litigated regarding the propriety of police use of ALPR technology. Tr. at 5:45-7:06. As to Manchester's specific use of ALPR technology, Ms. Revello testified that she knew Manchester was using ALPRs before she submitted the FOIA request at issue here, Tr. 7:39-7:49, that she had reviewed the substantial and detailed information that Flock makes available about its technology on its own website, Tr. at 9:09-11:19; *see also* Compl. Ex. E, and that Manchester had provided her with its own contract with Flock pursuant to a separate public records request, 7:58-8:41; *see also* Compl. Exs. C & D.

MPD then attempted to carry its burden to prove that the requested data was exempt from disclosure. Despite invoking the investigatory techniques exemption, however, MPD's witnesses offered no evidence at all about what investigatory techniques would be revealed if the ALPR data was disclosed.

MPD called James White as its first witness. Mr. White testified that he was involved in processing Ms. Revello's FOIA request, that he determined MPD had records responsive to the request, and that he interpreted the request to seek "all data that's generated by [MPD's]

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<sup>2</sup> Electronic Frontier Foundation, *Atlas of Surveillance*, <https://atlasofsurveillance.org/>[<https://perma.cc/F3D2-AQNS>].

ALPRs.” Tr. at 28:10-28:34. Mr. White admitted that he had no investigatory functions beyond troubleshooting the ALPR technology, Tr. at 46:28-46:38 51:07-51:53, and that he was not responsible for determining that the requested records were exempt, Tr. at 31:11-31:25. Instead, Mr. White testified at length about the administrative difficulties of producing photographic scans captured by the ALPR cameras. Tr. at 19:33-21:55. Mr. White also discussed the purported administrative burden of producing the alphanumeric spreadsheet data using the Flock tool’s search function, which apparently returns only 2,500 rows of data per search. Tr. at 31:33-35:45. Mr. White admitted, however, that he had “not asked Flock” whether MPD could “export [its] data without needing to go through the search function.” Tr. at 49:31-49:42.

In response to questions from the Hearing Officer, Mr. White also admitted that data was purged from the Flock system after 30 days, that he was not aware of MPD having taken any steps to preserve the data Ms. Revello requested, and that data from October 2024 would now be unrecoverable. Tr. at 22:15-58, 24:22-26:00.

MPD’s second witness was Captain Matthew Pace. Captain Pace testified generally about the ways that MPD officers use the Flock platform to access the bulk database of ALPR information. He testified that Flock’s uses:

could be anywhere from illegal dumping, it could be missing persons, Silver Alerts, missing juveniles, people with dementia or mental health issues, as well as stolen motor vehicles, it’s used to identify aggressors in street takeovers, identify victims of domestic violence in order to catch the defendant on protective orders, if that’s the case, serious assaults, um, a majority of our police work.

Tr. at 57:20-57:55. Captain Pace also agreed that MPD uses all the technological tools at its disposal to perform its public safety duties, including issuing traffic tickets, checking whether a

vehicle's registration is up-to-date, and investigating other conduct that is decidedly not criminal. Tr. at 1:06:59-1:08:44.

When asked whether officers could browse the Flock data for curiosity purposes, Captain Pace equivocated. Although he noted that officers were not supposed to use certain other databases that way, Tr. at 1:02:43-1:04:25 and that constraints on time and resources made browsing infeasible, Tr. at 1:05:20-1:05:36, he was careful to not to represent that officers lacked the *capability* to use the ALPR database for curiosity purposes, Tr. at 1:02:43-1:03:17. Captain Pace did not know whether MPD keeps any records of how its officers are using the Flock database. Tr. at 1:14:14-1:14:40.

Captain Pace was forthright about the fact that MPD's ALPRs effectuate dragnet surveillance. He agreed that huge swaths of data collected by the ALPRs are never associated with wrongdoing, whether at the time the data is collected or at any later time. Tr. at 1:04:47-1:06:30. For example, he testified that the "vast majority" of ALPR scans never result in a "match" with "hotlists" associated with missing persons, stolen vehicles, and the like. Tr. at 1:13:18-1:13:24. He further testified that even when a scan does trigger a "hotlist" alert, MPD does not always conduct investigatory follow up, Tr. at 1:13:00, 1:13:04 and that when MPD officers search the ALPR database, those searches likewise return many data entries that have no connection to wrongdoing, Tr. at 1:04:48-1:06:29.

Finally, Captain Pace testified that any "investigative steps" taken by MPD are documented outside of Flock and not reflected there. Tr. 1:15:37-1:16:23. "On its own," he agreed, the ALPR database is "just bulk data that might become relevant to an investigation later." Tr. at 1:16:14-1:16:23.

## ARGUMENT

### I. MPD FAILED TO DEMONSTRATE THAT THE LAW ENFORCEMENT EXEMPTION APPLIES TO THE BULK ALPR DATA REQUESTED

Under Connecticut’s Freedom of Information Act, records created by public agencies are presumptively public and must be disclosed, absent a specific exemption. *City of New Haven v. Freedom of Info. Comm’n*, 205 Conn. 767, 775 (1988). This Commission, the courts, and the legislature have all been clear that any exemptions to FOIA must be construed narrowly, so as not to interfere with the core purpose of the statute, which is to ensure transparency in governmental affairs. *Id.*; *see also Maher v. Freedom of Info. Comm’n*, 192 Conn. 310, 325 (1984) (citation omitted); *Town of Greenwich v. Freedom of Info. Comm’n*, 226 Conn. App. 40, 57, *cert. denied*, 349 Conn. 924 (2024). The burden of establishing that an exemption applies falls on the agency, and the agency must develop “a sufficiently detailed record” that “reflect[s] the reasons why an exemption applies to the materials requested.” *City of New Haven*, 205 Conn. at 776. “Unsupported conclusory allegations” are insufficient. *Id.* (collecting cases).

The only exemption at issue in this case is the “investigative techniques” exemption set forth in Section 1-210(b)(3)(E). Tr. at 1:18:02-1:18:11.<sup>3</sup> To withhold records under that exemption, a law enforcement agency must make a three-part showing. First, they must show that the records at issue are “[r]ecords of law enforcement agencies not otherwise available to the

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<sup>3</sup> Respondents represented to the Commission that they intended to invoke only Section 1-210(b)(3)(E). Tr. at 1:18:02-1:18:11. They have thus waived any arguments under other exemptions, including Section 1-210(a) and, more specifically, have waived any argument that any NCIC data in the responsive records would be exempt from disclosure because of 28 U.S.C. § 534 and/or Conn. Gen. Stat. § 29-164f. Even if Respondents had not waived this argument, however, they failed to offer any evidence concerning whether and how NCIC information would be disclosed if MPD were to produce the requested records.

public.” Conn. Gen. Stat. § 1-210(b)(3). Second, they must show that the records “were compiled in connection with the detection or investigation of crime.” *Id.* Third, they must show that disclosing the records would reveal “investigatory techniques not otherwise known to the general public.” *Id.* MPD has made neither the second nor the third showing here.

**A. The Requested ALPR Data Does Not Satisfy the Threshold Requirements for Law Enforcement Records**

***1. The requested data was not “compiled in connection with” any specific, potentially criminal incident.***

The law enforcement exemption does not cover bulk data simply because it might become relevant to an investigation someday. *See* Tr. 1:16:14-1:16:23. Rather, it applies explicitly to those records that are “compiled” “in connection with” the detection or investigation of crime. Conn. Gen. Stat. § 1-210(b)(3). To meet this threshold requirement, records must have been compiled for the original purpose of detecting or investigating crime. *Chief of Police v. FOIC*, *Superior Court*, No. CV-990497252-S, 2001 WL 76252, at \*4 (Conn. Super. Ct. Jan. 12, 2001); *Town of Avon v. FOIC*, No. HHBCV196056393, 2020 WL 5102098, \*4 (Conn. Super. Ct. Aug. 6, 2020); *see also ACLU Found. v. Superior Court*, 3 Cal. 5th 1032, 1042 (Cal. 2017) (interpreting analogous language in California FOIA statute the same way).

In *Chief of Police*, for example, the court concluded that records compiled pursuant to the sex offender registration provisions in “Megan’s Law” were not compiled “in connection with the detection or investigation of crime” and thus did not fall within the law enforcement exemption. 2001 WL 76252, at \*4. This was true even though the police, at the time of the request, were in the midst of investigating the homicide of an eleven-year old girl. *Id.* at \*1-2. As the court wrote, the law enforcement exemption, “by its express terms, refers to the purpose for

which the records were originally ‘compiled,’ not the purpose for which they were subsequently used by law enforcement agencies[.]” *Id.* at \*4.

In *Braasch v. Freedom of Information Commission*, 218 Conn. App. 488, 505-06 (2023), the Court of Appeals reached the same conclusion as to body camera footage that was created after police responded to allegations of trespassing and harassment in a college dormitory. Although the plaintiff argued that she did not subjectively intend to report a crime—and, indeed, the police found no unlawful activity after they investigated—the court treated it as a “dispositive fact” that the police reasonably understood themselves to be investigating “possible criminal activity” at the time they created the recordings. *Id.* In other words, what mattered was the situation that precipitated the creation of the records, not what happened later. *See also Steadwell v. Warden, Conn. Corr. Inst.*, 186 Conn. 153, 158 n. 8 (1982) (holding that presentence investigation reports “are not connected with the detection or investigation of crime” because they are created to assess punishment).

Moreover, the threshold language applies only to records compiled in connection with the detection or investigation of a particular, potentially criminal incident. *Connecticut Dep’t of Pub. Safety v. Freedom of Info. Comm’n*, No. CV 96561555S, 1997 WL 433910, at \*5 (Conn. Super. Ct. July 23, 1997) (interpreting “detection or investigation of crime” to include “the investigation as to whether a crime occurred *in a particular situation* as well as the investigation of a known crime (emphasis added)), *vacated on other grounds sub. nom. Dep’t of Pub. Safety, Div. of State Police v. Freedom of Info. Comm’n*, 51 Conn. App. 100, 105 (1998) (interpreting requirements for “prospective law enforcement action” subprovision); *see also Braasch*, 218 Conn. App. at 505 (stressing that police construed facts provided as “allegations of criminal activity” on night of investigation); *Gannett Co. v. Cnty. of Monroe*, 4 N.Y.S.3d 847, 853 (N.Y. Sup. Ct. 2015)

(requiring “a current specific ongoing law enforcement investigation” to exempt ALPR data under NY FOIL provision).

This interpretation makes good sense. If the police could convert any record into a law enforcement record simply by using it, someday, in connection with an investigation, it could potentially extend the law enforcement exemptions to a whole host of information that Connecticut courts have previously deemed to be non-exempt, such as motor vehicle registration lists, *Comm’r of Pub. Safety v. Freedom of Info. Comm’n*, 301 Conn. 323, 328-29 (2011), aerial photographs of various environmental sites in the state, *Pictometry Int’l Corp. v. Freedom of Info. Comm’n*, 307 Conn. 648, 652 (2013), and compilations of pistol permits, *Superintendent of Police of City of Bridgeport v. Freedom of Info. Comm’n*, 222 Conn. 621, 625 (1992). The same logic would extend even to private ALPR databases created by some of Flock’s most common customers—homeowners’ associations and businesses. *See* Compl. Ex. E at 6.

The California Supreme Court addressed this very question in *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032 (2017), concluding that bulk data collected by ALPRs did not qualify as an “investigatory record” under California’s FOIA law. *Id.* at 1042. In doing so, the court concluded that the term “records of investigations” encompassed only records created “*for the purpose* of determining whether a violation of law may occur or has occurred” or “*for the purpose* of uncovering information surrounding the commission of the violation and its agency.” *Id.* at 1040 (emphasis in original). Noting that the state legislature would likely not have imagined the exemption to protect bulk data gathering, the California court held that ALPR datasets are not records of investigation because the scans are (1) “not conducted as part a targeted inquiry into any particular crime or crimes” and (2) “conducted with an

expectation that the vast majority of the data collected will prove irrelevant for law enforcement purposes.” *Id.* at 1042.

The Supreme Court of Virginia reached essentially the same conclusion, holding that “the Police Department’s sweeping randomized surveillance and collection of personal information” through its ALPR system did not qualify for an exemption to the state’s Data Act that applied to “investigations and intelligence gathering related to criminal activity.” *Neal v. Fairfax Cnty. Police Dep’t*, 295 Va. 334, 349-50 (2018). The generalized collection of license plate scans, the court concluded, was not exempt because the scans’ “future value to any investigation or criminal activity is wholly speculative.” *Id.* at 349. *See also Matter of Lane v. Port Wash. Police Dept.*, 221 A.D.3d 698, 702 (N.Y. Ct. App. Nov. 8, 2023) (rejecting applicability of analogous NY exemption to ALPR data because ALPRs at issue “gather information about all vehicles, and are not used in connection with actual, specific targeted investigations”).

These precedents establish that MPD’s bulk data collection does not fall within the law enforcement exemption. Any connection to an eventual law enforcement investigation is both downstream and entirely speculative. The ALPR cameras run continuously and compile vehicle data indiscriminately, even when law enforcement officers have no reason to believe a crime has been or may soon be committed at a camera’s location. Tr. at 42:04-42:50, 1:04:50-1:06:16; Compl. Ex. E at 6.<sup>4</sup> As Captain Pace admitted, the ALPR database is just “bulk data that might become relevant to an investigation later.” Tr. at 1:16:16-1:16:23. The “vast majority” of ALPR scans are irrelevant to investigations and are connected to drivers who are doing nothing wrong.

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<sup>4</sup> Nor are the records compiled in connection with “detection” of crime. The ALPR cameras do nothing at all to detect crime; they respond the exact same way and perform the very same functions irrespective of, say, the speed or behavior of the vehicle. Compl. Ex. E at 5.

Tr. at 1:13:19-1:13:24; *ACLU*, 3 Cal. 5th at 1042. Such records are not compiled for the original purpose of detecting or investigating crime. *Chief of Police*, 2001 WL 76252, at \*4.

**2. *The withheld ALPR records are not compiled for the purpose of investigating or detecting “crimes”—namely felonies and misdemeanors.***

Separately, to the extent ALPR records are collected for investigative purposes, they are not compiled for the purpose of investigating or detecting “crimes.” Connecticut law defines a “crime” as a felony or a misdemeanor. Conn. Gen. Stat. § 53a-24. It specifically distinguishes “crimes” from violations, which trigger only civil penalties or fines. *Id.*; *see also State v. Menditto*, 315 Conn. 861, 869-70 (2015). Because the law enforcement exemption applies only to records compiled “in connection with the detection or investigation of crime,” Conn. Gen. Stat. § 1-210(b)(3), records compiled in connection with the detection or investigation of infractions or violations do not fall within the exemption. *Town of Avon*, 2020 WL 5102098, at \*3; *Danaher v. Freedom of Info. Comm’n*, No. CVHHB084016067S, 2008 WL 4308212, at \*6 (Conn. Super. Ct. Sept. 5, 2008).

In *Town of Avon*, the court held just this, concluding that requested police reports were not exempt under Section 1-210(b)(3) where they were compiled for the purpose of investigating a civil infraction—not a crime. 2020 WL 5102098, at \*3. In so holding, the court rejected the police department’s argument that the infraction might ripen into a crime if not resolved by the relevant violator, writing that “the infraction always remains an infraction,” regardless of what might happen later. *Id.*; *see also Danaher*, 2008 WL 4308212, at \*6 (holding that records compiled in connection with federal immigration enforcement were not “compiled in connection with the detection or investigation of crime” under § 1-210(b)); *Papaioannou v. Muratori*,

Docket #FIC 2008-663, ¶ 17, April 8, 2009 (ordering disclosure of records compiled in connection with animal control infraction on same grounds).

The necessary inquiry applies on a record-by-record basis. *See, e.g., Town of Avon*, 2020 WL 5102098, at \*3; *McManus v. Southington*, Docket #FIC 1978-118, Sept. 27, 1978 (ordering disclosure of records investigating zoning violation where agency presented no evidence that violation was willful and therefore criminal). Indeed, when exempt information appears alongside nonexempt information in the same record, an agency must redact or segregate the exempt information and disclose the rest. *Hartford Courant Co. v. Freedom of Info. Comm'n*, 261 Conn. 86, 94-95 (2002); *see also Pa. State Police v. Grove*, 640 Pa. 1, 14 (2017).

The Pennsylvania Supreme Court relied on the same reasoning to conclude that police motor vehicle recordings (“MVRs”) were not *per se* exempt under analogous language in the Pennsylvania FOIA statute. *Grove*, 640 Pa. at 26-27. In doing so, the court noted that the MVR cameras were typically activated to capture video “when a trooper activates his or her emergency lights,” *id.*, thereby capturing “many instances that plainly do not involve criminal activity,” such as routine traffic stops and assistance with car accidents, *id.* at 29-30. To treat the MVR recordings as “investigatory records” on a classwide basis would, the court concluded, ignore the agency’s burden to establish the applicability of an exemption on a case-by-case basis. *Id.* at 27 & 30 n.19.

Here, the MPD has made no attempt to demonstrate that any of the records it seeks to withhold were compiled in connection with a felony or misdemeanor—much less that all of the records were. Instead, MPD’s evidence establishes that it uses its ALPR database for myriad public safety purposes, a huge share of which have nothing to do with crime, or even unlawful conduct. Tr. at 1:06:46-1:08:39. As an initial matter, Mr. White testified that, before transitioning

to Flock, MPD used ALPR cameras that were specifically “assigned to the traffic division.” Tr. at 50:20-51:00. In Connecticut, motor vehicle violations—even serious ones—are not criminal offenses. Conn. Gen. Stat. § 53a-24(a); *State v. Lin Qi Si*, 184 Conn. App. 402, 410 (2018).

MPD’s hearing evidence further demonstrates that the Department is using its ALPRs for tasks as mundane as checking whether vehicles’ registrations are up to date, Tr. at 1:08:23-1:08:45, and as routine—though important—as helping lost elders find their way back to their caregivers, Tr. at 56:54-57:36, 1:07:26-1:07:46. As Captain Pace agreed during his testimony, such situations sometimes involve no criminal activity at all. Tr. at 1:07:36-1:07:46; *see also* Defendants’ Post-Hearing Brief at 6 (noting that officers receive alerts from Flock regarding past conduct “criminal and otherwise”).

Indeed, it appears from the record that *most* of MPD’s uses of its ALPR database are noncriminal. During his direct examination, Captain Pace listed six examples of situations in which MPD uses its ALPR database: “illegal dumping,” “missing persons, [including] Silver Alerts [and] missing juveniles, [or] people with dementia or mental health issues,” “stolen motor vehicles,” “serious assaults,” identifying individuals involved in “street takeovers,” and identifying “victims of domestic violence in order to catch the defendant on protective orders.” Tr. at 56:54-57:55. Many of these examples either relate to civil infractions or involve purely lawful conduct, like a “pe[rson] with dementia” who leaves the custody of their caregiver. *Id.* Illegal dumping, for example, is another term for littering, which is punishable through fines. Conn. Gen. Stat. § 22a-250. “Street takeovers” occur when groups of individuals park their cars in a manner that blocks off a portion of the roadway, often for street racing or pop-up

demonstrations.<sup>5</sup> At the moment, street takeovers do not even trigger independent violations (separate from motor vehicle violations like reckless driving or blocking traffic, if applicable), and bills seeking to make street takeovers eligible for stricter civil fines have failed. *See, e.g.*, S.B. 337 § 3 (2024 Leg. Sess.).<sup>6</sup>

Even taking MPD at its word—which we must do, since Captain Pace was not aware of any tracking system that would ensure MPD’s officers are using the ALPR database for purely investigatory purposes, Tr. at 1:14:13-1:14:40—the Department undeniably uses its ALPR database for a variety of purposes that are unconnected to criminal investigations. Under these circumstances, MPD has not satisfied its burden to show that the records at issue in this case were compiled for the purpose of detecting or investigating crime.

**B. Producing the Requested ALPR Data Will Not Reveal Investigatory Techniques Unknown to the Public**

Even assuming MPD could satisfy the threshold requirement of Section 1-210(b)(3)—which it cannot—its claim of exemption fails for an independent, equally dispositive reason: MPD has not provided any evidence that disclosing the bulk ALPR data would reveal “investigatory techniques not otherwise known to the general public.” Conn. Gen. Stat. § 1-210(b)(3)(E).

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<sup>5</sup> Woolf & Ross Law Firm, LLC, *New Connecticut Law May Increase Penalties for Street Takeovers* (May 16, 2024), <https://www.connecticutcriminallawyer.com/blog/new-connecticut-law-may-increase-penalties-for-street-takeovers> [https://perma.cc/U678-7M48].

<sup>6</sup> Available at <https://www.cga.ct.gov/2024/BA/PDF/2024SB-00337-R000216-BA.PDF> [https://perma.cc/582U-BZSA]. The bill was not enacted. *See* Connecticut General Assembly Bill Tracker, *Substitute for Raised S.B. No. 337 Session Year 2024*, [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=SB00337&which\\_year=2024](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00337&which_year=2024) [https://perma.cc/D6ZN-4TW7].

Connecticut courts have repeatedly confirmed that an agency must provide specific, factual evidence to support a claim of exemption. *City of New Haven*, 205 Conn. at 778 (affirming order of disclosure where city failed to provide specific factual evidence); *City of Hartford v. Freedom of Info. Comm'n*, 201 Conn. 421, 434 (1986) (affirming order of disclosure where “[a]t no time did the plaintiffs attempt to describe even generally the contents of the specific records in question”); *Town of Greenwich*, 226 Conn. App. at 59-60 (“without first conducting a search [and] . . . reviewing such records, [an agency] cannot satisfy [its] burden of establishing that those records are exempt”).

MPD provided no such evidence. Neither of its witnesses testified to having viewed the actual records that Ms. Revello sought—in fact, Mr. White testified that the records had likely been purged and were unrecoverable. Tr. at 24:22-25:17. Likewise, neither witness gave any testimony about investigatory techniques that might be revealed by the disclosures sought here. Indeed, the only mentions of “investigatory techniques” were made in passing by Respondent’s counsel. See Tr. at 1:03:17-1:03:36 (attorney question), 1:18:48-1:20:35 (closing argument). Such statements “are not evidence upon which findings can be based.” *City of New Haven*, 205 Conn. at 775.

To qualify for the investigatory techniques exemption, the information to be revealed must go beyond a “broad-based operating procedure.” *Danaher*, 2008 WL 4308212, at \*6. The information must relate to “how law enforcement officials go about investigating a crime.” *Allard K. Lowenstein Int’l Hum. Rts. Project v. Dep’t of Homeland Sec.*, 626 F.3d 678, 682 (2d Cir. 2010) (citing *Webster’s Third New Int’l Dictionary* (1986) to interpret “techniques and procedures” in federal FOIA exemption).

To qualify as “unknown to the general public,” the technique must be “at a level beyond what the public perceives” or it must be “so detailed as to reveal unknown aspects of otherwise known techniques.” *Danaher*, 2008 WL 4308212, at \*6. In *Danaher*, the court concluded that reports detailing an “operational order/plan” for immigration enforcement did not satisfy either of these criteria and thus were not exempt. *Id.* The Freedom of Information Commission has drawn the same conclusions regarding cellphone and cell tower data, *Tyus v. City of New London Police Department*, Freedom of Information Commission, Docket No. FIC 2019-0108, ¶¶ 13-18 (December 2, 2019) (“it is found that the in camera records do not contain any details on the use of cell phone and cell tower data to investigate crime, beyond the general information that is otherwise available to the public”).

Disclosing the bulk ALPR data requested here would not reveal any “investigatory technique,” much less a technique that is unknown to the general public. The fact that law enforcement agencies are utilizing ALPR technology is widely known and has been for more than a decade. In 2012 and 2013, for example, the Connecticut ACLU compiled a database of over 3.1 million ALPR scans using FOIA requests—including two that sought and received raw ALPR data from the then-consolidated Hartford region ALPR network, which at the time included Manchester.<sup>7</sup> The ACLU used this data to issue a 37-page report that demonstrated the

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<sup>7</sup> Hearing before the Conn. S. Comm. on the Judiciary (Apr. 1, 2013) (statement of David McGuire, Conn. ACLU Staff Attorney) <https://www.cga.ct.gov/2013/JUDdata/chr/2013JUD00401-R001000-CHR.htm>. [https://perma.cc/ZYP7-7WSG]; Press Release: ACLU of Connecticut Joins National Push to Regulate License Plate Scan Data (Jul. 17, 2023), <https://www.acluct.org/en/press-releases/aclu-of-connecticut-joins-national-push-to-regulate-license-plate-scan-data> [https://perma.cc/5FRH-D7QE].

tremendous surveillance power of ALPR networks.<sup>8</sup> The Electronic Frontier Foundation also makes copious resources available to the public regarding which jurisdictions are utilizing ALPRs,<sup>9</sup> and other police departments have readily provided their own ALPR scan data in response to Ms. Revello's FOIA requests, Tr. at 4:45-5:33; 11:20-11:36, 13:38-14:32.

Details about Flock are equally available. Flock's website materials provide detailed information to anyone with a web browser about how the technology works, and even how its law enforcement interface operates. Compl. Ex. E; *see also* Flock Safety, *Flock OS* (last accessed June 9, 2025), <https://www.flocksafety.com/flock-os> (embedding a two-minute-and-thirteen-second video that demonstrates Flock's law enforcement interface). Flock offers demonstrations to potential customers, Compl. Ex. E at 6, 7, 9, and its representatives regularly give public testimony or submit public evidence about their specific capabilities and uses. *See, e.g., United States v. Martin*, 3:23-cr-00150 (E.D. Va. Jul. 24, 2024), Dkt. 65. In at least one suit, Flock has gone so far as to intervene to ensure that it is able to provide direct and accurate evidence about how it works. *Schmidt v. City of Norfolk*, 2:24-cv-00621 (E.D. Va. Oct. 21, 2024), Dkts. 39, 40.

Moreover, a member of the public can learn all about how Flock works by simply purchasing their own Flock camera and beginning to compile their own database of license plate scans. As Flock's marketing materials make clear, its cameras are used by a range of non-law enforcement customers, including homeowners' associations, businesses, and schools. *See* Compl. Ex. E at 6; Tr. at 47:10-48:15.

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<sup>8</sup> Am. Civil Lib. Union, *You Are Being Tracked* (July 2013), <https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf> [https://perma.cc/B87A-XD28].

<sup>9</sup> *See, e.g.,* Electronic Frontier Foundation, *Atlas of Surveillance*, <https://atlasofsurveillance.org/> [https://perma.cc/F3D2-AQNS].

Even the specifics of Manchester’s dealings with Flock are publicly known, as the MPD/Flock contract is a public document subject to FOIA. After Ms. Revello requested that contract, MPD produced it in full. Compl. Exs. C, D. That contract contains detailed descriptions of Flock’s functionality, the business relationship between MPD and Flock, and the functions Flock provides MPD to help it investigate vehicles. Compl. Ex. D.

Naturally, MPD creates records of its criminal investigations—but those records are not implicated by Ms. Revello’s request, because they are entirely separate from the ALPR database. As Captain Pace explained, the ALPR database does not reflect any investigative steps that MPD officers might have taken before querying Flock, nor any investigative steps they take after doing so. Tr. at 1:15:38-1:16:13. Ms. Revello’s request asks only for the ALPR database itself. As Captain Pace’s testimony established, it merely seeks “data that might become relevant to an investigation later.” Tr. at 1:16:14-1:16:23. Disclosing that data would reveal no investigatory techniques unknown to the general public.

## **II. THE PUBLIC HAS A STRONG INTEREST IN UNDERSTANDING THE SURVEILLANCE BEING CONDUCTED BY MPD**

Manchester’s ALPR database is not exempt from FOIA for good reason. Drivers have a right to know how they are being surveilled by law enforcement, and shielding such records from disclosure subverts the kind of public transparency and discourse that is essential when communities make decisions about how much power they are willing to give over to the police—and how much of their own privacy they are willing to give up in exchange. As the Connecticut Supreme Court has written, “the public has a legitimate interest in the integrity of local police departments.” *City of Hartford*, 201 Conn. at 435. Indeed, the public’s interest in overseeing potential “abuse[s] of power” that might occur “while engaged in the performance of [] official

police duties” is strong enough to overcome even the privacy interests of exonerated police officers. *Dep’t of Pub. Safety*, 242 Conn. at 88-89; *see also Matter of Lane*, 221 A.D.3d at 702 (noting “risk of indiscriminate use” of ALPRs by police department).

This debate is not unique to Manchester, and it is not unique to Connecticut; many state courts have been called upon to answer the same question presented in this case. They have done so in essentially the same voice, concluding that dragnet data collected with ALPRs is not entitled to exemptions designed to shield investigatory records of law enforcement agencies. *ACLU*, 3 Cal. 5th at 1042; *Grove*, 640 Pa. at 26-27; *Neal*, 295 Va. at 349-50. Other state appellate courts have done the same. *Matter of Lane*, 221 A.D.3d at 702; *cf. Lexington-Fayette Urban Cnty. Govt. v. Maharrey*, 2019 WL 2712967 at \*5 (Ky. Ct. App. June 28, 2019) (remanding for factual development).

Plaintiffs are not aware of any state appellate court that has held otherwise. Instead, those states that shield ALPR data from disclosure have done so through specific, legislatively enacted exemptions to their FOIA laws. *See, e.g.,* Tenn. Code § 10-7-504(a)(32)(A) (“Captured plate data from automatic license plate reader systems must be treated as confidential and shall not be open for inspection by members of the public.”); Neb. Rev. Stat. § 60-3209(1) (similar); N.C. Gen. Stat. § 20-183.32(e) (similar); Utah Code § 41-6a-2004(1)(d) (similar); Ga. Code § 35-1-22(f) (similar); Md. Pub. Safety Code § 3-509(d) (similar); Fla. Stat. § 316.0777(3)-(4) (limiting disclosure of ALPR data that reveals personal identifying information).

The Connecticut legislature has enacted no similar exemption to allow ALPR data generally to be withheld. Absent such authority, other police departments in this state have disclosed their bulk ALPR data, both to Ms. Revello recently and to the ACLU more than a decade ago. *See supra*, p. 18-20. To shield the APLR records requested here by interpreting the

law enforcement exemption to encompass MPD's dragnet data collection would betray the core principle of openness embodied in FOIA.

### **III. MPD'S ADMINISTRATIVE BURDEN ARGUMENT IS BOTH UNFOUNDED AND IRRELEVANT**

As a final matter, MPD cannot shield its ALPR data from disclosure simply because producing it would be administratively burdensome—there is no “administrative burden” exemption to FOIA. *Town of Franklin Assessor v. Freedom of Info. Comm'n of State*, No. CV 970113250, 1998 WL 305420, at \*4 (Conn. Super. Ct. June 2, 1998) (“The administrative burden imposed . . . does not free [an agency] from its obligations under the FOIA.” (citing *Glastonbury Educ. Ass'n v. Freedom of Info. Commission*, 234 Conn. 704, 714 (1995))). Where an agency asserts that a request would impose a significant production burden, the proper recourse is to negotiate with the requester to narrow the request or to establish a reasonable production schedule. *See Mayor v. Freedom of Info. Comm'n*, No. CV010511803S, 2002 WL 523086, at \*5 (Conn. Super. Ct. Mar. 19, 2002).

During the evidentiary hearing in this case, the MPD dedicated significant time—an entire witness's worth—to eliciting testimony about how difficult it might be to respond fully to Ms. Revello's FOIA request. *See, e.g.*, Tr. 17:40-22:04, 31:35-35:45 Specifically, the Department's counsel appeared convinced that Ms. Revello's request sought the images captured by ALPR cameras, and focused heavily on the time it would take to download all the responsive images at a rate of 100 images every 7 minutes. Tr. at 19:35-21:55, 55:11-55:24, 1:18:48-

1:20:35.<sup>10</sup> But this argument was based on a misunderstanding of Ms. Revello’s request—she does not, and did not, seek the photos used to generate the ALPR scan data. Tr. at 4:52-5:35, 11:20-12:01, 28:22-28:48.<sup>11</sup>

Had MPD contacted Ms. Revello to discuss the administrative burden of producing the images, she could have clarified that she sought only the alphanumeric scan data, and she could have done so before the data that she requested was purged from the system. But MPD did not do so. Instead, it did nothing. It failed to preserve the records, to negotiate a production schedule, or to explore options with Flock that might allow it to batch-download the data without needing to resort to Flock’s cumbersome search tools. Tr. at 22:40-22:57, 24:22-25:17, 49:31-49:42.

Agencies may not simply rest on unsupported assertions of technical infeasibility to withhold public records. *Town of Greenwich*, 226 Conn. App. at 74; 46-47. In *Town of Greenwich*, for example, the Court of Appeals vacated an order treating database records as exempt because the agency in question had refused to ask the database provider to run commands that would have produced requested records. *Id.* MPD likewise cannot hide behind representations of technical difficulty—representations that appear particularly doubtful in light

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<sup>10</sup> It bears mention that MPD’s “100 images every 7 minutes” argument posits a download speed of approximately 0.23 mb/second, assuming that each image is 1 megabyte—quite large for a .jpg file. The average household download speed in the United States was 291.18 mb/second in 2024. *Speedtest Global Index* (last accessed June 2, 2025), <https://www.speedtest.net/global-index/united-states#fixed> [https://perma.cc/LP7D-LP5F].

<sup>11</sup> Defendants also conflate the time it would allegedly take to download all the images in Flock with the time it would take to download all the spreadsheets of alphanumeric plate data. *See* Defendants’ Post-Hearing Brief at 7 (“the task of completing spreadsheets for data gathered in a 30-day period takes approximately 1600 hours”). This is incorrect. Although the Department offered no testimony about how long it would take to download all the spreadsheets, the time commitment would be significantly less than the time required to download the images.

of the fact that peer police departments promptly produced numerous spreadsheets of ALPR data, consisting of “hundreds of thousands” of entries. Tr. at 13:38-14:32.

### CONCLUSION

The Commission should find that respondents have failed to meet their burden to claim the Section 1-210(b)(3)(D) law enforcement exemption and should require respondents to promptly disclose the withheld records.

Dated: June 16, 2025

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<sup>12</sup> This brief has been prepared in part by law students Grace Chisholm, Tinuola Dada, and Kelsey Griffin, as well as a clinic associated with the Abrams Institute for Freedom of Expression and the Information Society Project at Yale Law School, but it does not purport to represent the school’s institutional views, if any.