

EXHIBIT A

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

SOUTH CAROLINA PUBLIC)
INTEREST FOUNDATION and JOHN)
SLOAN, individually and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

SOUTH CAROLINA STATE LAW)
ENFORCEMENT DIVISION and MARK)
KEEL, in his official capacity as Chief of)
the South Carolina State Law Enforcement)
Division,)

Defendants.)

Case No. _____

**COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs would respectfully show the Court as follows:

INTRODUCTION AND NATURE OF THE CASE

1. The South Carolina State Law Enforcement Division (“SLED”) is an agency of the State of South Carolina. Like every state agency, SLED was created by the South Carolina General Assembly, and it exists solely by virtue of its enabling legislation. Like every state agency, SLED cannot lawfully exceed the scope of the powers afforded to it by the legislature. *See, e.g., Edisto Aquaculture Corp. v. S.C. Wildlife & Marine Res. Dep’t*, 311 S.C. 37, 40, 426 S.E.2d 753, 755 (1993) (explaining the bedrock principle of administrative and constitutional law that an executive agency is “a creature of statute” and “is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged”).

2. Yet over the course of the past decade, SLED unilaterally—without any legislative authorization—has created a vast surveillance dragnet across the state. This dragnet records and

aggregates over a hundred million time- and location-stamped images of license plates each year as vehicles travel South Carolina roads. *See* Exhibit 1, Freedom of Information Act Request # 2022-0118 and Response from SLED (August 3, 2022) [hereinafter “Ex. 1, 2022 FOIA Response”], at 4, “Item 11.” SLED then makes these images available via a searchable database to scores of other municipal, state, and federal agencies. *See id.* at 5, “Item 5”; Exhibit 2, SLED Memorandum, “Retention Time for ALPR Data,” (Aug. 7, 2012) [hereinafter “Ex. 2, SLED ALPR Memo”]. Members of these agencies may search the database without any suspicion of criminal wrongdoing. *See* Exhibit 3, SLED Policy 13.40: Automated License Plate Recognition [hereinafter “Ex. 3, Policy 13.40”], at 2, 4.

3. SLED collects this data using a rapidly proliferating network of automated license plate readers (“ALPRs”)—high-speed, computer-controlled camera systems typically mounted on street poles, streetlights, highway overpasses, mobile trailers, or police cars. ALPRs scan perpetually and indiscriminately. SLED stores for three years every image it collects, along with the time and location at which the image was collected. *See id.*, at 1, 4. It is irrelevant to SLED whether the vehicle owner is suspected of any violation of the law.

4. SLED’s collection and sharing of ALPR data is entirely without legislative authorization. The South Carolina General Assembly has expressly authorized SLED by statute to operate myriad public safety databases—including the statewide DNA, gang, and fingerprint databases—but not this one.

5. SLED built its sprawling ALPR surveillance network with minimal transparency, and it has failed to promulgate a single formal regulation regarding (or even mentioning) the program.

6. Instead, SLED’s ALPR program is governed by an informal, internal policy that SLED most recently revised in 2018. *See id.* In developing this policy, SLED did not adhere to rulemaking procedures required by the South Carolina Administrative Procedures Act, such as providing the public an opportunity for notice and comment, even though the policy creates binding norms and rules for SLED, external agencies, and South Carolina residents who are subject to the ALPR surveillance.

7. Plaintiffs bring this matter pursuant to the South Carolina Declaratory Judgment Act, S.C. §§ 15-53-10, *et. seq.* They ask this Court to enjoin SLED’s lawless dragnet surveillance database and rule that the General Assembly, not an administrative agency, must determine if, when, and how, a statewide ALPR program should operate in South Carolina.

PARTIES AND STANDING

8. **Plaintiff South Carolina Public Interest Foundation** (“SCPIF”) is a not-for-profit corporation, organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including upholding the Constitution and laws of the State of South Carolina.

9. **Plaintiff John Sloan** is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He brings this action individually and on behalf of all others similarly situated.

10. **Defendant South Carolina State Law Enforcement Division** is a state agency with rulemaking authority. SLED operates a program that includes the acquisition, operation, and distribution of ALPR technology and data. SLED also maintains and operates a searchable database that contains hundreds of millions of license plate images and associated metadata captured by ALPR cameras.

11. **Defendant Mark Keel** is the Chief of SLED. As Chief, Mr. Keel is the head of the agency, pursuant to S.C. Code Ann. § 23-3-10, and oversees the agency’s rulemaking. He is sued in his official capacity.

JURISDICTION AND VENUE

12. The South Carolina Supreme Court has personal jurisdiction with regard to each Defendant.

13. This case involves an actual, justiciable controversy between the parties as described herein.

14. The Court should grant these Plaintiffs public interest standing to bring this action because this case raises matters of great public importance.

15. Plaintiffs request the Court to take this matter in its original jurisdiction pursuant to Article V, section 5, of the South Carolina Constitution, Section 14-3-310 of the South Carolina Code, South Carolina Appellate Court Rule 245, and the Declaratory Judgments Act, S.C. Code Ann. § 15-53-20.

16. The Court's exercise of original jurisdiction is appropriate because the issues raised are of significant public importance, both to law enforcement agencies and South Carolina residents, and they require prompt resolution.

- a) SLED's unauthorized collection and storage of license plate images in an enormous shareable and searchable database violates the Constitutional principle of separation of powers. By short-circuiting the legislative process, SLED has encroached on the General Assembly's legislative power and appropriated authority reserved for our elected representatives. The South Carolina Supreme Court has stated that such expansive governance by bureaucratic fiat "presents a threat to our civil society." *Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 465, 790 S.E.2d 763, 778 (2016) (Kittredge, J., concurring). In *Joseph*, the Court's opinion "embrace[d] completely the excellent comprehensive analysis of administrative rulemaking set forth in sections I, II, and III of Justice Kittredge's concurring opinion"). *Id.* at 455, n.3, 773 n.3.
- b) This surveillance program implicates the privacy interests and individual rights of millions of South Carolina residents, whose movements are being monitored and recorded by a rapidly proliferating surveillance database that they know little about, have played no role in authorizing, and are funding with their taxpayer dollars.
- c) SLED's continued operation of its ALPR program without statutory authority is an ongoing violation of the South Carolina Constitution, establishing a pressing need for prompt resolution. The rapid and unchecked proliferation of ALPR cameras, the potential for abuse, the expenditure of public funds, and the potential for the

future implementation of similarly unlawful mass surveillance programs using new technologies all underscore the urgency of this matter.

FACTS

I. Automated License Plate Reader Systems

17. Automated License Plate Readers, or “ALPRs,” are devices that automatically capture passing license plate images and detect license plate characters.

18. ALPR cameras can be stationary (mounted in a permanent location), mobile (such as a camera attached to a vehicle), or portable (such as a trailer that can be temporarily installed where an agency wishes).

19. ALPRs can scan hundreds of plates per minute.

20. ALPR systems can notify officers or analysts in real time if a passing license plate is on a “hot list”—i.e., a list of license plates that a government agency has flagged as belonging to a vehicle of interest.

21. ALPR cameras also wirelessly transmit the images they capture to data warehouses, where the images are stored along with their associated data, including the time and location at which the license plate was scanned.

22. The warehousing of ALPR data is independent of the ALPR’s hot list function. ALPR systems can be programed to perform one function, the other, or both.

II. Defendant SLED’s ALPR Program

23. Defendant SLED has developed, operated, and maintained a statewide ALPR program since at least 2012. *See* Ex. 2, SLED ALPR Memo.

24. SLED’s statewide ALPR program includes three primary components:

- a. ALPR hardware;
- b. SLED’s own searchable database of historical ALPR data;
- c. A real-time “hot list” alert system. *See* Ex. 3, Policy 13.40.

A. SLED’s ALPR Hardware

25. Defendant SLED owns only a handful of ALPR devices that the agency operates itself,

but **many** law enforcement agencies use their own ALPR devices to capture license plate data that they upload and store on SLED’s database. *See* Ex. 1, 2022 FOIA Response, at 3, “Item 4;” *id.* at 4, “Item 6.”

B. SLED’s Back-Office Database¹

26. SLED uploads all of the ALPR images it collects and those it receives from other agencies to a centralized, searchable database commonly referred to as the “Back Office.” According to a FOIA response from August 2022, SLED collects and retains ALPR images from at least 48 agencies. *See id.* at 3, “Item 6.”

27. Under SLED’s informal ALPR policy—“Policy 13.40”—SLED indiscriminately retains all images and metadata uploaded to the Back Office for three years. *See* Ex. 3, at 4.

28. According to a FOIA response from August 2022, SLED gives at least 99 agencies (from both within and outside South Carolina) access to the Back Office database, and more than 2,000 individual users have active Back Office accounts. *See* Ex. 1, 2022 FOIA Response, at 4, “Item 5,” “Item 8” (confirming recent numbers); Exhibit 6, SLED’s Response to Freedom of Information Act Request # 2015-153 (March 5, 2015) [hereinafter “Ex. 6, 2015 FOIA Response”], at 2, “Question 1” (showing the variety of agencies that had access to SLED’s ALPR database as early as 2014).

29. Any individual or agency with access to the database can run a search based on a license plate, a partial license plate, or an address. *See* Ex. 2, SLED ALPR Memo; *supra*, at n. 1.

¹ SLED has entered into sole source contracts with both NDI-Recognition Systems (“NDI-RS”) and Vigilant Solutions (“Vigilant”) to procure ALPR technology and software. *See e.g.*, Exhibit 4, South Carolina Law Enforcement Division “Intent to Award Sole Source,” (Dec. 18, 2021); Exhibit 5, South Carolina Law Enforcement Division, “Intent to Award Sole Source,” (April 25, 2022). For a highly technical explanation of both how ALPR software works generally, as well as the specific capabilities of NDI-RS and Vigilant’s platforms, *see* U.S. Department of Homeland Security, Science and Technology, “License Plate Recognition Database Software Market Survey Report,” (April 2013), available at <https://www.dhs.gov/publication/license-plate-recognition-database-software>.

- a) A Back Office search based on a license plate will generate a report of every image of that plate in the database, along with the date, time, and location each image was taken.
- b) A Back Office search based on an address will generate a report of all license plates captured at or near a location of the user's choosing.

30. For each search, users can request the full three-years of results or narrow by time frame. *See supra*, at n. 1.

31. These Back Office reports can reveal years' worth of sensitive personal information, such as an individual's contacts and associates, where an individual shopped, what religious services an individual attended, and which medical professionals or counselors an individual visited.

32. There is no evidentiary threshold that an officer must satisfy before conducting a search of the database. The only restrictions Policy 13.40 imposes on law enforcement use of ALPR systems is that it be for a "legitimate law enforcement purpose" or "public safety-related mission." *See Ex. 3, Policy 13.40*, at 2, 4. Policy 13.40 does not define these terms.

33. All the ALPR data stored on the Back Office database is collected and retained without justification or suspicion of wrongdoing.

34. The overwhelming majority of data stored on the Back Office database documents the movements and locations of individuals who neither have been nor will be suspected of, relevant to, or involved in a criminal or public safety investigation.

35. As of July 13, 2022, the Back Office contained data from over four hundred million (400,000,000) license plate reads. *See Ex. 1, 2022 FOIA Response*, at 4, "Item 11."

36. The Back Office is growing rapidly. In 2021, the Back Office received data from 150,738,105 license plate reads—up from 135,368,308 in 2020 and 26,451,216 in 2014. *See id.*; *Ex. 6, 2015 FOIA Response*, at 6, "Question 5."

37. SLED’s ALPR surveillance database will continue to expand rapidly as municipalities continue to add new ALPR cameras, all of which may feed into the Back Office.²

C. SLED’s Real-Time Hot List Alert System

38. A “hot list” refers to a list of license plates that have been deemed “of interest.”

39. An ALPR system can be configured to generate a real-time alert—a notification to the agency—any time a hot-listed license plate is observed by an ALPR camera.

40. SLED’s ALPR system is linked to a number of hot lists, including: the SC Department of Motor Vehicles’ lists of vehicles with expired registration tags or lapsed insurance; the FBI’s National Crime Information Center (NCIC) list of stolen vehicles; and hot lists created by any user with “administrative privileges.” *See* Ex. 6, 2015 FOIA Response, at 6, “Question 4”; Ex. 3, Policy 13.40, at 2.

III. Statutory Framework

41. Defendant SLED is a state agency, created by the South Carolina General Assembly. S.C. Code Ann. § 23-3-10.

42. The General Assembly has passed dozens of statutes that authorize, oblige, and constrain SLED’s administration of specific criminal justice and public safety databases, including the Criminal Justice Information Center (a statewide repository for arrest records, custodial records, and fingerprints collected pursuant to a lawful arrest), the State DNA Database, the Statewide Criminal Gang Database, fingerprint databases, and a body-worn camera database, amongst others.

43. No South Carolina statute governs or even mentions ALPR devices, databases, or programs.

² *See, e.g.,* Rickey Ciapha Dennis Jr., *North Charleston Planning to Add Over 700 Cameras Around the City to Expand Surveillance*, *The Post and Courier* (Apr. 28, 2022), available at <https://bit.ly/3FKNdNr>; Corinne McGrath, *Horry County Police Department to Install 23 License Plate Readers to Combat Crime*, *WMBF*, Mar. 21, 2022, available at <https://bit.ly/3t5FaDa>; *Simpsonville Uses Automated License Plate Readers to Help Fight Crime*, *WSPA*, Mar. 31, 2021, available at <http://bit.ly/3T4P3Mg>.

44. SLED’s own internal policy template prompts the agency to list “Related Standards/Statutes/ References” when drafting a policy.

45. For Policy 13.40, the only policy governing ALPR devices and databases, SLED cites “CALEA 17.5.4 a., b., c., d.” where the agency normally would list “related standards/statutes/references.” *See* Ex. 3, Policy 13.40, at 1. CALEA—the Commission on Accreditation for Law Enforcement Agencies—is an independent, privately-run organization that offers voluntary accreditation programs and model policies. *See* CALEA Website, “About the Commission,” *available at* <https://calea.org/about-commission>. It is not the General Assembly, and it cannot authorize SLED action.

46. In a generic Memorandum of Understanding between SLED and local law enforcement agencies regarding access to SLED’s Back Office database, there is a section entitled “Empowering Statutes.” Exhibit 7, South Carolina Law Enforcement Division, “Memorandum of Understanding Pertaining To The Establishment Of The South Carolina Law Enforcement Division Automated License Plate Reader,” at 2. The only statute SLED references in this section is a sub-provision of its general enabling statutes. *Id.* Specifically, SLED quotes S.C. Code Ann. § 23-3-15(A)(1), which provides SLED with “authority statewide” in:

“the investigation of organized criminal activities or combined state-federal interstate criminal activities, all general criminal investigations, arson investigation and emergency event management pertaining to explosive devices.”

47. As the plain language of Section 23-3-15(A)(1) makes clear, this provision only authorizes *criminal* investigations and emergency event management pertaining to explosive devices. It does not authorize the collection, storage, and distribution of years’ worth of time- and location-stamped vehicle data of millions of individuals who will never be the subject of, or relevant to, a criminal investigation.

IV. Regulatory Framework

48. SLED has not formally promulgated a single regulation governing the use, operation, or maintenance of its ALPR program. *See* S.C. Code Ann. Regs. Ch. 73.

49. The entire program is administered under the informal policy described above—Policy 13.40—which cannot be enforced by the public and which SLED can amend, revoke, or replace at any time, without notice and without providing an opportunity for public input. *See* Ex. 3.

50. Although SLED failed to implement Policy 13.40 as a formal regulation—with public notice and comment—Policy 13.40 establishes binding norms that give it regulatory effect. *See* Ex. 3, Policy 13.40. Specifically, Policy 13.40 regulates who may use ALPR systems (Subsection “C”), how the systems may be used (Subsections “A” and “C”), and who may access SLED’s ALPR database (Subsection “E”). *Id.* Policy 13.40 also establishes a binding rule for SLED’s retention of images generated by ALPR systems (Subsection “F”). *Id.* at 4 (“SLED will maintain data and images submitted to [SLED’s database] for a period of three years.”).

51. Municipal police departments also have stated expressly that SLED Policy 13.40 is binding on them. For example, Myrtle Beach Police Department Policy #276 states: “MBPD shall adhere to SLED policy and guidelines related to the storage and/or retrieval of ALPR data as per South Carolina Law Enforcement Division Policy Statement 13:40, Automated License Plate Recognition.” *See* Exhibit 8, Myrtle Beach Police Department, Administration Regulations and Operating Procedures # 276, at 4.

52. SLED’s policy also binds the public generally; individuals cannot escape the ALPR cameras while traveling on many South Carolina roads, nor can they prevent their data from being stored in the database for three years.

V. SLED’s ALPR Program Implicates a Host of Critical Issues and Exposes Members of the Public to Considerable Risk

53. When law enforcement agencies deploy ALPR programs without legislative authorization, those agencies, not the legislature, make significant policy choices that impact the public’s day-to-day lives.

54. Unregulated ALPR systems and inadequate policies risk widespread infringement on the exercise of constitutional rights and can result in profound invasions of privacy. For example, the International Association of Chiefs of Police (IACP) has warned that ALPR technology can make people “more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they consider themselves under constant surveillance,” and that “mobile LPR units [can] read and collect the license plate numbers of vehicles parked at addiction counseling meetings, doctors’ offices, and health clinics.”³

55. Unregulated ALPR surveillance systems and inadequate policies can also make confidential databases vulnerable to misuse and abuse. Associated Press journalists reviewed hundreds of *documented* examples of misuse of public safety databases by law enforcement, including ALPR databases, motivated by “romantic quarrels, personal conflicts, voyeuristic curiosity,” and the desire “to stalk or harass.”⁴ There have been multiple instances of law enforcement officers using ALPR technology in particular to track former romantic partners or potential romantic partners and their associates,⁵ including a report in South Carolina of “at least

³ See IACP, “Privacy impact assessment report for the utilization of license plate readers” (Sept. 2009), *available at* <https://bit.ly/3t18dbi>.

⁴ Sadie Gurman, “Across US, police officers abuse confidential databases,” Associated Press (Sept. 28, 2016), *available at* <https://bit.ly/3DG3Wie>.

⁵ See, e.g., Cole West, “Kechi officer used license plate reader to track estranged wife, police say,” KAKE ABC (Oct. 31, 2022), *available at* <https://bit.ly/3UtFwPE>; Ellen Dennis, “Everett ex-cop acquitted of perjury but is still guilty of stalking,” The Daily Herald (Feb. 14, 2022), *available at* <https://bit.ly/3fxPxx0>; Becky Metrick, “Former Pa. police officer arrested on stalking charges following standoff,” PennLive (Sept. 28, 2021), *available at* <https://bit.ly/3NEoD2U>.

one case where ALPRs were used to track the whereabouts of [a] partner by falsely reporting the partner as missing.”⁶

56. Unregulated ALPR programs and inadequate policies also can create vulnerability to security breaches. For example, in 2019, hackers breached an ALPR and facial recognition database belonging to U.S. Customs and Border Patrol.⁷ Security breaches and incompetence have caused live streams linked to more than a hundred ALPR cameras in Florida, Louisiana, and California to be exposed online, along with their real-time analytics and hot list alerts.⁸

CLAIMS FOR RELIEF

First Cause of Action

(Violation of Separation of Powers and *Ultra Vires* Agency Action) South Carolina Constitution, art. I, § 8, and art. III, § 1

57. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

58. Article I, section 8 of the South Carolina Constitution provides: “In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”

59. Article III, section 1 of the South Carolina Constitution vests the legislative power of the State in the South Carolina General Assembly.

60. Pursuant to this separation of powers, executive agencies have “only such powers as have been conferred by law and must act within the authority granted for that purpose.” *Bazzle v.*

⁶ See Eric Connor, “Greenville adding more cameras to read license plates, raising questions of oversight, privacy,” *The Post and Courier* (July 16, 2022), available at <https://bit.ly/3hey7pn>.

⁷ Drew Harwell and Geoffrey A. Fowler, “U.S. Customs and Border Protection says photos of travelers were taken in a data breach,” *The Washington Post* (June 10, 2019), available at <https://wapo.st/3t1P1tK>.

⁸ Electronic Frontier Foundation, “License Plate Readers Exposed! How Public Safety Agencies Responded to Major Vulnerabilities in Vehicle Surveillance Tech” (Oct. 28, 2015), available at <https://bit.ly/3hgMkSM>.

Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (citing *Triska v. Dep't. of Health & Env't Control*, 292 S.C. 190, 355 S.E.2d 531 (1987)).

61. Defendant SLED is an executive agency of the State of South Carolina. S.C. Code Ann. § 23-3-10.

62. SLED's general enabling legislation is contained in Chapter 3 of Title 23 of the Code of Laws of South Carolina.

63. Article 1 creates SLED and vests the agency with certain general "authorities and responsibilities." S.C. Code Ann. § 23-3-10, 23-3-15. These responsibilities include criminal investigations, (§ 23-3-15(A)(1),(3)), the maintenance of the state's forensic sciences laboratory (§23-3-15 (A)(2)), operation of the statewide "criminal justice data base" (§ 23-3-15(A)(4)), the operation of specialized tactical response units (§ 23-3-15(A)(5)), the operation and regulation of polygraph exams (§ 23-3-15(A)(6)), inspections and enforcement related to alcoholic beverages (§ 23-3-15(A)(7)), "the coordination of counter terrorism efforts" (§ 23-3-15(A)(8)), and other activities not "inconsistent with the mission of the division or otherwise proscribed by law" (§ 23-3-15(A)(9)).

64. In addition, the South Carolina General Assembly has passed dozens of laws authorizing SLED to operate specifically enumerated databases, departments, and programs, and dozens more laws constraining how those databases, departments, and programs may be administered and used.

65. No provision in SLED's enabling statutes expressly or implicitly authorizes SLED's ALPR program.

66. None of the duties with which SLED is charged implicitly authorize SLED to engage in bulk data collection via the unregulated, widespread, and technology-fueled surveillance of individuals not suspected of any legal misconduct.

67. No statute authorizes SLED to retain sensitive surveillance data for millions of individuals for three years, in a searchable database that may be perused without any evidentiary standard.

68. No statute authorizes SLED to share this database with scores of agencies and thousands of agents and officers from both inside and outside South Carolina.

69. When an agency acts outside the scope of its enabling statute, that action is *ultra vires*, and, therefore, unlawful. *See Bazzle v. Huff*, 319 S.C. 443, 462 S.E.2d 273 (1995).

70. This principle is at its strongest in the context of surveillance by law enforcement, where individual privacy and liberty interests are most at stake. Only the legislature can balance the competing policy interests and craft appropriately tailored solutions to promote successful law enforcement with adequate regard for personal security and privacy.

71. SLED's ALPR database exceeds the agency's statutory authority and is therefore unlawful.

**Alternative Second Cause of Action
(Violation of Separation of Powers and Non-Delegation Doctrine)
South Carolina Constitution, art. I, § 8, and art. III, § 1**

72. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

73. Article I, section 8 of the South Carolina Constitution provides: "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."

74. Article III, section 1 of the South Carolina Constitution vests the legislative power of the State in the South Carolina General Assembly.

75. It is "well settled" that "the legislature may not delegate its power to make laws" without violating the constitutional principle of separation of powers. *S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 594, 86 S.E.2d 466, 470 (1955).

76. The legislature violates this foundational principle when it passes a "statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body." *Id.* at 595, 86 S.E.2d at 471.

77. S.C. Code Ann. § 23-3-15(A)(1) is the only statutory provision SLED has referenced as empowering its ALPR program.

78. Section 23-3-15(A)(1) assigns SLED “authority statewide” in ...“the investigation of organized *criminal* activities or combined state-federal interstate *criminal* activities, all general *criminal* investigations, *arson* investigation and emergency event management pertaining to explosive devices.” (Emphasis added).

79. This provision does not offer any direction, limiting principle, or guidance regarding a statewide program centered on the mass surveillance of countless individuals not suspected or accused of any violation of the law.

80. No statute contemplates, regulates, constrains, or places sufficient legislative guardrails on any aspect of the agency’s ALPR program.

81. Section 23-3-15(A)(1) confers only two powers—the power to conduct *criminal* investigations and authority over emergency event management pertaining to explosive devices. If that statute is read to authorize a statewide database centered on the mass surveillance of wholly innocent individuals, it would so strip the law of any plain meaning or guiding principle as to repose “absolute, unregulated, and undefined discretion” in SLED.

82. Such a reading would be an unconstitutional delegation of legislative power to an executive agency, in violation of the non-delegation doctrine and art. 1, § 8 of the South Carolina Constitution.

**Alternative Third Cause of Action
(Violation of the Administrative Procedures Act)
S.C. Code Ann. §§ 1-23-10, *et seq.***

83. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

84. The South Carolina Administrative Procedures Act (“APA”) dictates the procedures state agencies must follow when promulgating administrative regulations. S.C. Code Ann. §§ 1-23-10, *et seq.*

85. The APA defines a “regulation” as an “agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.” S.C. Code Ann. § 1-23-10(4).

86. “Whether a particular agency creates a regulation or simply announces a general policy statement depends on whether the agency action establishes a ‘binding norm.’” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 454, 790 S.E.2d 763, 772 (2016) (quoting *Home Health Serv., Inc. v. S.C. Tax Comm’n*, 312 S.C. 324, 328, 440 S.E.2d 375, 378 (1994)).

87. SLED is a state agency under the APA. S.C. Code Ann. § 1-23-10.

88. SLED Policy 13.40 establishes binding norms—including data retention periods and access requirements—for the dozens of agencies that use SLED’s ALPR hardware and database.

89. SLED Policy 13.40 and its statewide database also establish procedures and practices that bind the public. Anyone who lives, works, shops, or has other responsibilities in covered areas will have their license plate repeatedly photographed and encoded with time and location information. Any collected data will be retained for at least three years, and anyone with access to the database can run a search on any member of the public’s vehicle without regard for evidentiary thresholds.

90. The public cannot opt out of SLED’s ALPR database without relinquishing their use of automobiles altogether.

91. Because Policy 13.40 and the ALPR database bind both the public and other law enforcement agencies in South Carolina, SLED was obliged to comply with the APA’s procedures for promulgating a regulation before adopting it.

92. Those procedures include: providing notice of drafting and public hearings; conducting a public hearing; reviewing written and oral testimony; issuing any necessary reports; filing the proposed regulation with the Legislative Counsel for submission to the General Assembly; receiving approval from the General Assembly; and publishing the final rule in the State Register. S.C. Code Ann. §§ 1-23-110, *et seq.*

93. SLED did not comply with any of these requirements before adopting Policy 13.40.

94. Accordingly, even if it were determined that SLED's enabling statutes *did* authorize the operation and maintenance of a statewide ALPR database, and even if it were determined those statutes did so without violating the nondelegation doctrine, SLED's failure to comply with the requirements of the APA renders its ALPR database unlawful.

95. SLED Policy 13.40, and the program it implements, violate the South Carolina Administrative Procedures Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

a) A declaration that Defendant SLED's statewide ALPR database exceeds the agency's statutory authority and violates the Separation of Powers clause of the South Carolina Constitution;

b) In the alternative, should the Court hold that any aspect of SLED's ALPR database is statutorily authorized, a declaration that such statute unconstitutionally delegates legislative authority to an executive agency in violation of the Separation of Powers clause of the South Carolina Constitution;

c) In the alternative, should the Court hold that SLED's ALPR database is lawfully authorized by statute, a declaration that SLED Policy 13.40 and the program it implements place binding norms on both the public and government entities, and thus should have been promulgated as a regulation under the South Carolina Administrative Procedures Act;

d) An order enjoining the Defendants and their officers, agents, and employees from collecting ALPR data and operating SLED's ALPR database so long as its operation remains unlawful;

e) An award of reasonable attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300; and

f) Such other relief as the court deems just and equitable.

Dated: November 17, 2022

Respectfully submitted,

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Alesia Flores (SC Bar No. 72857)
Flores Menegakis LLC (SC Bar No. [])
2850 Ashley Phosphate Rd, Ste B
North Charleston, SC 29418
(843) 823-7444
allie@fmcriminallaw.com
alesia@fmcriminallaw.com

Attorneys for Plaintiffs

**Exhibit 1 to Complaint for Declaratory and Injunctive
Relief**

**Freedom of Information Act Request # 2022-0118 and
Response from South Carolina Law Enforcement
Division (August 3, 2022)**

FOIA Request

Annie Hudson-Price <annie.hudsonprice@nyu.edu>
To: foi@sled.sc.gov

Wed, Jan 26, 2022 at 5:33 PM

January 26, 2022

Freedom of Information Office
S.C. Law Enforcement Division
P.O. Box 21398
Columbia, S.C. 29221
foi@sled.sc.gov
803.896.2327

Pursuant to the South Carolina Freedom of Information Act (“FOIA”), S.C. 30-4-10, *et seq.*, I write to request the following:

1. All contracts the South Carolina State Law Enforcement Division (SLED) has entered into for the procurement of Automatic License Plate Reader (ALPR) software, hardware, subscriptions, and/or related services;
2. All SLED policies, directives, orders, internal memoranda, and/or training materials that relate to ALPR technology;
3. The number of ALPR devices owned or operated by SLED, broken out by type (i.e., fixed, mobile, or portable);
4. A list of all local, state, and federal agencies and organizations to which SLED loans or rents ALPR devices, and the number of devices SLED rents and/or loans to each agency or organization;
5. A list of all local, state, and federal agencies and organizations with which SLED shares ALPR data;
6. A list of all local, state, and federal agencies and organizations from which SLED receives ALPR data;
7. A list of all databases and/or servers SLED uses to store the ALPR data SLED collects and receives;
8. The number of individual users with access to SLED’s ALPR databases/servers, broken out by database/server;
9. A list of all local, state, and federal agencies and organizations from which SLED receives “hot lists,” the purpose of those hot lists (e.g., expired registrations, missing persons, wanted persons), and the number of license plates on each list;
10. A list of all local, state, and federal agencies and organizations with which SLED shares “hot lists,” the purpose of those hot lists, and the number of license plates on each list;
11. The number of license plate “reads” that were uploaded to SLED’s ALPR databases/servers between 01/01/2015 and 01/01/2022, broken out by year and database;
12. All informal and formal agreements, including memoranda of understanding, between SLED and any other law enforcement agency, public entity, or private company concerning ALPR technology, including, but not limited to, ALPR hardware and databases.

If you deny any or all of this request, please cite each specific exemption you believe justifies the refusal to release the information, including redaction, and notify me of the appeal procedures available to me under the law. I expect the release of all segregable portions of otherwise exempt material.

I would appreciate receiving these records as an email attachment, through a secure file transfer service, or, if neither option is possible, on a CD ROM.

To avoid delays in receiving records or information, I request that records or information be produced as they become available.

Thank you in advance for your assistance in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Annie Hudson-Price
annie.hudsonprice@nyu.edu
(917) 658-0783



South Carolina
Law Enforcement Division

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel: (803) 737-9000

August 3, 2022

VIA Email: annie.hudsonprice@nyu.edu
Ms. Annie Hudson-Price

RE: Freedom of Information Act Request #2022-0118
ALPR Data

Dear Ms. Hudson-Price:

As an initial matter, we appreciate your patience as we worked through the issues surrounding your request. As we evaluated your request, we located a request from 2018 that was similar to the information that was sought in 2013 and was from the same requestor. Attached is SLED's response to this 2018 FOIA. As I am sure you are aware, SLED is not bound by previous FOIA disclosures, particularly one in which subsequent legal analysis revealed that certain FOIA exemptions and specific legal prohibitions to the production of records were applicable.

In any event, please find attached nonexempt public records in SLED's possession that are responsive to your request. See S.C. Code Ann. §§ 30-4-20(c); 30-4-40(a)(2); 30-4-40(a)(3)(A), (D), (E) or (F); 30-4-40(a)(4). Be advised that "[i]nformation relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, **is required to be closed to the public** and is not considered to be made open to the public under the provisions of this act." See S.C. Code Ann. § 30-4-20(c)(emphasis added). Furthermore, 28 C.F.R. Part 20 and FBI CJIS Security Policy, Version 5.9 specifically prohibit the release of any and all Criminal Justice Information Systems (CJIS) information to non-law enforcement sources. As such, SLED is informed and believes that state and federal law and federal CJIS security policy prohibit SLED from releasing certain materials responsive to this request.

In addition to the information produced herewith, please see SLED's specific responses to your email dated June 13, 2022:

Items 1, 2: Attached are all nonexempt public records responsive to such, as provided above.

Item 3: SLED does not possess nonexempt public records, as provided above. However, please be advised that SLED has 5 portable trailers and 1 mounted unit.

Item 4: SLED does not possess nonexempt public records responsive to this request, as provided above.



An Accredited Law Enforcement Agency



Item 5: SLED does not possess nonexempt public records responsive to this request, as provided above. However, SLED would aver that 99 agencies currently have access to ALPR data.

Item 6: SLED does not possess nonexempt public records responsive to this request, as provided above. However, SLED would aver that ALPR data is currently collected from 48 agencies.

Item 7: SLED does not possess nonexempt public records responsive to this request, as provided above.

Item 8: SLED does not possess nonexempt public records responsive to this request, as provided above. However, there are currently 2,077 active users.

Item 9: SLED has does not possess nonexempt public records responsive to this request, as provided above. However, be advised of the following current data:

SCDMV 23,835 total license plates

NCIC 291,194 total license plates

Item 10: SLED does not possess nonexempt public records responsive to this request, as provided above.

Item 11: SLED does not possess nonexempt public records responsive to this request, as provided above. However, be advised that, in accordance with policy, data is purged following a 3-year retention period. As such, SLED can provide you the following information regarding "reads" from 2019-2022:

8/13/2019 – 12/31/2019 – 56,698,973


1/1/2020 – 12/31/2020 – 135,368,308

1/1/2021 – 12/31/2021 – 150,738,105

1/1/2022 – 7/13/2022 – 78,798,311

Item 12: Attached are all nonexempt public records responsive to such, as provided above.

Regards,



Paul T. Ahearn, III
Deputy General Counsel

Attachments- listed in text

**Exhibit 2 to Complaint for Declaratory and Injunctive
Relief**

**South Carolina Law Enforcement Division
Memorandum, “Retention Time for ALPR Data”
(August 7, 2012)**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

August 7, 2012

TO: Agencies Contributing ALPR Data to the SLED ALPR Back Office
FROM: Lt. Sigrid Phinney
RE: Retention Time for ALPR Data

The South Carolina Law Enforcement Division (SLED) maintains an Automated License Plate Recognition (ALPR) database, commonly referred to as the back office, for use by law enforcement agencies across the state. Various local, state, and federal law enforcement agencies have access to the back office to search for information pertaining to investigations, suspicious activity, or other law enforcement purposes. The back office is maintained by SLED and users are assigned user names and passwords. Transaction logs are maintained to ensure proper use of the system and for audit purposes. SLED does not require other local, state, or federal law enforcement agencies or other agencies/organizations with ALPR units, to submit their data to the back office. SLED's ALPR program is a voluntary program available to enhance information sharing and intelligence analysis.

SLED will maintain data and images submitted to the back office for a period of three years, after which the data and corresponding images (if applicable) will be removed from the back office server. This will be in compliance with the SC Information and Intelligence Center Privacy, Civil Rights, and Civil Liberties Protection Policy and will conform to other states' retention time for similar data.



**Exhibit 3 to Complaint for Declaratory and Injunctive
Relief**

**South Carolina Law Enforcement Division Policy
13.40: Automated License Plate Recognition**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210



13.40 AUTOMATED LICENSE PLATE RECOGNITION

POLICY: 13.40	DATE: FEBRUARY 7, 2013	REVISION DATE: JULY 18, 2018
TITLE: AUTOMATED LICENSE PLATE RECOGNITION		PAGE 1 OF 5

RESPONSIBLE AUTHORITY: APPROPRIATE MAJOR

RELATED STANDARDS/STATUTES/REFERENCES: CALEA 17.5.4 a., b., c., d.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

GENERAL PURPOSE: The purpose of this policy is to provide officers with guidelines on the proper use of Automated License Plate Recognition (ALPR) systems and the data collected from the systems.

POLICY: The availability and use of the ALPR systems have provided many opportunities for the enhancement of productivity, effectiveness, and officer safety. It is the policy of SLED that all members abide by the guidelines set forth herein when using ALPR systems.

ACRONYMS AND DEFINITION(S) :

FOUO: For Official Use Only

ALPR: Automated License Plate Recognition

OCR: Optical Character Recognition

READ: Digital images of license plates and vehicles associated with metadata (ie: date, time, and geographical coordinates associated with the vehicle capture) that are captured by ALPR systems.

ALERT: A visual and/or auditory notice that is triggered when the ALPR system receives a potential "hit" on a license plate.

HIT: A read matched to a plate that has previously been registered on an agency's "hot list" of vehicle plates related to stolen vehicles, wanted

vehicles, suspended tags, or other factors supporting investigation, or which has been manually registered by a user for further investigation.

HOT LIST: License plate number of stolen cars, stolen tags, suspended tags, AMBER alerts and vehicles owned by persons of interest in a crime are regularly added to "hot lists". Hot list information can come from a variety of sources, included the National Crime Information Center (NCIC) and the South Carolina Department of Motor Vehicles (SCDMV). In addition to agency created hotlists, users with Administrative privileges may also manually add license plate numbers to hot list in order to be alerted if and when a vehicle license plate of interest is read by the ALPR system.

FIXED ALPR system: ALPR cameras that are permanently affixed to a structure, such as a pole, traffic barrier or a bridge.

MOBILE ALPR system: ALPR cameras that are affixed, either permanently (hardwired) or temporarily (i.e. magnet or window mount), to a law enforcement vehicle of mobile deployment.

PORTABLE ALPR system: ALPR cameras that are transportable and can be moved and deployed in a variety of venues as needed, such as a speed radar sign.

Back Office: A database that houses all ALPR captures from the participating agencies.

SPECIFIC PROCEDURES:

A. General

1. The use of the ALPR systems is restricted to public safety-related missions.
2. ALPR systems and associated equipment and databases are authorized for official public safety purposes. Misuse of the equipment and associated databases, or data, may be subject to sanctions and/or disciplinary actions as per SLED's Privacy Policy 7.13.
3. ALPR systems and ALPR data and associated media are the property of SLED and intended for use in conducting official business with limited exceptions noted elsewhere in this policy. (CALEA 17.5.4 a.)

B. Administration

1. The agency shall designate an employee(s) with administrative oversight for ALPR system deployment and operations who is responsible for the following:
 - a. Establishing protocols for access, collection, storage, and retention of ALPR data and associated media files. (CALEA 17.5.4 b.)
 - b. Establishing protocols to preserve and document ALPR reads and "alerts" or "hits" that are acted on in the field or associated with investigations or prosecutions.

- c. Establishing protocols to establish and ensure security and integrity of data captured, stored, and/or retained in the ALPR system. This shall be conducted with a monthly audit by the agency ALPR Administrator. (CALEA 17.5.4 b.)
 - d. Ensuring the proper selection of the personnel approved to operate the ALPR system and maintaining an adequate number of trainees;
 - e. Maintaining records identifying approved ALPR deployments and documenting their results, including appropriate documentation of significant incidents and arrests that are related to ALPR usage.
 - f. Authorizing any request for ALPR systems or data access according to the policies and guidelines of this agency. (CALEA 17.5.4 b.)
2. Designated, trained personnel shall check equipment on a regular basis to ensure functionality and camera alignment. Any equipment that falls outside expected functionality shall be removed from service until deficiencies have been corrected.
 3. ALPR systems repair, hardware or software, shall be made by agency authorized sources.

C. AUTOMATED LICENSE PLATE RECOGNITION USAGE

1. ALPR operation and access to ALPR collected data shall be for official agency purposes only.
2. Only officers who are NCIC inquiry certified and have been issued user name and passwords by SLED shall be permitted to use an ALPR system or access the ALPR back office.
3. At the start of each shift the officers must ensure that the ALPR has been updated with the most current hot lists available.
4. ALPR Alerts/Hits: Prior to initiation of a traffic stop:
 - a. Visually verify that the vehicle plate numbers match the plate number run by the ALPR system, including both alphanumeric characters of the license plate and the state of issuance.
 - b. The current status of the plate must be verified through dispatch or MDT query prior to taking any action on the vehicle.
5. In each case in which an alert or a hit is triggered, the user should record the disposition of the alert and the hit into the ALPR system.
6. Hot lists may be updated manually by designated agency ALPR Administrators and must document the reason for the alert and a 24/7 contact person.
7. Any searches of ALPR captures in the ALPR back office should be done in accordance with established departmental policies and procedures.

D. ALPR DATA SHARING AND DISSEMINATION (CALEA 17.5.4 b.)

- a. ALPR data should be considered FOUO and can be shared for legitimate law enforcement purposes.
- b. When ALPR data is disseminated outside the agency, it should be kept in a secondary log. (Share point).
- c. Information sharing among agencies should be dictated in accordance with memoranda of understanding (MOUs) or established departmental policies.

E. ACCESS TO THE ALPR BACK OFFICE (CALEA 17.5.4 b.)

- a. Any agency in the State of SC who either does or does not have an ALPR may still have access to the agencies ALPR back office where the ALPR captures are located.
- b. The officer/analyst attached to a law enforcement agency in the State must be NCIC inquiry certified prior to gaining access or using any ALPR in the State.
- c. Officers/analysts that are NCIC inquiry certified and request to have access to the ALPR back office must complete the SLED/CJIS Access Form. Once completed, the form must be signed by the requesting officer/analyst's terminal agency coordinator (TAC) and emailed to SLED at itworkrequest@sled.sc.gov
- d. Once the paperwork is approved by SLED the requesting user will receive their user names and passwords to access the ALPR system. (CALEA 17.5.4 b.)

F. RETENTION

- a. SLED will maintain data and images submitted to the back office for a period of three years, after which the data and corresponding images (if applicable) will be removed from the back office server. This will be in compliance with the SC Information and Intelligence Center Privacy, Civil Rights, and Civil Liberties Protection Policy and will conform to other states' retention time for similar data. (CALEA 17.5.4 d.)

G. MAINTENANCE

- a. Under no condition should an ALPR operator attempt to modify the ALPR equipment or software operating system without permission from the ALPR coordinator.
- b. ALPR camera lenses may be cleaned with glass cleaner or mild soap and water and a soft, nonabrasive cloth.
- c. Vehicles with ALPR cameras shall not enter any automatic car washing facility.
- d. Damage to ALPR equipment shall be immediately reported to the ALPR coordinator and their supervisor. The supervisor shall document and investigate, if necessary, the damage in accordance with established policies on agency owned equipment. The supervisor will also notify the agencies insurance company of the incident.

- e. The ALPR coordinator for the agency shall be notified of any ALPR equipment needing maintenance or repair and will notify the appropriate ALPR vendor.
- f. All loss of data, irregularities, and recovery issues of the Back Office system will be the responsibility of the SLED IT Department. (CALEA 17.5.4 c.)


BY ORDER OF:



Mark A. Keel
CHIEF OF SLED

Exhibit 4 to Complaint for Declaratory and Injunctive Relief

South Carolina Law Enforcement Division “Intent to Award Sole Source,” NDI-RS (December 18, 2021)

	<p style="text-align: center;">South Carolina Law Enforcement Division</p> <p style="text-align: center;">Intent to Award Sole Source</p>	<p>Date Issued: 12/18/2021 Procurement Officer: JESSICA GOFF Phone: 803-896-7171 E-Mail Address: jgoff@sled.sc.gov Mailing Address: SC Law Enforcement Division</p>	<p>4400 Broad River Road Columbia SC 29210</p>
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In accordance with §11-35-1560 (A) of the SC Consolidated Procurement Code, it is the intent of South Carolina Law Enforcement Division (SLED) to award without competition a sole source contract in accordance with Regulation 19-445.2105 (B) (5) Two RoadWarrior Speed Trailers , On the basis of: NDI's ALPR Back-Office solution known as VISCE, which is today deployed and maintained by the South Carolina Law Enforcement Division (SLED), is a proprietary application with an associated proprietary database. There is no known vendor in the industry that can send, receive, store, transmit and/or query NDI's proprietary database. NDI, and only NDI can provide additional ALPR cameras and ALPR processors that can seamlessly integrate with the SLED existing VISCE ALPR database. No other ALPR vendor can integrate with NDI's solutions. NDI does not provide any interfaces or custom scripts for any vendor other than NDI to access NDI's proprietary VISCE ALPR database

As a sole source procurement from:NDI Technologies, 105 E. State Road 434, Winter Springs FL 32708

QUESTIONS: Shall be addressed to the email address of the Procurement Officer indicated above.


PROTESTS (MAY 2019) If you are aggrieved in connection with the intended award of this contract, you may be entitled to protest, but only as provided in §11-35-4210. To protest an intended award of a contract pursuant to §11-35-1560, you shall (i) notify the chief procurement officer in writing of your intent to protest within five (5) business days of the date this intent to award is posted, and (ii) if the appropriate chief procurement officer has been timely notified of your intent to protest, you may submit your actual protest within fifteen days of the date this notice of intent to award is posted. Days are calculated as provided in §11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

Any protest or notice of intent to protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to: protest-itmo@itmo.sc.gov or (b) by post or delivery to: 1201 Main Street, Suite 600, Columbia, SC 29201.

Unless otherwise suspended or canceled, The South Carolina Law Enforcement Division will enter into a contract for these supplies on January 26, 2022. Contractor should not perform any work on or incur any costs associated with this notice prior to the receipt of a purchase order. The South Carolina Law Enforcement Division assumes no liability for any expenses incurred prior to issuance of a purchase order.

**Exhibit 5 to Complaint for Declaratory and Injunctive
Relief**

**South Carolina Law Enforcement Division “Intent to
Award Sole Source,” Vigilant (April 25, 2022)**

	<p style="text-align: center;">South Carolina Law Enforcement Division</p> <p style="text-align: center;">Intent to Award Sole Source</p>	<p>Date Issued: 4/25/2022 Procurement Officer: JESSICA GOFF Phone: 803-896-7171 E-Mail Address: jgoff@sled.sc.gov Mailing Address: SC Law Enforcement Division</p>	<p>4400 Broad River Road Columbia SC 29210</p>
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In accordance with §11-35-1560 (A) of the SC Consolidated Procurement Code, it is the intent of South Carolina Law Enforcement Division (SLED) to award without competition a sole source contract in accordance with Regulation 19-445.2105 (B) (5) Vigilant "Commercial Data" Access via LEARN Subscription Renewal

From: Vigilant Solutions, LLC 1152 Stealth Street Livermore, California 94551

FÈ Vigilant Solutions owns and manages the single largest license largest license plate recognition (LPR) data sharing initiative, known as the LEARN.

GÈ This is a renewal and Vigilant Solutions is the current vendor and the only vendor who can access and update the data.

Á

HÈ ÁThe Data consists largely of privately collected LPR data owned by Vigilant and made available for law enforcement exclusively via LEARN.

QUESTIONS: Shall be addressed to the email address of the Procurement Officer indicated above.

PROTESTS (MAY 2019) If you are aggrieved in connection with the intended award of this contract, you may be entitled to protest, but only as provided in §11-35-4210. To protest an intended award of a contract pursuant to §11-35-1560, you shall (i) notify the chief procurement officer in writing of your intent to protest within five (5) business days of the date this intent to award is posted, and (ii) if the appropriate chief procurement officer has been timely notified of your intent to protest, you may submit your actual protest within fifteen days of the date this notice of intent to award is posted. Days are calculated as provided in §11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

Any protest or notice of intent to protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to: protest-itmo@itmo.sc.gov or (b) by post or delivery to: 1201 Main Street, Suite 600, Columbia, SC 29201.

Unless otherwise suspended or canceled, The South Carolina Law Enforcement Division will enter into a contract for these supplies on May 2, 2022. Contractor should not perform any work on or incur any costs associated with this notice prior to the receipt of a purchase order. The South Carolina Law Enforcement Division assumes no liability for any expenses incurred prior to issuance of a purchase order.

**Exhibit 6 to Complaint for Declaratory and Injunctive
Relief**

**South Carolina Law Enforcement Division's Response
to Freedom of Information Act Request # 2015-153
(March 5, 2015)**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

March 5, 2015

Via email to 16473-18386955@requests.muckrock.com

Chris Meller
MuckRock News
DEPT MR 16473
P.O. Box 55819
Boston, MA 02205-5819

RE: Freedom of Information Act Request #2015-153
ALPR Use

Dear Mr./Ms. Meller:

Please find enclosed the information you have requested under the S.C. Freedom of Information Act pursuant to the request dated March 2, 2015.

If you have any questions or concerns, do not hesitate to contact me at (803) 896-7136 or via email at tberry@sled.sc.gov.

Sincerely,

S/A Thomas W. Berry
Freedom of Information Coordinator



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

Question 1 - A list of local, state, and federal agencies that have access to SLED's ALPR system or back office;

Response: 77 agencies

14th Circuit Solicitors Office
Abbeville 911
Abbeville County SO
Anderson County SO
Anderson County Emergency Services
Beaufort PD
Beaufort County SO
Belton PD
Berkeley County SO
Bluffton PD
Briarcliffe Acres PD
Charleston AFB
Charleston PD
Charleston County Aviation Police
Charleston County SO
Chesnee PD
Clover PD
Coward PD
Columbia PD
Darlington County SO
Dillon County SO
Dorchester County SO
Easley PD
Edisto Beach PD
FBI – SC

Florence County SO
Florence PD
Fort Jackson Provost Marshal
Fountain Inn PD
Georgetown PD
Goose Creek PD
Greenville County SO
Greenville PD
Hampton County SO
Hanahan PD
Hartsville PD
Horry County PD
Irmo PD
Jasper County SO
Johnsonville PD
Kershaw County SO
Lexington County SO
Lexington PD
Loris PD
Mauldin PD
Moncks Corner PD
Mt Pleasant PD
Myrtle Beach PD
Newberry County SO
North Augusta DPS
North Charleston PD
North Myrtle Beach DPS
Orangeburg County SO

Orangeburg DPS
Pawleys Island PD
Pickens County SO
Richland County SO
Rock Hill PD
Saluda County SO
Santee PD
SC Forestry Commission
South Carolina DPS
South Carolina Highway Patrol
Seneca PD
SLED – SIIC
SLED – Seahawk
Spartanburg DPS
St George PD
Summerville PD
Sumter County SO
Surfside Beach PD
Travelers Rest PD
US Coast Guard
US Marshals
University of South Carolina PD
Williamsburg County SO
York PD
York County SO

Question 2 - A list of all agencies that have opted to submit their data to SLED's ALPR system or back office;

Response: 31 agencies (These are the agencies that are currently

uploading to us and/or whose data we have in the system within our retention rate of 3 years.)

Beaufort County Sheriff's Office
Charleston Air Force Base
Charleston Police Department
Charleston County Sheriff's Office
Chesnee Police Department
Columbia Police Department
Darlington County Sheriff's Office
Dorchester Sheriff's Office
Edisto Beach Police Department
Florence Police Department
Fort Jackson Provost Marshal
Georgetown County Sheriff's Office
Georgetown Police Department
Greenville Police Department
Hampton County Sheriff's Office
Johnsonville Police Department
Lexington Police Department
Myrtle Beach Police Department
Mt Pleasant Police Department
North Charleston Police Department
Orangeburg Sheriff's Office
Orangeburg Department of Public Safety
Pawley's Island Police Department
Pickens County Sheriff's Office
South Carolina Highway Patrol
South Carolina Law Enforcement Division

South Carolina State Transport Police
Spartanburg Department of Public Safety
University of South Carolina
West Columbia Police Department
York Police Department

Question 3 - The number of individual users with access to SLED's ALPR system or back office;

Response: 1,608 users

Question 4 - A list of all current "hot lists" and the number of plates on each;

Response:

NCIC – 214,034

BCSO - 0

CCSO - 2

CPD - 1

CPD2 - 0

JTTF - 0

MBPD - 0

MPPD - 0

NCPD - 1

SCDMV - 27286

SLED - 8

USCPD – 1

FJSC - 0

Question 5 - The number of "reads" that were submitted to SLED's ALPR system between 01-01-2014 and 12-31-2014;

Response: 26,451,216

Question 6 - The number of "hits" or "alerts" that were generated during the same period (If possible, please include the number of alerts broken out by hot list);

Response: 81,820

Question 7 - The number of ALPR devices owned or operated by SLED, broken out by type (ie: fixed, mobile, or portable);

Response: SLED has 6 portable trailers, 2 loaner mobile units, 1 permanent mounted mobile unit.

Question 8 - A list of all fixed-position devices and their locations;

Response: SLED owns no fixed ALPR devices.

Question 9 - The current status of the DICE and NLETS integration projects mentioned in the previously-released memos dated January 9, 2013;

Response: Both projects are on hold.

The NLETS project has not been pursued any further because of funding.

The DICE integration is pending ALPR upgrades and then further discussion will take place on how/if to proceed with this project.

Question 10 - The number of sanctions or disciplinary actions initiated due to misuse of ALPR equipment or data since the program's launch;

Response: One sanction occurred in 2013 and the subject's access from ALPR was removed completely. Brief summary – Subject logged into back office system and searched for a license plate owned by him. One image was found and it was changed to reflect another license plate number not owned by him. It's not certain that he intended to change

his own license plate or if this was accidental but his access was still removed.

Question 11 - A copy of any documentation or reports surrounding the last monthly security / integrity audit conducted by the ALPR Administrator.

Response: This is completed monthly by the ALPR Coordinator who audits logins and overall usage. If discrepancies are found then a further investigation would occur on those discrepancies to determine if it was misuse. No discrepancies have been noted since the one incident in 2013.

**Exhibit 7 to Complaint for Declaratory and Injunctive
Relief**

**South Carolina Law Enforcement Division,
“Memorandum of Understanding Pertaining to the
Establishment of the South Carolina Law
Enforcement Division Automated License Plate
Reader”**



South Carolina Law Enforcement Division

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor

Mark A. Keel, Chief

Tel: (803) 737-9000

MEMORANDUM OF UNDERSTANDING PERTAINING TO THE ESTABLISHMENT OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION AUTOMATED LICENSE PLATE READER

1. PURPOSE AND CONCEPT

- 1.1. This Memorandum of Understanding (MOU) constitutes an agreement between the South Carolina Law Enforcement Division (SLED) and the undersigned law enforcement agency (hereinafter "partnering agency") to implement an Automated License Plate Reader (ALPR) system back-office application.
- 1.2. It is the intent of the parties to share and leverage assets for the benefit of the citizens of the State of South Carolina by better enforcing criminal laws through a corporate approach to law enforcement.
- 1.3. The goal of this project is to provide connectivity for partnering agencies to participate in ALPR system data sharing. Partnering agencies will share ALPR sensor information for the replication to the data warehouse created as a part of the SLED ALPR back-office application. This system will have the capability to query all sensor information, which is stored within the back-office from a local client or web based application remotely by the participating law enforcement agencies. It is envisioned that partnering agencies at all levels will communicate with each other and SLED to ensure jurisdictional boundaries are respected and the law properly enforced.

2. AFFECTS ON PRIOR AGREEMENTS

- 2.1 This MOU supersedes and/or replaces any prior contracts or agreements between the parties related to the subject matter contained herein.

3. EFFECTIVE DATES AND TERMINATION

- 3.1 This MOU will commence immediately upon signature of both parties.
- 3.2 Either party may opt out of the MOU upon thirty (30) day written notice as provide for in this agreement.

4. EMPOWERING STATUES

- 4.1 Pursuant to South Carolina law, SLED has: specific and exclusive jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the “investigation of organized criminal activities or combined state-federal interstate criminal activities, all general criminal investigation, arson investigation, and emergency event management pertaining to explosive devices.” S.C. Code Ann. §23-3-15(A)(1).
- 4.2 SLED is empowered to provide technical assistance and utilize personnel to work with law enforcement agencies to provide for the safety and general well-being of the citizens of the State of South Carolina.

5. SCOPE

- 5.1 SLED will establish and operate the SLED ALPR back-office application as a shared information system for the benefit of all partnering agencies.
- 5.2 SLED will appoint a project manager to oversee and manage the ALPR project according to the terms and conditions of this MOU.
- 5.3 SLED will direct the management of all obligations, responsibilities, and assets of ALPR, including but not limited to:
 - 5.3.1 Any and all contractual obligations for development, implementation, expansion, maintenance, and management of ALPR system back-office.
 - 5.3.2 Security and control of any data that resides in ALPR back-office, for exclusive public safety use as defined by ALPR sharing system warehouse security policies and procedures established by SLED.
 - 5.3.3 Ownership of any and all equipment in the inventory of ALPR system warehouse, including, but not limited to servers, workstations, communication devices, routers, firewalls or other hardware, and all software in use or under development in compliance with the requirements of ALPR system, as promulgated by SLED.
- 5.4 SLED will design and implement a governance structure appropriate to the proper operation maintenance of the ALPR and provide appropriate levels of input to all participating agencies.
- 5.5 SLED will ensure that appropriate personnel are made available as needed to assist with implementation, as well as for any training required, for the purposes of the ALPR project.

- 5.6 SLED will not have law enforcement responses or notification duties/responsibilities with regard to the ALPR alerts detected by the participating agency's sensors.
- 5.7 SLED will adopt security policies and procedures as may be consistent with appropriate security and maintenance of the system for all participating agencies. The document shall become the governing MOU document for participation in the ALPR system warehouse, upon ratification of the participating agencies.
- 5.8 The partnering agency agrees to share sensor information stored in the back-office application with all public safety agencies involved in the ALPR project.
- 5.9 The partnering agency will appoint a representative, as the agency's ALPR project manager, who will be responsible for the overall coordination of the project on behalf of the agency, and serve as the authorizing official for user access requested by the agency.
- 5.10 The partnering agency will assist in obtaining the cooperation of any third party contractor or vendor approved by them, to provide license plate reader systems in South Carolina, and/or internal or external technology providers (e.g. South Carolina CIO/ other South Carolina State/County/City agencies/ South Carolina Law Enforcement Division (SLED) information technology staff), as may be reasonably necessary for the purposes of this project.
- 5.11 The partner agency maintains sole authority and responsibility for determining the actions, if any, that are appropriate for the department's information technology environment and for implementing any changes deemed to be appropriate for the purposes of this project.
- 5.12 The partnering agency will adopt the SLED ALPR system warehouse security policies and procedures document, which is the governing MOU for participating in SLED ALPR warehouse, and agrees to remain in compliance with the requirements policies, and practices as outlined therein for the duration of the [participating agency name] participation in SLED ALPR system warehouse.
- 5.13 The partnering agency will make reasonable accommodations for access by SLED staff to their facilities and license plate reader system as may be required in furtherance of this project.
- 5.14 The partnering agency will ensure that appropriate personnel are made available as reasonably necessary to assist with development, implementation, and testing of any hardware/software solution, as well as for any training required, for the purposes of this project.

- 5.15 All contributing agencies shall develop and maintain an ALPR data usage policy that addresses privacy concerns. Such usage policy may be derived from the International Association of Chiefs of Police publication pertaining to license plate readers.
- 5.16 The partnering agency shall maintain ownership of all data submitted to the ALPR system warehouse. Therefore, all ownership rights are the sole authority and responsibility of the partnering agency. The data in this system is shared by the partnering agency for the communal use by other law enforcement and government agencies that have this signed agreement with SLED, but shall adhere to the partnering agency's usage policy when using the partnering agency's data. All data use and handling shall comply with the current laws and statues with respect to data.
- 5.17 SLED shall develop and maintain and ALPR data retention policy to address privacy concerns in accordance with current federal and state law, and may be limited by system capability. All partnering agencies shall adhere to the data retention policy until such time that the partnering agency has developed their own policy. At that time, the partnering agency may submit a memorandum to this MOU to address the retention of the data owned by the partnering agency. Such data retention policy may be derived from the International Association of Chiefs of Police publications pertaining to license plate readers.

6. COSTS/REIMBURSEMENTS/COMPENSATION/ FUNDING

- 6.1 SLED agrees to fund maintenance costs for the ALPR back-office application, including necessary hardware and software acquisition and support.
- 6.2 The partnering agency will be responsible for all costs associated with the maintenance, upgrade, and alternation of the partnering agency's sensor system.

7. ASSIGNMENTS

- 7.1 Neither party shall, assign any rights or delegate any obligations hereunder, without the prior written consent of both parties, unless specifically provided for in this MOU.

8. AMENDMENTS

- 8.1 This MOU may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification is sought.

8.2 Either SLED or partnering agency may, buy an instrument in writing, waive compliance by the other party with any term or provision of this MOU on the part of such other party to be performed or complied with.

9. NOTICE

9.1 Any notice required or permitted hereunder shall be in writing and sent to the address first written above or to such other address as the parties may from time to time specify, by United States Mail, First Class postage prepaid, by Federal Express, DHL, or similar courier or by hand delivery.

10. SEVERABILITY

10.1 The provisions of this agreement are severable and if any provision of this agreement shall be invalid or unenforceable to any extent or in any application, then the remainder of such provisions and this agreement, except to such extent or in such application, shall not be affected thereby, and each and every provision of this agreement shall be valid and enforceable to the fullest extent and to the broadest application permitted by law.

11. ENTIRE AGREEMENT

11.1 This MOU contains the entire agreement between SLED and the partnering agency pertaining to the subject matter hereof and supersedes all prior agreements and understanding, oral or written, between SLED and the partner agency with respect to the subject matter hereof.

Jennie Temple
South Carolina Law Enforcement
Division Major – Fusion

Date

Signature of
Chief Law Enforcement Officer

Date

Printed name of Chief Law
Enforcement officer

Jurisdiction

**Exhibit 8 to Complaint for Declaratory and Injunctive
Relief**

**Myrtle Beach Police Department, Administration
Regulations and Operating Procedures # 276**



MYRTLE BEACH POLICE DEPARTMENT

ADMINISTRATION REGULATIONS AND OPERATING PROCEDURES

Subject: Real Time Crime Unit

Number: 276

Effective Date: April 08, 2019

Revised Date:

Rescinds:

Dated:

Approved By:

Purpose

The City of Myrtle Beach Police Department (MBPD) is committed to protecting the public, both resident and visitor. Technology employed by the Real Time Crime (RTC) Unit is a crucial component of MBPD's comprehensive safety plan. This policy explains the purpose of the technology and provides guidelines for the capture, storage and use of video and images.

Background

All sworn MBPD officers and specific Support Services Division personnel are authorized to use video equipment in conjunction with their assigned duties. The RTC Unit, an entity within Support Services Division, houses a centralized technology center specifically designed to support MBPD officers. An RTC analyst provides instant and comprehensive information to officers via surveillance cameras, automated license plate recognition (ALPR) systems, and other enforcement software and databases.

Procedure

Surveillance cameras, ALPR, may be placed in strategic public locations throughout Myrtle Beach with the approval of the MBPD Chief of Police. Cameras may be monitored in real time with RTC analyst providing information to officers. Additionally, the RTC analyst may provide video and ALPR images to investigating officers after a crime has been reported or for other law enforcement purposes.

No person may access information obtained via surveillance cameras without lawful authority.

Due to the fact that this data may contain investigative and confidential information, it is not open to public review. However, information may be made available via Freedom of Information Act (FOIA) requests as per MBPD regulation #123. ALPR systems and data are the property of the South Carolina Law Enforcement Division (SLED). Any requests for information gleaned from the ALPR system should be submitted to SLED for their review and consideration.

A. Responsibilities

1) MBPD

It shall be the responsibility of the MBPD to ensure that surveillance equipment used by department personnel in their official duties is properly installed according to the manufacture's recommendations. Furthermore, MBPD will ensure that surveillance cameras are directed to only record areas in the public view.

2) Support Services Division MBPD

It shall be the responsibility of the Support Services Division Captain with the concurrence of the Chief of Police, to:

- a. establish policy and procedures for the RTC Unit.
- b. ensure that RTC Unit members receive department-approved training to use and/or access law enforcement software, databases and equipment necessary to provide officer support.
- c. ensure the information provided by the RTC Unit is in accordance with MBPD policies and guidelines.

3) Information Technology

It shall be the responsibility of Information Technology to:

- a. work with the vendor to make changes to surveillance camera based on the direction of Support Services Division Captain.
- b. ensure surveillance system is up-to-date and operational based on work items noted in the RTC SharePoint – Camera Issues folder.

4) RTC Analyst

It shall be the responsibility of the RTC analyst to:

- a. ensure that all RTC Unit systems and / or equipment is operated within MBPD policies and guidelines.
- b. provide factual and comprehensive information to officers in real time via monitoring surveillance cameras to:
 1. locate suspects

2. locate vehicles
 3. stop emerging crime
 - c. provide factual and comprehensive information to officers related to reported crime by:
 1. reviewing video
 2. providing system information in hard form (i.e., disc, pictures), as appropriate
 3. identifying patterns
 - d. report any malfunction, damage, or problems with surveillance cameras via the RTC SharePoint – Camera Issues folder.
- 5) MBPD Officer

It shall be the MBPD officer's responsibility to request assistance from the RTC Unit in accordance with departmental policy and guidelines.

B. Information Requests

- 1) Internal

An MBPD officer should request assistance from the RTC Unit as appropriate. Should the need occur in real time, the officer shall request RTC assistance via authorized communication channels. All other requests shall be initiated via the RTC SharePoint – Requests folder.
- 2) External – Inter-Agency

The MBPD may be asked to provide surveillance camera information in support of other law enforcement agencies. Any such request should be made through the Support Services Division Captain who will then assign the request to the RTC analyst. Documentation of the RTC analyst's actions will be housed on the RTC SharePoint – RTC Briefing folder.
- 3) External – Public

Any public request for information received by the MBPD shall be forwarded to the MBPD FOIA Coordinator. The determination of what records can be released remains with the FOIA coordinator and any requests for RTC analysts to provide video for a FOIA request shall be documented by the FOIA coordinator.

C. Data Retention

- 1) Video Surveillance Camera Images / Video

Images / Video from surveillance cameras are retained for 30 days.

2) ALPR

ALPR systems and data are the property of the South Carolina Law Enforcement Division (SLED). As such, MBPD shall adhere to SLED policy and guidelines related to the storage and/or retrieval of ALPR data as per South Carolina Law Enforcement Division Policy Statement 13:40, Automated License Plate Recognition.