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TRB TRANSPORTATION RESEARCH BOARD

TRB Webinar: Legal Issues Relating to DOT's Collection and Use of Data

April 30, 2026

11:00 AM– 12:00 PM



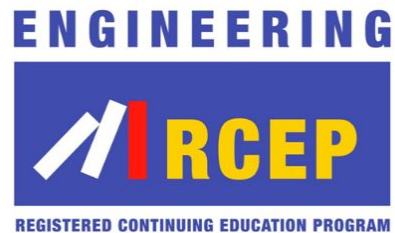
PDH Certification Information

1.5 Professional Development Hours (PDH) – see follow-up email

You must attend the entire webinar.

Questions? Contact Andie Pitchford at TRBwebinar@nas.edu

The Transportation Research Board has met the standards and requirements of the Registered Continuing Education Program. Credit earned on completion of this program will be reported to RCEP at RCEP.net. A certificate of completion will be issued to each participant. As such, it does not include content that may be deemed or construed to be an approval or endorsement by the RCEP.



CLE Credit Information

1.25 Continuing Legal Education Credits from the American Bar Association

You must attend the entire webinar

TRB did not seek approval for this workshop from the state board, we advise you contact your state board to see if credit would be accepted

See email following webinar for the certificate to provide to your board

Purpose Statement

This webinar will examine the legal implications associated with data collected in the normal course of agency business and explore how those requirements affect day-to-day technical and programmatic activities. Presenters will review key legal concepts, outline regulatory considerations, and offer practical strategies for navigating data collection, retention, and disclosure requirements.

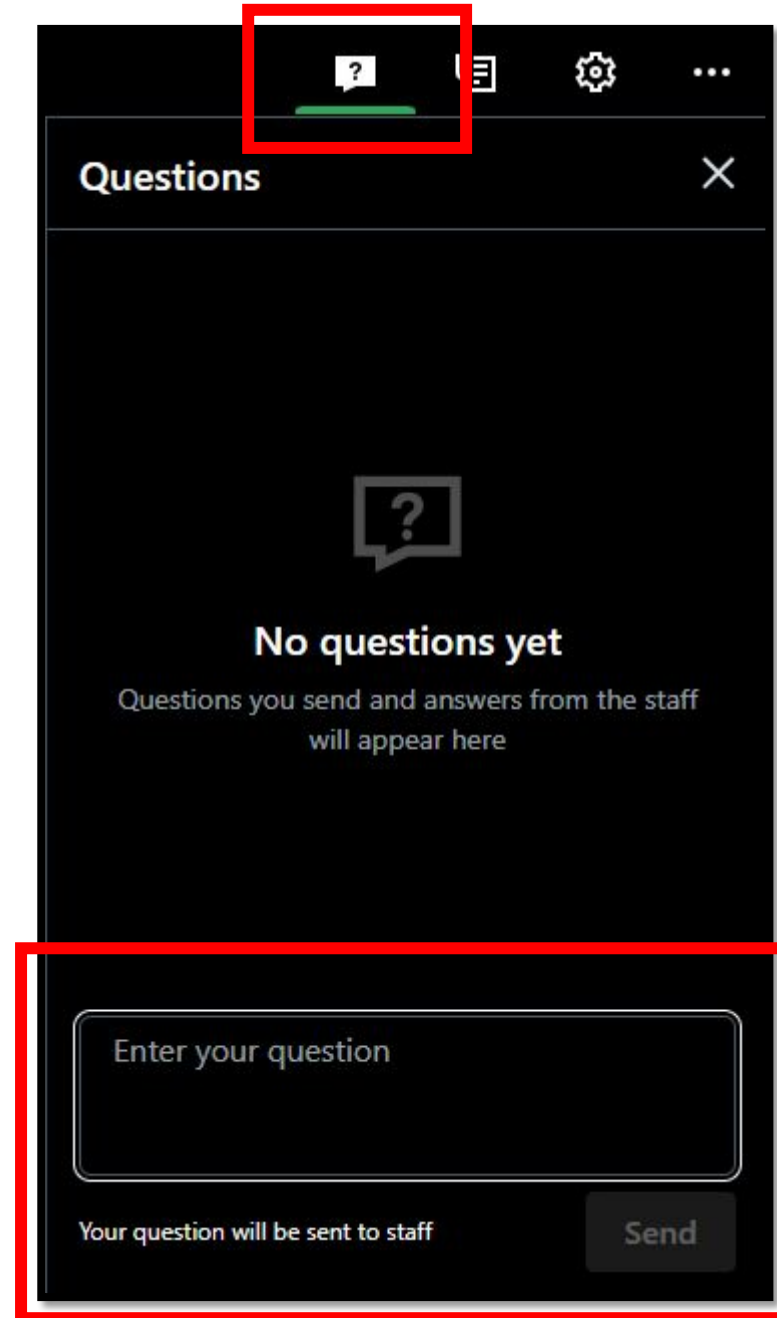
Learning Objectives

At the end of this webinar, you will be able to:

- (1) Identify and explain key legal concepts related to public records collection and retention
- (2) Develop or refine plans to address data collection, retention, and release requirements

Questions and Answers

- Please type your questions into your webinar control panel
- We will read your questions out loud, and answer as many as time allows



Today's Presenters



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Legal & Practical Issues Related To Collection And Use Of Data

April 30, 2026

- Gary Holtmeyer, Assistant Chief Counsel, Missouri Department of Transportation
- Heidi Skinner, Interim City Attorney, City of National City

Data Sources

Public Agency

Industry Organizations

DOT Generated

3rd Party/Contract

Data Application n

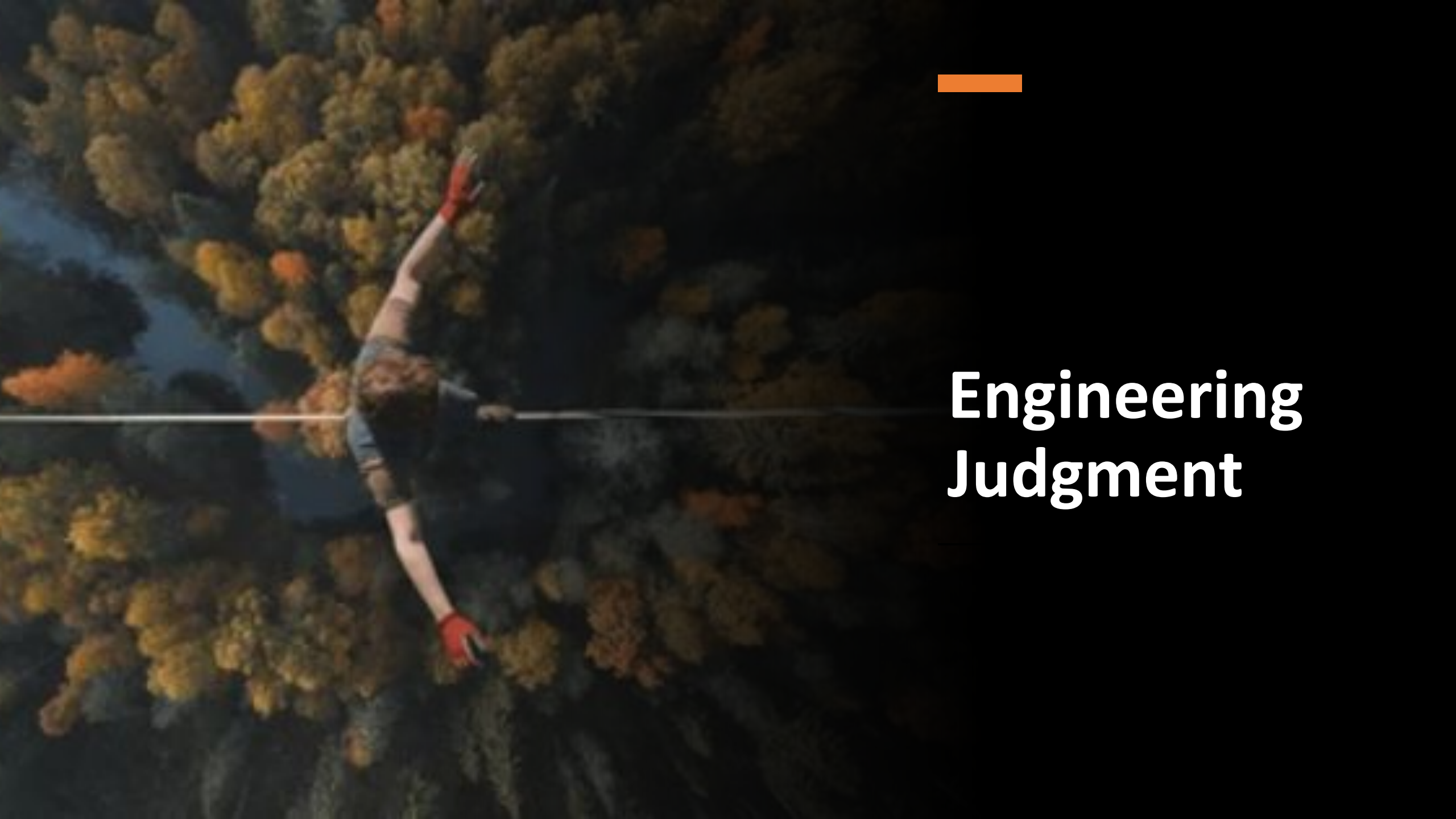
Planning

Design

Maintenance



RISK





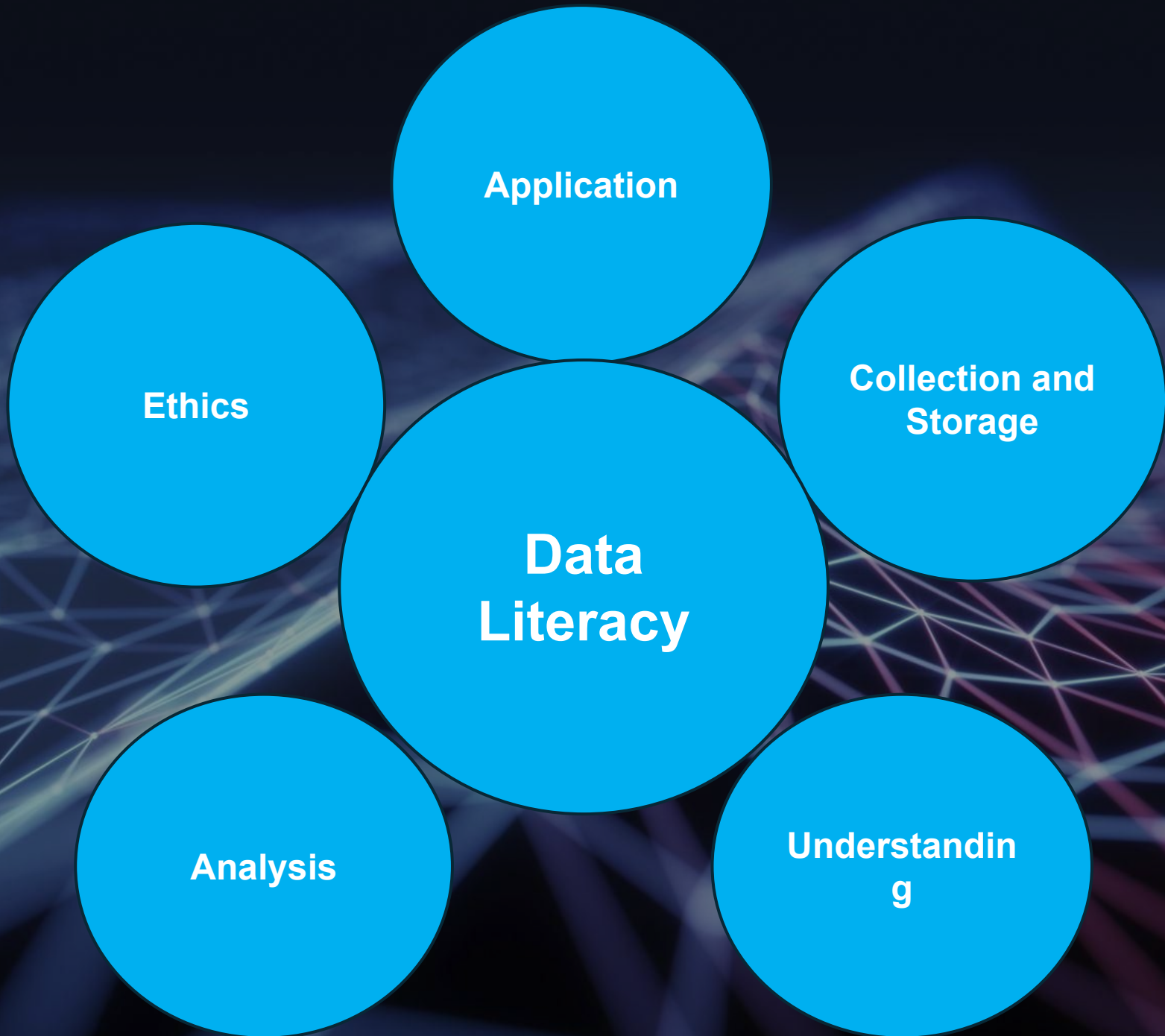
Engineering Judgment



Data Literacy

The ability to read, work with, analyze, interpret, and communicate with data to make informed decisions and solve problems.





Application

**Collection and
Storage**

**Data
Literacy**

**Understandin
g**

Analysis

Ethics

Risks of Data

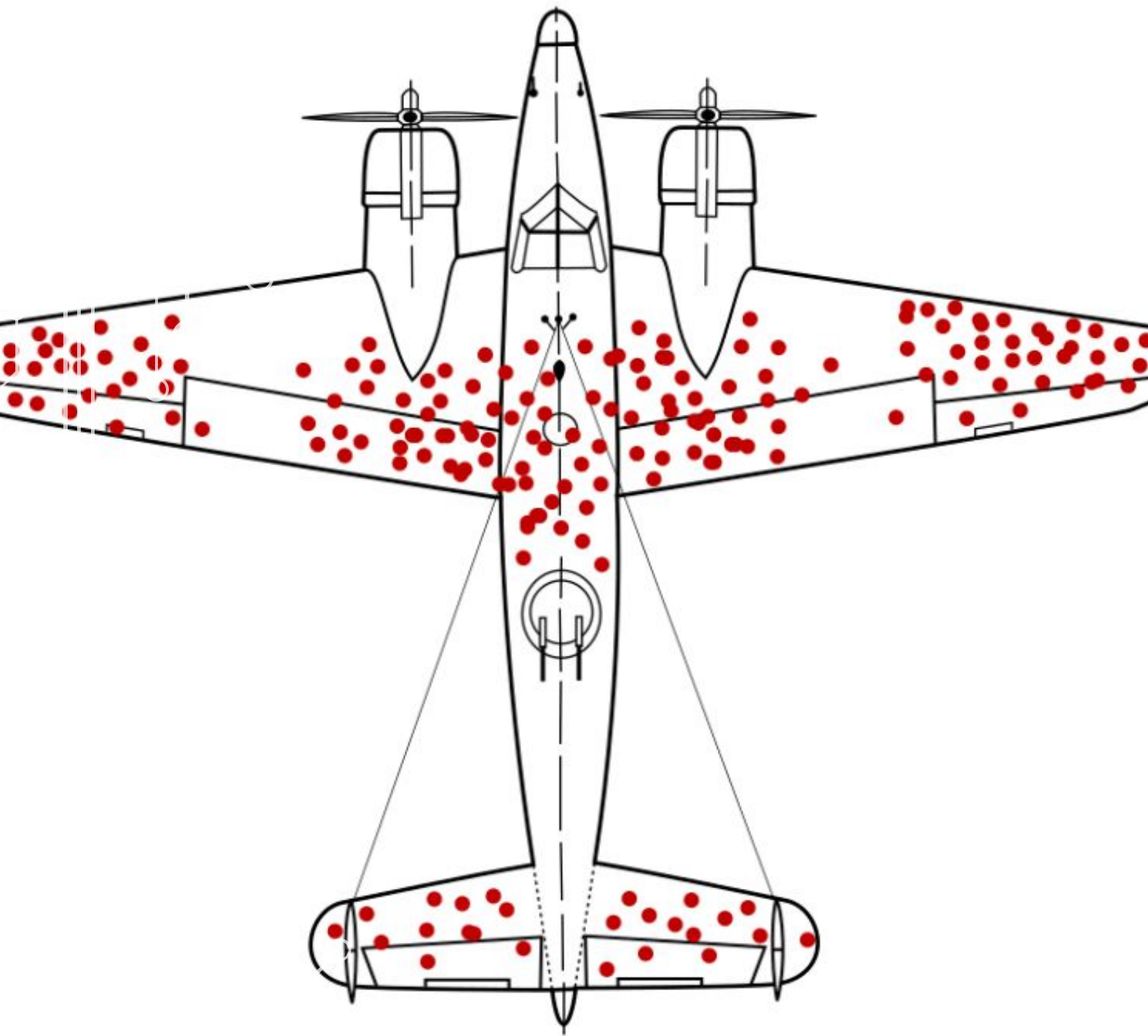


- **“Bad data” can lead to faulty decisions by your agency and an increased liability potential.**
- **“Bad data” can be relied upon by your planning partners, which could increase their liability potential but, more importantly, it could make your agency look incompetent.**

Risks of Data



- **Beware the bias!**
- **Data bias can cause systematic errors that skew analysis and lead to inaccurate decisions.**



Selection Bias

- “Selective sampling”
- Survivorship bias—Sample consists of the successes from the selection criteria and not the failures.
- This can lead to incorrect conclusions because of incomplete data.

Confirmation Bias

A preference for data that is consistent with a belief or result rather than data that opposes it. This is not intentional or deliberate.

Protecting Data—Cyberattacks

	NATURE OF ATTACK	YEAR	ESTIMATED COST
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY RANSOMWARE ATTACK	The SFMTA, also known as Muni, was hit by a ransomware attack that affected its ticketing systems, leading to free rides for passengers over a weekend. The attack did not compromise passenger data, but it disrupted the agency's operations.	2016	\$50,000 (included the ransom demand. However, SFMTA did not pay the ransom and instead restored its systems through its own efforts, which likely incurred additional costs for IT support and system recovery).
COLORADO DOT CYBERATTACK	CDOT suffered a ransomware attack by the SamSam group, which impacted its computer systems and forced the department to shut down more than 2,000 computers. The attack disrupted operations and led to a costly recovery process.	2018	\$1.5 million (included costs for IT services, cybersecurity enhancements, and system downtime).
PORT OF LOS ANGELES CYBERATTACK	The Port of Los Angeles faced a cyberattack that targeted its information systems. While the attack did not lead to significant disruptions, it highlighted vulnerabilities in the transportation and logistics sector.	2018	Not publicly disclosed but outside estimates range from tens to hundreds of thousands of dollars.
COLONIAL PIPELINE RANSOMWARE ATTACK	A ransomware attack by the DarkSide group targeted Colonial Pipeline, the largest fuel pipeline in the United States. The breach led to significant disruptions in fuel supply along the East Coast, causing widespread panic and fuel shortages.	2021	\$4.4 million in ransom (overall economic impact including lost productivity, fuel shortages, and increased fuel prices, was estimated to be in the hundreds of millions of dollars).
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY CYBER ATTACK	The MBTA, which provides public transportation in the Boston area, experienced a cyberattack that targeted employee email accounts. The breach compromised personal information and disrupted some of the authority's operations.	2021	Not publicly disclosed but included incident response, system restoration, and measures to prevent future breaches.

Protecting Data—23 USC §407

What is it?

Establishes an
evidentiary privilege

Applies in both federal
and state court
proceedings

Purpose is to
encourage candid
data collection and
safety planning for
federally funded
highway programs

Protecting Data—23 USC §407

When does it apply?

- “Stuff” (Data, reports, surveys, schedules, lists, etc.)
- That is compiled or collected
- For the purpose of identifying, evaluating, or planning
- A safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings
- Or, for the purpose of developing any highway safety construction improvement project
- Which may be implemented utilizing Federal-aid highway funds

Protecting Data—23 USC §407 Effects

Stuff is not subject to
discovery

Stuff is not admissible
into evidence

Stuff cannot be
considered for other
purposes in action for
damages

Providing Data—Disclaimers

Data Acknowledgement

According to the National Highway Traffic Safety Administration, vulnerable road users (non-motorists like pedestrians and cyclists) are accounting for a growing share of all serious injury and fatal roadway crashes in the United States. State and other funding recipients are encouraged to prioritize vulnerable road user (VRU) safety in all Federal highway funded projects, where appropriate. Therefore, this VRU Analysis is provided to our partners and stakeholders to provide awareness and to assist them in planning safety enhancements that seek to reduce serious injury and death crashes for VRUs.

By clicking "I acknowledge," you acknowledge that this data is generated and/or gathered for highway safety purposes, and you agree to use it solely for research and/or planning purposes.

Cancel

I Acknowledge

Storage of Data—Open Records Laws



- An open records law is a ***state statute*** that establishes a public right of access to government-held information (“public records”)
- Core principle: Government business should be conducted in the open, and its records belong to the people
- It’s a legally enforceable right

Storage of Data—Open Records Laws Public Records

What information is considered a public record?

The definition of a “public record” is intentionally broad in most states. It generally includes any document, paper, letter, map, book, photograph, film, sound recording, or data—regardless of physical form—that is created or received in connection with the transaction of public business.

Storage of Data—Open Records Laws

Types of Records

Reports and data
generated or
collected

Business
documents
(salaries, invoices,
budgets, contracts,
receipts)

Meeting minutes

Communications
(emails, letters)

Storage of Data—Open Records Laws

Closed Records

Personal Health Information, Social Security numbers

Attorney work product and client communications

Law Enforcement Investigations

Transitory documents

Public Records Acts & Modern Technologies

A look at legal risks for public entities
when using modern data capabilities –
the more records, the merrier???

Why Public Records Law Is Under Pressure

- **Presumption of disclosure**
 - Digital, automated record generation
 - Vendor-hosted and cloud-based data
 - Expanded law enforcement exemptions

From Paper Records to Digital **Everything**

Historical model

- Paper files and physical storage
- Manual search and retrieval
- Statutory copying and labor fees

Modern reality

- Born-digital records
- Instant duplication and transmission
- Limited or no cost recovery



Modern Technologies as a Public Records Stress Test

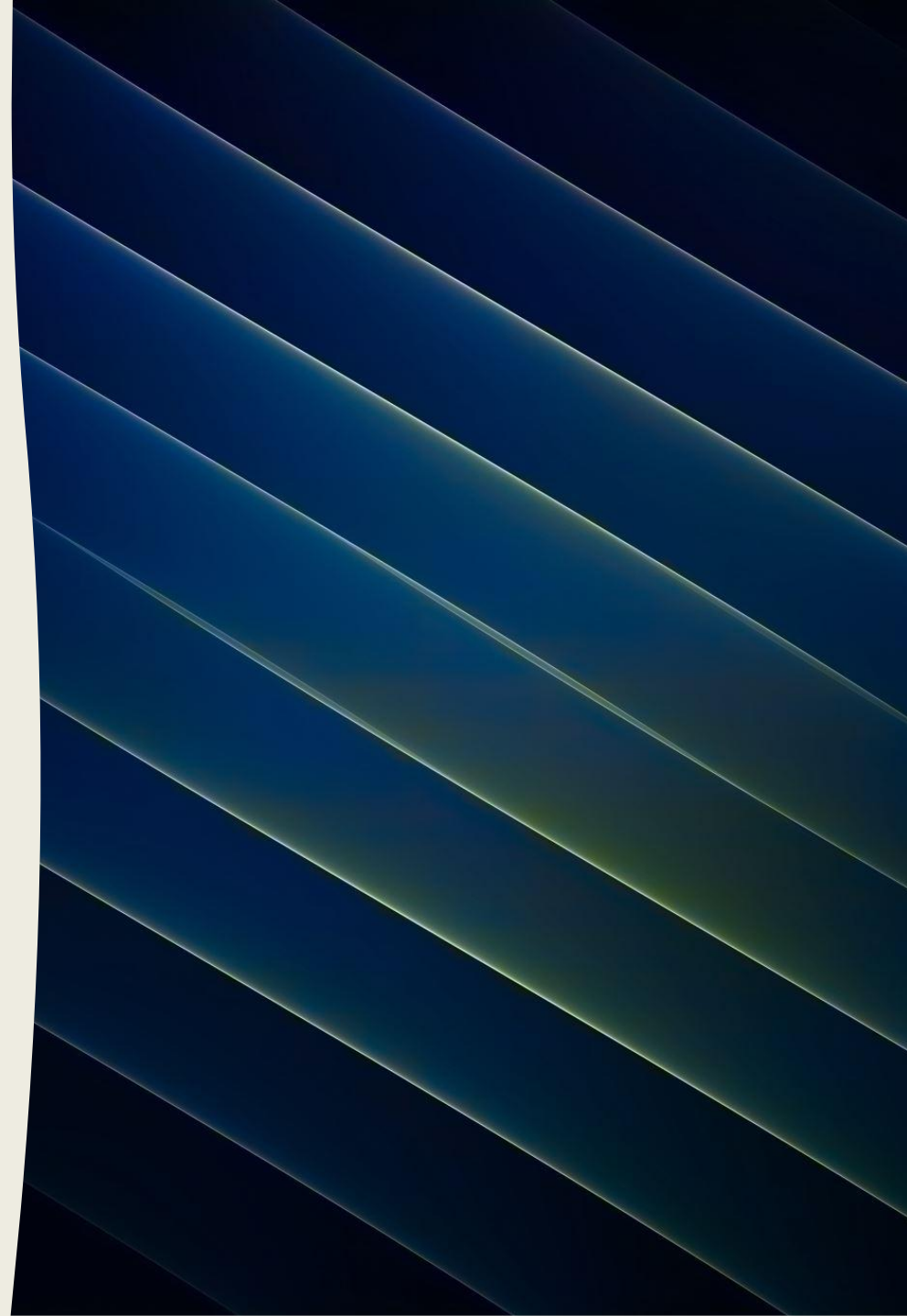
Cloud-based platforms

Automated data generation

Sensors, cameras, and system
logs

AI-assisted analytics

Born-digital records



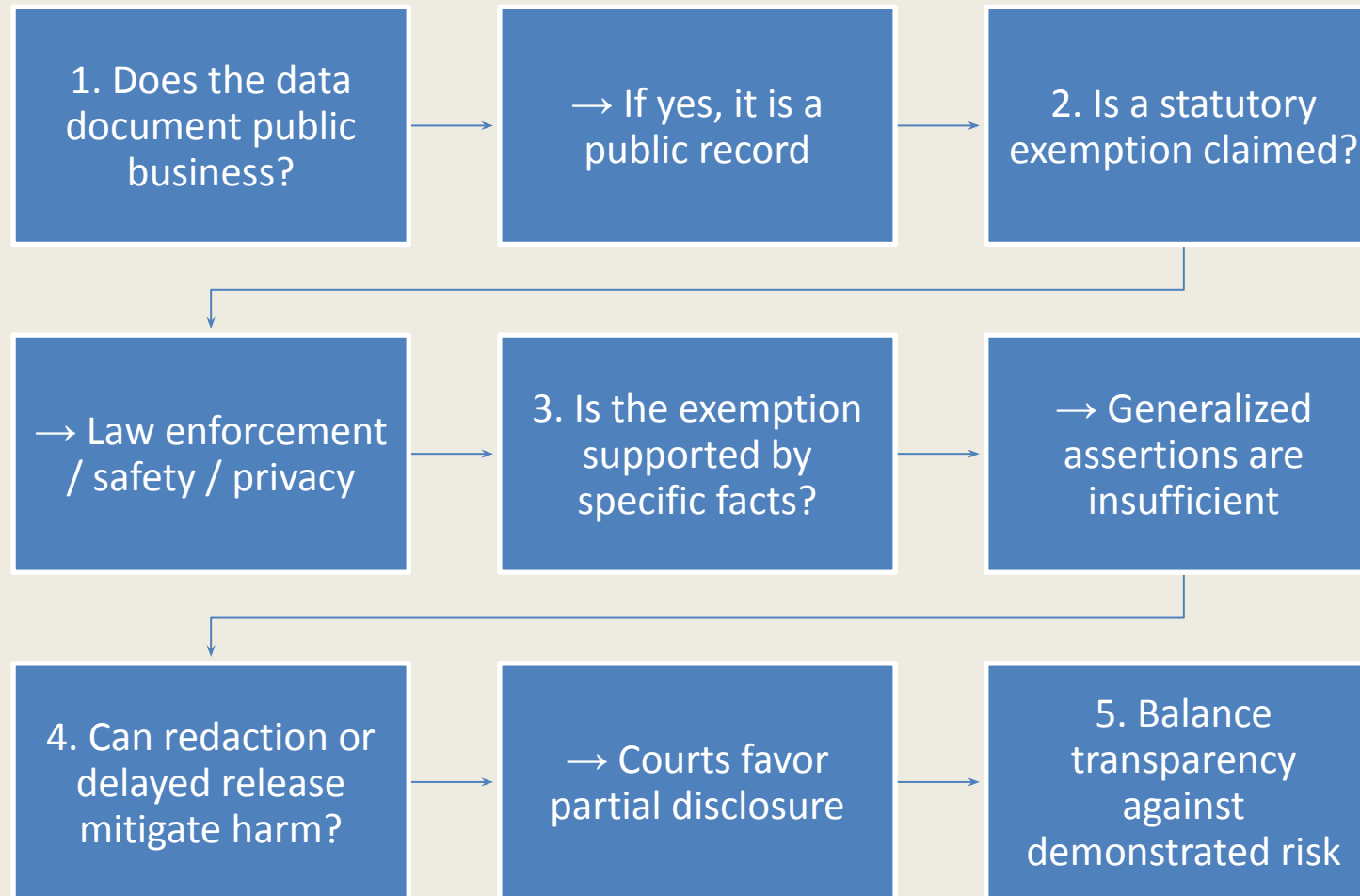
The Evolution of Public Records Law



The
Presidential
Records Act
of 1978



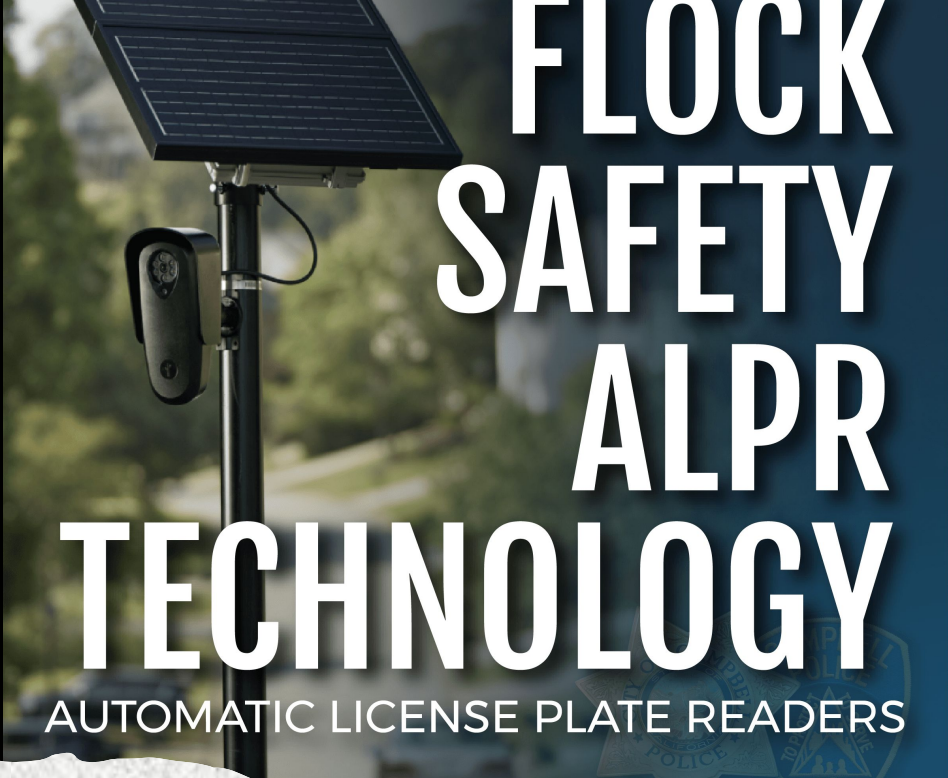
How Courts Analyze Data Based Public Records Requests



City of San Jose v. Superior Court

2 Cal.5th 608 (2017)

“This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.”



FLOCK SAFETY ALPR TECHNOLOGY

AUTOMATIC LICENSE PLATE READERS

Location,
Location, Location

LPR Cameras



Public Records
Issues Raised
by ALPR

Custody
versus
control

ACLU of S. Cal. v. Superior Court,
3 Cal. 5th 1032, 1041–1042 (2017)
Legal Issues Presented

- Whether raw ALPR plate-scan data constitute "records of ... investigations" exempt from disclosure under Government Code section 7923.600-625.
- Whether the CPRA catchall exemption (Government Code section 7922.000) permits withholding raw ALPR scan data on the particular facts of this case.
- Whether anonymized or redacted ALPR data (as opposed to unaltered/raw data) may be withheld under section 7922.000.



ACLU of S. Cal. v. Superior Court,
3 Cal. 5th 1032, 1041–1042 (2017)

Court's Ruling

- Bulk ALPR plate-scan data are NOT "records of ... investigations" exempt from disclosure under Government Code section 7923.600-625.
- The CPRA catchall exemption (Government Code section 7922.000) PERMITTED withholding raw ALPR scan data on the particular facts of this case.
- Anonymized data may be exempt, depending on whether the work was feasible (i.e. would it be a burden or not).





Drone
as
First
Responder
Programs

**Castañare
s
v.
Superior
Court**

(Dec. 2023) 98
Cal.App.5th 295,
316, review denied
(Apr. 10, 2024)



Judicial Trends Nationwide

- Surge in lawsuits
- Narrow construction of exemptions
- Context-specific analysis
- Extensive data collection means extensive PRA production.

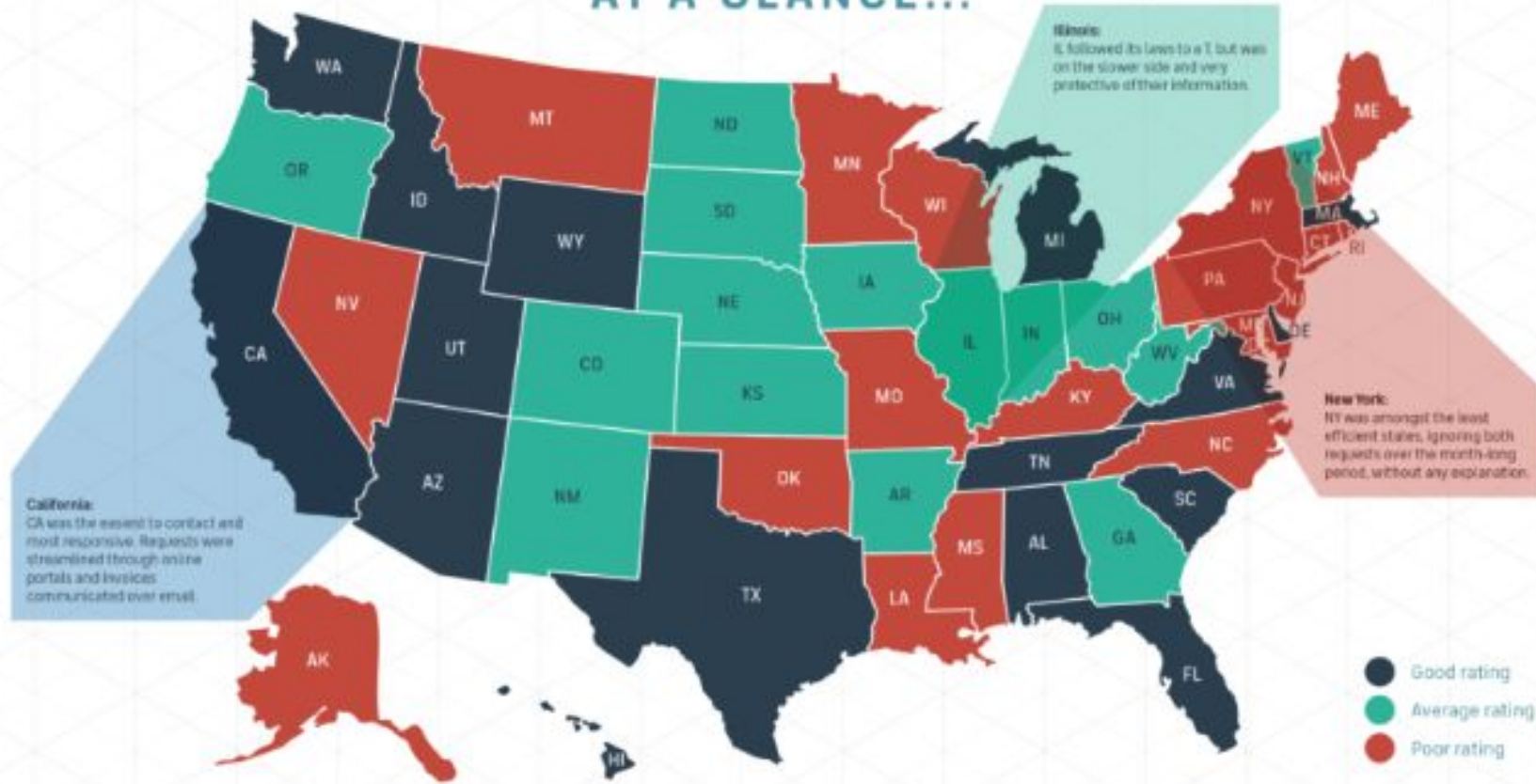


Public Records Laws as Technology Governance

- Continuous monitoring leads to expanded transparency duties
- Policy choices drive litigation outcomes
- Statutory interpretation is evolving

The "State" of Public Records Response

AT A GLANCE...



10%

States that require citizenship

34%

States that require clarification

28%

States that had to transfer to another dept.

10%

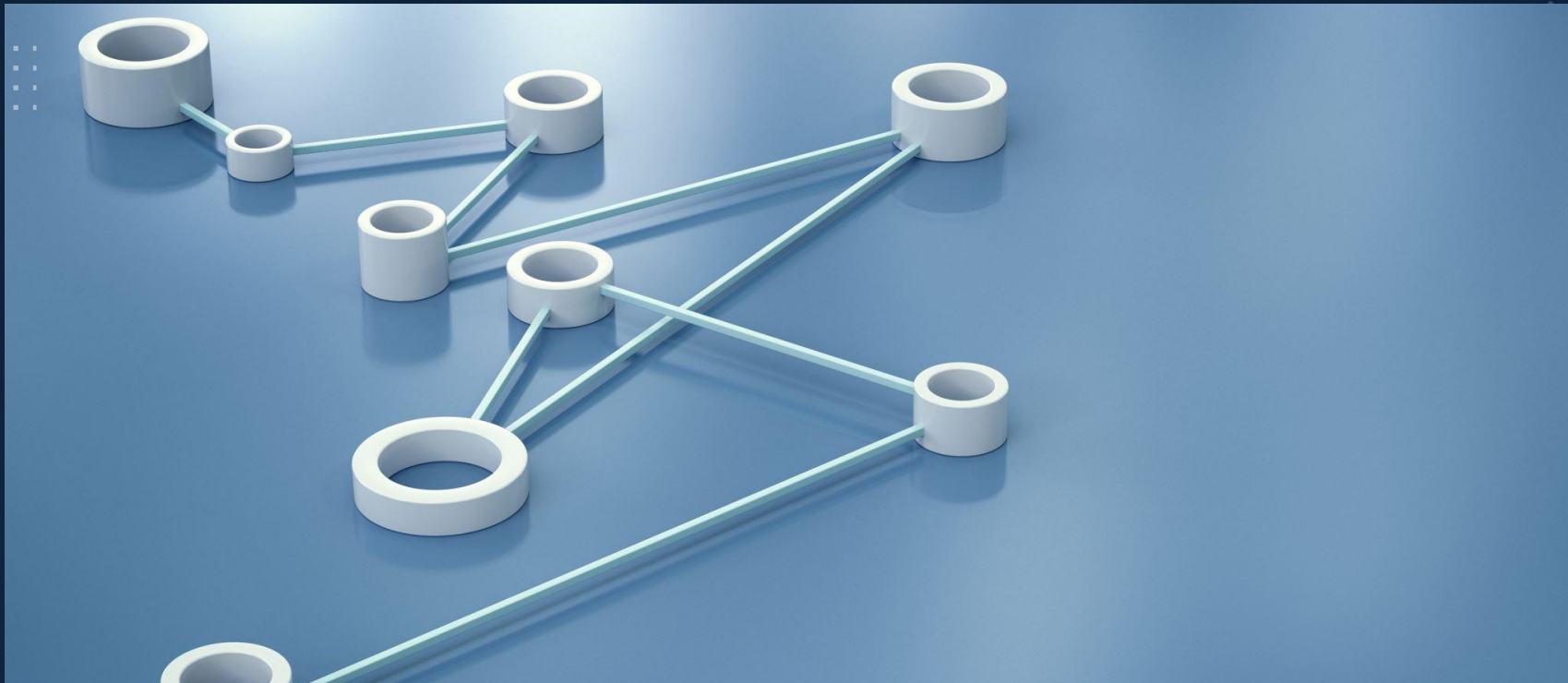
States that didn't comply with their law's requirements

54%

States where at least 1 department did not responding at all

20%

States where no agency responded



Key Takeaways

- Technology increases PRA exposure
- Exemptions require precision
- Cross-disciplinary planning is essential



High Risk Areas

Litigation Risk
for
Transportation
Agencies

Automated data collection (ALPR, drones, sensors)

Vendor-hosted or shared platforms

Long retention periods

Risk Mitigation Strategies

Clear use limitations and retention schedules

Documentation of safety rationales

PRA review during procurement and deployment

Five Questions to Ask Before Deploying New Technology

1. What data is automatically created by the system?
2. Where is the data stored, and who controls it (agency vs. vendor)?
3. How long is the data retained, and is retention tied to a defined purpose?
4. Who can access, share, or reuse the data across departments or agencies?
5. How would we justify withholding this data under public records law?

Today's Presenters



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Joshua Root
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Upcoming events for you

May 8, 2026

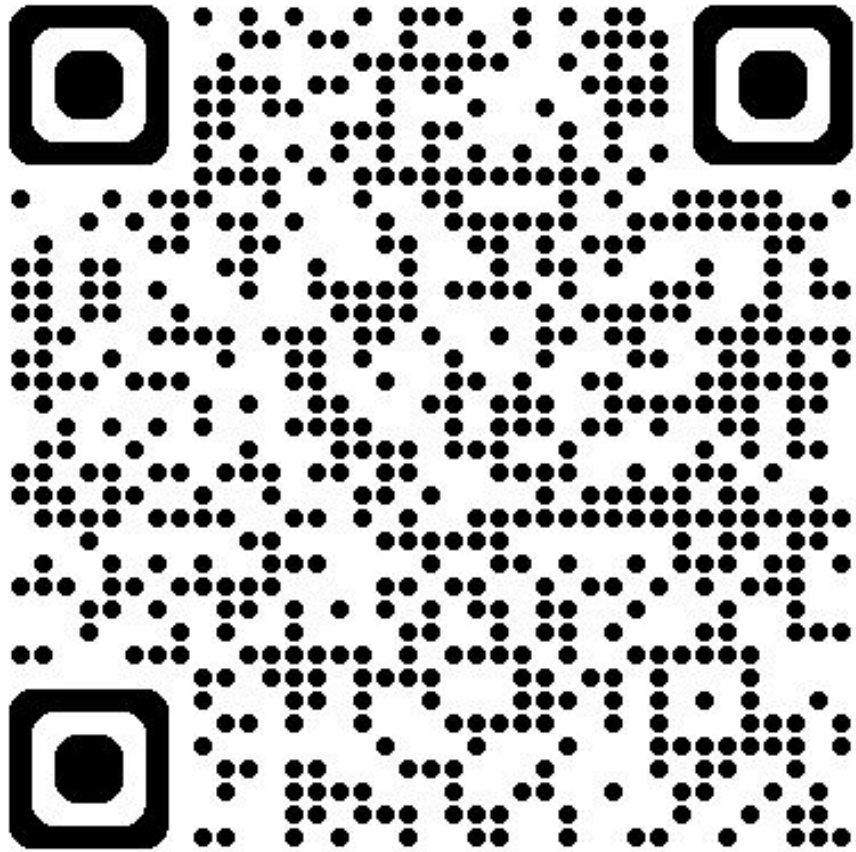
TRB Webinar: Data Governance in State DOTs—Insights and Practitioner Perspectives

May 19-20, 2026

ACRP Insight Event: Exploring the Impact of Artificial Intelligence on the Airport Industry

[https://www.nationalacademies.org/trb/
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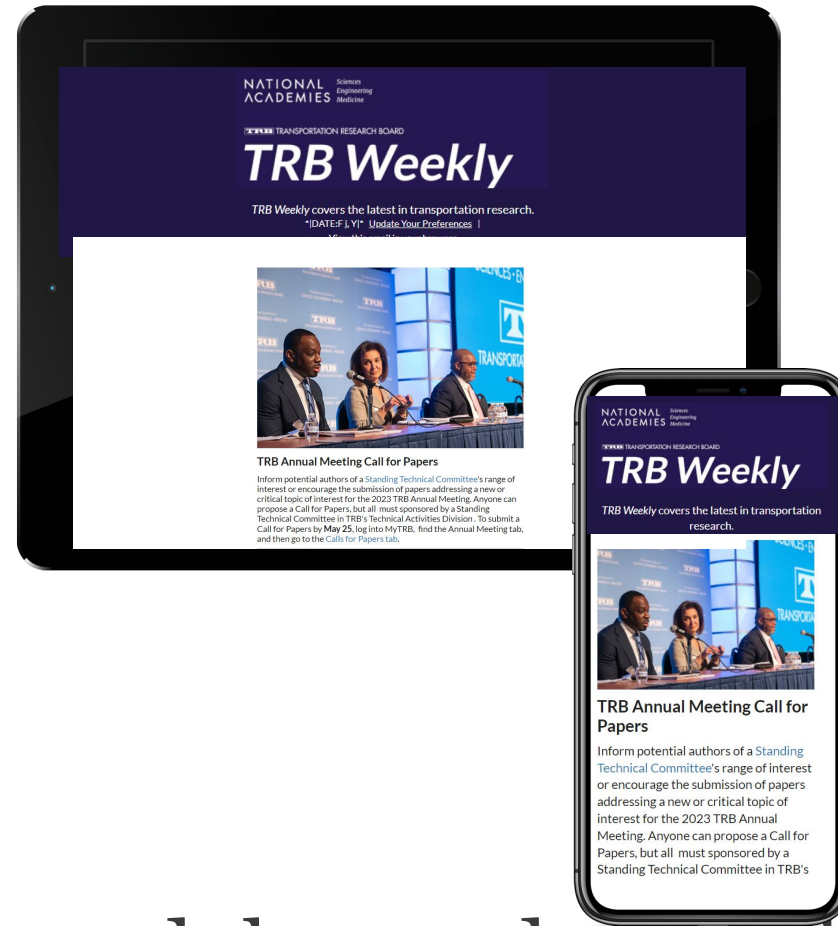
65th Annual
Workshop on Transportation Law
July 12 -15, 2026 • Irvine, CA

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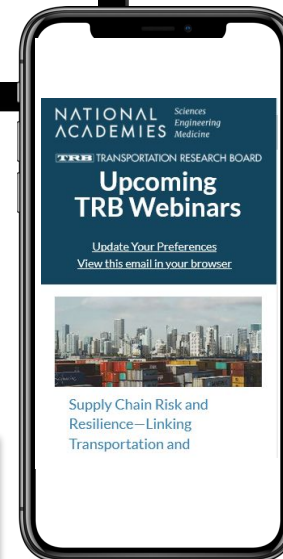
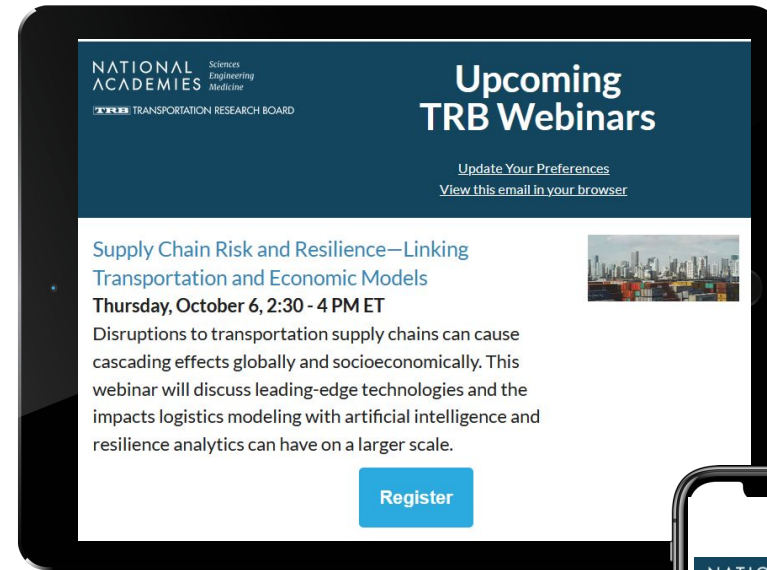
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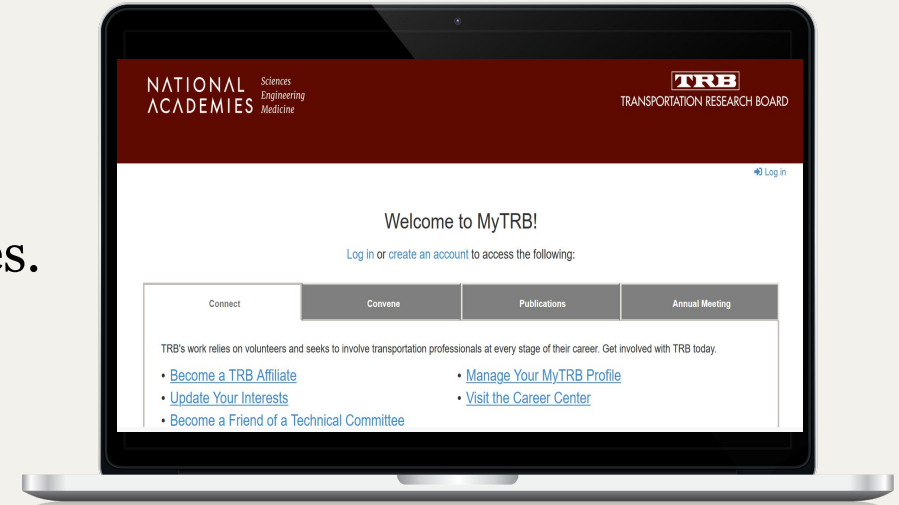


Get involved

TRB mobilizes expertise, experience, and knowledge to anticipate and solve complex transportation-related challenges.

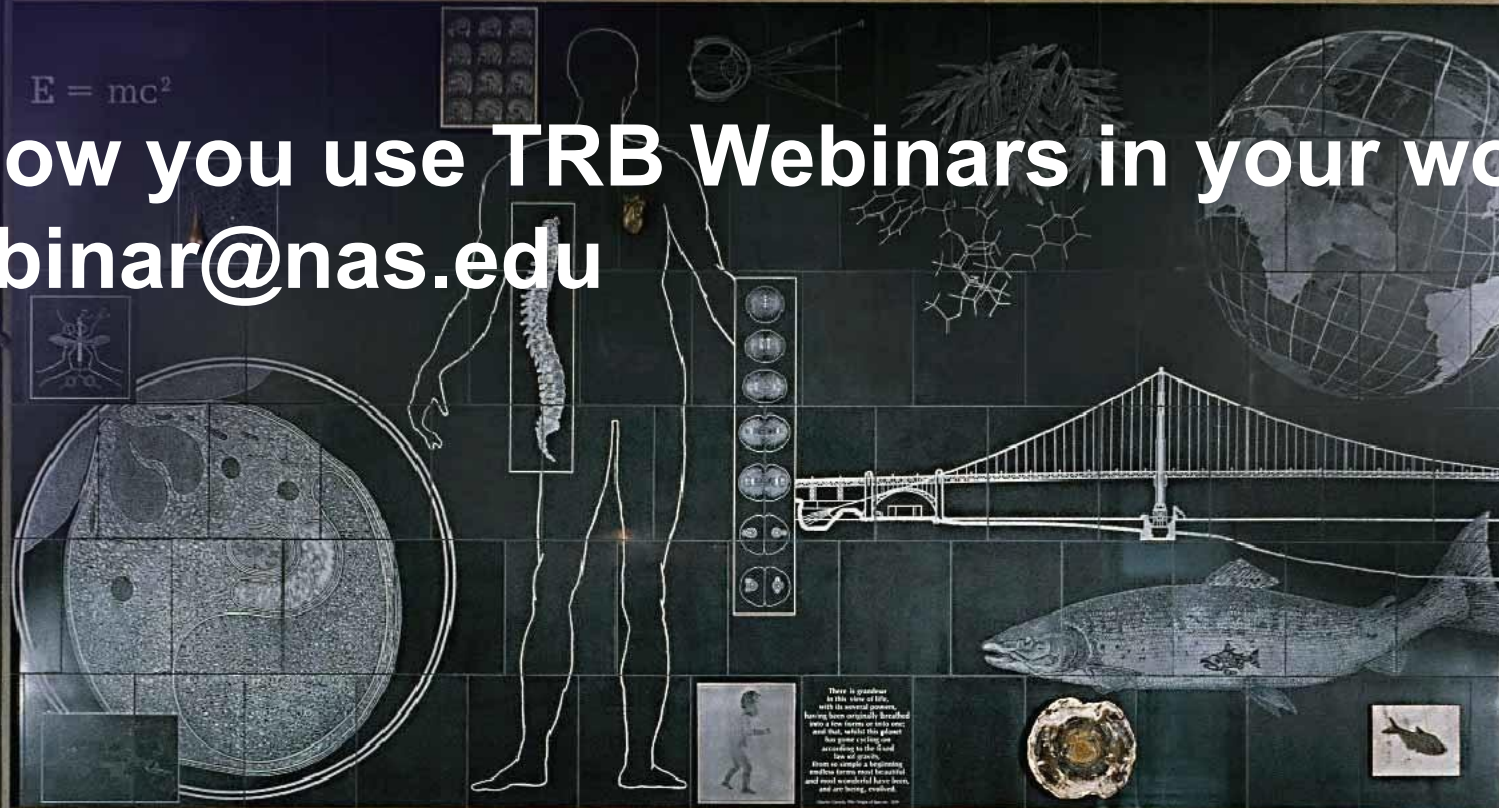
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