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RECEIVED FOR SCANNING
VENTURA SUPERIOR COURT

MAR 30 2021

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Attorneys for Petitioner
FIRST AMENDMENT COALITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

FIRST AMENDMENT COALITION, a
California non-profit corporation,

Petitioner,

v.

WILLIAM AYUB, in his official capacity
as Sheriff of Ventura County, California,

Respondent.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE TO ENFORCE COMPLIANCE
WITH THE CALIFORNIA PUBLIC
RECORDS ACT AND PENAL CODE 832.7**

[Gov. Code §§ 6250, *et seq.*; Code Civ. Proc.
§§ 1085, *et seq.*]

ms

INTRODUCTION

1
2 1. Pursuant to Government Code section 6250, *et seq.*, Petitioner First Amendment
3 Coalition (“FAC”) seeks issuance of a writ of mandate compelling Respondent Ventura County
4 Sheriff William Ayub (“Respondent”) to produce documents, records, and other materials
5 lawfully requested by Petitioner under the California Public Records Act (“CPRA”) and
6 California Penal Code section 832.7. Petitioner also seeks issuance of a writ under those
7 provisions of the California Constitution securing public access to government documents and
8 records. *See* Cal. Const., Art. 1 § 3(b)(1). On January 31, 2020, and January 28, 2021, FAC
9 submitted lawful and proper requests for records concerning incidents and sustained findings as
10 defined in California Penal Code section 832.7 to Respondent.

11 2. As of the filing of this Petition, Respondent has refused to produce records
12 responsive to FAC’s requests and continues to impede and unlawfully delay access by FAC, and
13 the public at large, to law enforcement records available under the CPRA and California Penal
14 Code section 832.7. Respondent’s actions in refusing to produce the documents and other
15 materials sought by FAC are under color of the authority of his office as the elected Sheriff of
16 Ventura County. Respondent’s failure to produce the documents and the other unlawful acts
17 alleged in this Petition are without substantial justification. Not only has Respondent refused to
18 release requested records, he has refused through his representatives to provide a schedule of
19 when such records will be made available.

20 3. Respondent’s unlawful conduct, including his withholding of non-exempt
21 material, frustrates the purposes of the CPRA and the public’s right to review and be informed of
22 Respondent’s personnel and investigative records concerning incidents of substantial public
23 interest and notoriety, including incidents: (a) in which Respondent’s officers discharged a
24 firearm at a person; (b) in which Respondent’s officers used force against a person resulting in
25 death or great bodily injury; (c) where there was a sustained finding of dishonesty by an officer;
26 or, (d) where an officer engaged in sexual assault involving a member of the public.

27 4. The CPRA requires a local agency that receives a request to promptly release all
28 non-exempt records. California Penal Code section 832.7 establishes specific timelines for the

1 release of responsive records, which Respondent has failed to meet repeatedly. The CPRA and
2 Penal Code section 832.7 place the burden on Respondent to demonstrate that the records or
3 information withheld are exempt from disclosure.

4 5. By refusing to respond properly to FAC's requests and release all non-exempt
5 records, Respondent has violated his legal duties. FAC therefore asks this Court to issue a writ of
6 mandate commanding Respondent to comply immediately with the CPRA and the disclosure
7 requirements of California Penal Code section 832.7 by fully responding to FAC's requests, as
8 well as granting declaratory and injunctive relief to the same effect and as otherwise prayed for in
9 this Petition.

10 **PARTIES**

11 6. Petitioner FAC is a non-profit corporation based in San Rafael, California that is
12 dedicated to advancing free press and free speech rights, ensuring open, accountable and
13 transparent government, and promoting public participation in civic affairs. FAC has been at the
14 forefront of legal efforts to secure public access to law enforcement records under Senate Bill
15 1421, the reform legislation that amended California Penal Code section 832.7 and made
16 previously exempt records subject to disclosure. *See e.g., Becerra v. Superior Court*, 44
17 Cal.App.5th 897 (2020).

18 7. FAC is a member of the public under Government Code section 6252 and is
19 beneficially interested in the outcome of these proceedings. FAC has a clear, present, and
20 substantial right to the relief sought herein and no plain, speedy, and adequate remedy at law
21 other than that sought in this Petition.

22 8. Respondent is an elected public official who heads the Ventura County Sheriff's
23 Office, a department of the County of Ventura. The Sheriff's Office and the County of Ventura
24 are local public agencies within the meaning of Government Code section 6252(d).

25 9. Upon information and belief, Respondent maintains, uses, and retains the public
26 records sought by this Petition.

27 ///

28 ///

JURISDICTION AND VENUE

10. This Court has jurisdiction of this action under Government Code sections 6258, 6259, Code of Civil Procedure sections 1060 and 1085, and Article VI section 10 of the California Constitution.

11. Venue is proper in this Court because Respondent and the records in question, or some portion of them, are situated in this County, and because the acts giving rise to the causes of action herein arose in this County. Code Civ. Proc., §§ 393(b), 394(a), 395(a), 401(1); Gov. Code § 6259(a).

DISCLOSURE REQUIREMENTS UNDER THE CALIFORNIA PUBLIC RECORDS

ACT AND CALIFORNIA PENAL CODE SECTION 832.7

12. The CPRA was enacted for the explicit purpose of increasing freedom of information by giving the public access to information in possession of public agencies. *See CBS, Inc. v. Block*, 42 Cal.3d 646, 651 (1986). In enacting the CPRA, the California Legislature declared that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in [California].” Government Code § 6250. “Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.” *CBS, Inc.*, 42 Cal.3d at 651.

13. Under the CPRA, Government Code section 6250, *et seq.*, all records “containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency” must be made publicly available for inspection and copying upon request, unless they are exempt from disclosure. Government Code §§ 6253(a) and (b), 6252(e). If documents contain both exempt and non-exempt material, the government must disclose all non-exempt material. *Id.* § 6253(a).

14. The CPRA also requires the government to “assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records” by taking steps to “identify records and information that are responsive to the request or to the

1 purpose of the request, if stated.” *Id.* § 6253.1(a). An agency that receives a request must also
2 “[p]rovide suggestions for overcoming any practical basis for denying access to the records or
3 information sought.” *Id.*

4 15. Any “person” has the right to request non-exempt public records. Gov. Code
5 § 6253(b). A “person” includes “any natural person, corporation, partnership, limited liability
6 company, firm, or association.” *Id.* § 6252.

7 16. If information or records are withheld, the CPRA requires the government agency
8 to “justify withholding any record by demonstrating that the record in question is exempt under
9 express provisions of this chapter or that on the facts of the particular case the public interest
10 served by not disclosing the record clearly outweighs the public interest served by disclosure of
11 the record.” *Id.* § 6255(a).

12 17. If the Court finds that the failure to disclose is not justified, it shall order the public
13 official to make the record public. *Id.* § 6259(b).

14 18. California Penal Code section 832.7 provides that four categories of records
15 related to peace officers are available to the public under the CPRA. The categories include
16 records related to (1) use of force causing death or great bodily injury; (2) discharges of a firearm;
17 (3) a sustained finding of sexual assault by a peace officer; and (4) a sustained finding of
18 dishonesty tied to police officers’ unique powers in investigating and prosecuting crimes, such as
19 perjury or the fabrication of evidence. *See* Cal. Penal Code § 832.7(b)(1)(A)-(C).

20 19. Accordingly, a member of the public who files a CPRA request is entitled to
21 disclosure of all such documents in the possession of the public agency, regardless of when those
22 documents were created. *See Walnut Creek Police Officers’ Assn. v. City of Walnut Creek*, 33
23 Cal. App. 5th 940, 941–42 (2019).

24 20. California Penal Code section 832.7 mandates redaction of certain categories of
25 information but generally does not permit withholding entire records otherwise subject to
26 disclosure. *See* Cal. Penal Code § 832.7(b)(6). An agency may withhold a disclosable record
27 only under limited, enumerated circumstances during “an active criminal or administrative
28 investigation[.]” *Id.* at § 832.7(b)(7).

1 21. The California Constitution provides an additional, independent right of access to
2 government records: “The people have the right of access to information concerning the conduct
3 of the people’s business, and, therefore, the meetings of public bodies and the writings of public
4 officials and agencies shall be open to public scrutiny.” Cal. Const., Art. 1 § 3(b)(1).

5 **FAC’S REQUESTS AND RESPONDENT’S FAILURE TO PRODUCE DOCUMENTS**

6 **A. FAC’S JANUARY 31, 2020 REQUEST**

7 22. On January 31, 2020, FAC Litigation Director Glen Smith made a CPRA request
8 to Respondent (the “First Request”). A true and correct copy of the First Request is attached to
9 this petition as **Exhibit A**. FAC’s First Request seeks records related to incidents and sustained
10 findings as defined in Penal Code section 832.7(b)(1) involving Respondent that occurred from
11 January 1, 2019 through December 31, 2019. FAC’s First Request also seeks records in the
12 possession or control of Respondent involving officers employed by other state agencies.
13 Specifically, FAC requested records relating to any report, investigation or finding of any of the
14 following:

- 15 a. an incident involving the discharge of a firearm at a person by a peace
16 officer or custodial officer;
- 17 b. an incident in which the use of force by a peace officer or custodial officer
18 against a person resulted in death or great bodily injury; or,
- 19 c. an incident in which there was a sustained finding of dishonesty by any
20 peace officer or custodial officer or that any such officers engaged in
21 sexual assault involving a member of the public.

22 23. All of the records requested under FAC’s First Request fall within the definition of
23 public records set forth in the CPRA and California Penal Code section 832.7. *See* Gov. Code
24 § 6252(e).

25 24. On February 3, 2020, Respondent replied to FAC’s First Request by letter.
26 Although Respondent identified “two events” responsive to FAC’s First Request, a sexual battery
27 that occurred on September 6, 2019, and an officer involved shooting that occurred on January
28 12, 2019, Respondent provided only publicly available media releases related to the two events.

1 Respondent claimed that its investigation into the sexual battery was “still pending” and that
2 therefore Respondent had “no responsive investigative records.”

3 25. After waiting nearly a year, on February 2, 2021, FAC responded to Respondent
4 by letter, and again requested that Respondent produce all documents responsive to the First
5 Request. FAC’s letter also made clear that FAC’s First Request encompassed relevant video and
6 audio files as per Government Code section 6254(f)(4). A copy of this letter is attached to this
7 petition as **Exhibit B**. On February 22, 2021, FAC sent an email to Respondent again demanding
8 a response. A copy of this letter is attached to this petition as **Exhibit C**.

9 26. On March 22, 2021, Respondent replied to FAC by email. Respondent released
10 only three redacted records in response to the sustained finding of sexual assault.

11 27. By this same response, Respondent stated that “[a]dditional records have been
12 identified and may be eligible for release” but Respondent did not identify those records.
13 Respondent also unlawfully conditioned the release of the records on payment of a \$1,200.00 fee
14 by FAC.

15 28. As of the time this Petition was verified, Respondent has not provided FAC with
16 records responsive to FAC’s First Request, including for the period January 1, 2019 through
17 December 31, 2019, and has failed to provide a schedule for release of the documents as required
18 by Penal Code section 832.7 and Government Code section 6253(c).

19 29. Upon information and belief, and based on Respondent’s written responses to
20 FAC’s First Request, Respondent has at least some of the requested records in his possession.

21 **B. FAC’S JANUARY 28, 2021 REQUEST**

22 30. On January 28, 2021, FAC Legal Extern Sara Beladi made a CPRA request to
23 Respondent (the “Second Request”). A copy of FAC’s Second Request is attached to this petition
24 as **Exhibit D**. FAC’s Second Request seeks records related to incidents and sustained findings as
25 defined in California Penal Code section 832.7(b)(1) involving law enforcement officers
26 occurring from January 1, 2016 through December 31, 2018, and from January 1, 2020 through
27 December 31, 2020. FAC’s Second Request also seeks audio and video records in the possession
28 or control of Respondent as defined in Government Code section 6254(f)(4).

1 31. All of the records requested under FAC’s Second Request fall within the definition
2 of public records set forth in the CPRA and California Penal Code section 832.7. *See* Gov. Code
3 § 6252(e).

4 32. On February 11, 2021, Respondent replied to FAC’s Second Request by letter.
5 Respondent stated that “records have been identified for January 1, 2020 – present,” however,
6 Respondent refused to produce the requested records.

7 33. In response to FAC’s Second Request, Respondent provided only two links to
8 publicly available descriptions of an October 4, 2020 deputy-involved shooting incident that
9 occurred in Camarillo, California.

10 34. By the same February 11, 2021 letter, Respondent refused to produce the
11 requested records related to incidents and sustained findings occurring from January 1, 2016
12 through December 31, 2018 because “pursuant to Ventura County Superior Court Case 2019-
13 00523492 the Ventura County Sheriff’s Office is not able to release records for events which
14 occurred prior to January 1, 2019.”

15 35. On February 22, 2021, FAC contacted Respondent by email and again requested
16 disclosure of the requested documents. A copy of this email is attached to this petition as
17 **Exhibit E.**

18 36. On March 3, 2021 the Court of Appeal of the State of California, Second
19 Appellate District overturned the holding of Ventura County Superior Court Case 56-2019-
20 00523492, which Respondent cited in his February 11, 2021 letter as grounds to withhold records
21 for events occurring prior to January 1, 2019. In pertinent part, the Court of Appeal held that
22 California Penal Code section 832.7 “applies retroactively,” and that records predating January 1,
23 2019 are subject to disclosure under the statute. *See Ventura Cty. Deputy Sheriffs’ Ass’n v. Cty. of*
24 *Ventura*, No. 2D CIV. B300006, 2021 WL 803774, at *4 (Cal. Ct. App. Mar. 3, 2021).

25 37. On March 4, 2021, Respondent replied to FAC and stated that it anticipated
26 “providing correspondence” by March 15, 2021. Respondent’s reply, which neither provided
27 responsive records nor identified what correspondence was allegedly forthcoming, did not
28 comply with Respondent’s duties under the CPRA or Penal Code section 832.7.

1 violates the CPRA, California Penal Code section 832.7, and Article I, Section 3 of the California
2 Constitution.

3 **THIRD CAUSE OF ACTION**

4 **For Violation of the California Public Records Act, California Penal Code Section 832.7,**
5 **and Article I, § 3 of the California Constitution**

6 46. FAC realleges as though fully set forth herein each allegation set forth in
7 paragraphs 1 through 45 above.

8 47. The CPRA, California Penal Code section 832.7, and California Constitution
9 require disclosure of the public records FAC requested from Respondent in FAC's Second
10 Request related to incidents and sustained findings that occurred during the period January 1,
11 2016 through December 31, 2018.

12 48. Respondent's refusal to release records and failure to provide Petitioner with a
13 schedule of when records will be available, violates the CPRA, Penal Code section 832.7, and
14 Article I, Section 3 of the California Constitution.

15 **FOURTH CAUSE OF ACTION**

16 **For Declaratory and Injunctive Relief**

17 49. FAC realleges as though fully set forth herein each allegation set forth in
18 paragraphs 1 through 48 above.

19 50. The CPRA, California Penal Code section 832.7, and California Constitution
20 require disclosure of the public records FAC requested from Respondent in FAC's First Request
21 and in its Second Request.

22 51. FAC seeks a judicial declaration that records related to incidents and sustained
23 findings that occurred during the period January 1, 2016 through December 31, 2020 are public
24 records as defined by Government Code section 6252(e), are subject to disclosure under
25 Government Code sections 6253(a) and (b), Government Code section 6254(f)(4), Penal Code
26 section 832.7, and Article I, Section 3(b) of the California Constitution, and that Respondent has
27 violated the CPRA and Penal Code section 832.7 by failing to promptly make the materials
28 available to FAC and to the public.

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5. That FAC be awarded attorneys' fees and costs under Government Code section 6259, Code of Civil Procedure section 1021.5, and any other applicable statute;

6. For all such other and further relief that the Court deems proper and just.

Dated: March 30, 2021

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: Dean A. Morehous
Dean A. Morehous
Attorneys for Petitioner
FIRST AMENDMENT COALITION

TROUTMAN PEPPER HAMILTON SANDERS LLP
1301 EMBARCADERO CENTER, SUITE 400
SAN FRANCISCO, CA 94111


VERIFICATION

I, David E. Snyder, am an attorney and the Executive Director of the First Amendment Coalition ("FAC"), Petitioner in this action.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE in the matter of *First Amendment Coalition v. William Ayub*. The facts as alleged therein are true to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true. I have authorization to verify such facts on behalf of FAC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 29, 2021 in San Rafael California.



David E. Snyder

TROUTMAN PEPPER HAMILTON SANDERS LLP
100 CALIFORNIA STREET, SUITE 900
SAN FRANCISCO, CA 94111

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Exhibit A



January 31, 2020

Sheriff Bill Ayub
County of Ventura
800 S. Victoria Ave.
Ventura, CA.
VCSOPublicRecordsRequests@ventura.org
vcasd.media@ventura.org

Sent via Email

To the Hon. Sheriff Ayub:

On behalf of the First Amendment Coalition ("FAC"), I hereby request the records set forth below. This request is submitted pursuant to the California Public Records Act ("CPRA"), Gov't. Code § 6250 *et seq.*; the California Constitution, Article 1, § 3; and FAC's public access rights under California common law.

FAC requests the following records relating to a report, investigation or finding (as those terms are used in Penal Code § 832.7(b)(1)(A)(B)&(C)) of any of the following:

- (1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer;
- (2) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury; and,
- (3) An incident in which there was a sustained finding of dishonesty by any peace officer or custodial officer or that any such officers engaged in sexual assault involving a member of the public.

FAC is requesting records as defined in Penal Code §832.7(b)(2) for incidents and sustained findings involving employees of the Sheriff's Department. The request also includes records in the possession or control of the Sheriff's Department involving officers employed by other agencies. FAC is requesting records for incidents and sustained findings as defined above that occurred in 2019.

If any portion of the records requested is exempt from disclosure by express provisions of law, Gov't Code § 6253(a) requires segregation and redaction of that material in order that the remainder of the information may be released. If you believe that any express provision of law exists to exempt from disclosure all or a portion of the records FAC has requested, you must notify FAC of the reasons for the determination not later than 10 days from your receipt of this request letter. (Gov't. Code § 6253(c).) Any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing. (Gov't. Code § 6255(b).)

Gov't. Code section 6253(d) prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting public records."

In addressing this request, please keep in mind that Article 1, § 3 of the California Constitution expressly requires you to broadly construe all provisions that further the public's right of access, and to apply any limitations on access as narrowly as possible.

Please contact me if you have any questions and thank you for your timely attention to this request.

Sincerely,

/s/ Glen A. Smith

Glen A. Smith
Litigation Director
First Amendment Coalition
gsmith@firstamendmentcoalition.org
Cc: David Snyder, dsnyder@firstamendmentcoalition.org

534 FOURTH STREET, SUITE B SAN RAFAEL, CA 94901 • 415.460.5000 • FIRSTAMENDMENTCOALITION.ORG

Exhibit B



February 2, 2021

S. Snow
Sheriff's Manager – Records
800 South Victoria Avenue
Ventura, CA 93009
Stacie.snow@ventura.org
VCSO.PublicRecordsRequests@ventura.org

Ms. Snow,

I'm writing on behalf of the First Amendment Coalition in response to your February 3, 2020 letter regarding our January 31, 2020 California Public Records Act Request. A copy of the February 3 response is attached for your convenience.

The Request asked for disclosure of "records relating to a report, investigation or finding (as those terms are used in Penal Code § 832.7(b)(1)(A)(B)&(C)) of any of the following: (1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; (2) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury; and, (3) An incident in which there was a sustained finding of dishonesty by any peace officer or custodial officer or that any such officers engaged in sexual assault involving a member of the public." The Request clarified that "FAC is requesting records for incidents and sustained findings as defined above that occurred in 2019."

The Sheriff's Office Must Release Records Related to the September 6, 2019 Incident of Sexual Assault

The February 3 letter states that there are records related to a September 6, 2019 incident of sexual battery, but that "the administrative investigation is still pending; therefore we have no responsive investigative records." A year has passed since your letter, and more than 18 months have elapsed since this incident occurred.

Please provide copies of any records related to the investigation of this incident and the criminal prosecution of Deputy Leonard Lopez, including court records from the criminal case that are within the possession or control of the Sheriff's Office, in addition to records related to any sustained findings that may have been reached in administrative proceedings.

The Sheriff's Office Must Release Records Related to the January 12, 2019 Officer-Involved Shooting

The February 3 letter also states there are records related to a January 12, 2019 officer involved shooting but instructs FAC to direct our request to the Los Angeles Sheriff's Department, explaining that the L.A. Sheriff is the custodian of these records.

The Ventura County Sheriff's Office is legally obligated to produce records in its possession, regardless of whether those records are also maintained or stored by other agencies. In a recent First District Court of Appeal decision, the court held that "section 832.7 generally requires disclosure of all responsive records in the possession of the Department, regardless of whether the records pertain to officers employed by the Department or by another public agency and regardless whether the Department or another public agency created the records." *Becerra v. Superior Court*, 44 Cal.App.5th 897, 910 (2020).

As you conduct a reasonable search for these records, please be reminded that state law is clear that agencies may not withhold records longer than 180 days following the discovery of use of force or 30 days after the close of any criminal investigation related to the officer's use of force.

Penal Code § 832.7(b)(7)(C) provides:

"During an administrative investigation into an incident...the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later." Cal. Penal Code § 832.7(b)(7)(C) (emphasis added).

The Sheriff's Office Must Release Video and Audio Recordings Related to the January 12, 2019 Officer-Involved Shooting

You are under a statutory obligation to release video and audio recordings related to this incident. Cal. Gov. Code § 6254(f)(4) requires agencies to disclose audio and video records of "critical incidents." A "critical incident" is: (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury. Cal. Gov. Code § 6254(f)(C).

Here, the January 12, 2019 officer-involved shooting is a critical incident, as it involves the discharge of a firearm. Please note that you are obligated to produce *all* video and audio recordings related to the incident that are in your possession.

Thank you for your attention to this matter, and please contact me if you have any questions.

Sincerely,

/s/ Glen A. Smith

Litigation Director

Exhibit C


From: Glen Smith <gsmith@firstamendmentcoalition.org>
Subject: Fwd: Sheriff's Response to CPRA Request
Date: February 22, 2021 at 8:55 AM
To: Jennifer Casillas@ventura.org, Snow, Stacie Stacie.Snow@ventura.org
Cc: Sara Beladi sbeladi@dons.usfca.edu

I have not received a response to my Feb. 2 email, attached below. Please let me know when I can expect a reply. Thank you.

----- Forwarded message -----

From: **Glen Smith** <gsmith@firstamendmentcoalition.org>
Date: Tue, Feb 2, 2021 at 3:52 PM
Subject: Sheriff's Response to CPRA Request
To: Snow, Stacie <Stacie.Snow@ventura.org>, <vcsopublicrecordsrequest@ventura.org>

Attached please find a reply to your February 3, 2020 response to a California Public Records Act Request. The February response should also be attached. Please contact me if you have any questions.

 VCSheriff-Letter Re 020320 Response-V3 copy.pdf

 PRE Response to FAC all SB1421 Records.pdf

Glen A. Smith | Litigation Director | First Amendment Coalition
gsmith@firstamendmentcoalition.org | 415-460-5060
534 4th St. #B | San Rafael, CA 94901
www.firstamendmentcoalition.org | [@FACoalition](https://twitter.com/FACoalition)

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Exhibit D



January 28, 2021

S. Snow
Sheriff's Manager – Records
Ventura County Sheriff Office
800 South Victoria Avenue
Ventura, CA 93009
Stacie.snow@ventura.org

Ms. Snow,

On behalf of the First Amendment Coalition ("FAC"), I hereby request the records set forth below. This request is submitted pursuant to the California Public Records Act ("CPRA"), Gov't. Code § 6250 et seq.; the California Constitution, Article 1, § 3; and FAC's public access rights under California common law.

FAC requests the following records relating to a report, investigation or finding (as those terms are used in Penal Code § 832.7(b)(1)(A)(B)&(C)) of any of the following:

- (1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer;
- (2) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury; and,
- (3) An incident in which there was a sustained finding of dishonesty by any peace officer or custodial officer or that any such officers engaged in sexual assault involving a member of the public.

FAC is requesting records as defined in Penal Code § 832.7(b)(2) for incidents and sustained findings involving employees of the Ventura County Sheriff. The request also includes records in the possession or control of the Office of the Ventura County Sheriff's Office involving officers employed by other agencies. FAC is requesting records for incidents and sustained findings as defined above that occurred in 2020. FAC is also renewing its request for records for such incidents and sustained findings that occurred 2016-2018.

FAC acknowledges that an injunction in *Ventura County Deputy Sheriff's Association v. County of Ventura Sheriff's Office* (2019 WL 9467561) restrains the Sheriff's Office from releasing documents created prior to 2019. We also understand that this decision has been appealed, and we expect an imminent ruling in the Court of Appeal that would remove this injunction.

If any portion of the records requested is exempt from disclosure by express provisions of law, Gov't Code § 6253(a) requires segregation and redaction of that material in order that the remainder of the information may be released.

If you believe that any express provision of law exists to exempt from disclosure all or a portion of the records FAC has requested, you must notify FAC of the reasons for the determination not later than 10 days from your receipt of this request letter. (Gov't. Code § 6253(c).)

Any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing. (Gov't. Code § 6255(b).)

Gov't. Code section 6253(d) prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting public records."

In addressing this request, please keep in mind that Article 1, § 3 of the California Constitution expressly requires you to broadly construe all provisions that further the public's right of access, and to apply any limitations on access as narrowly as possible.

Please contact me if you have any questions, and thank you for your timely attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Beladi', with a horizontal line underneath.

Sara Beladi
Legal Extern

cc: Glen A. Smith, gsmith@firstamendmentcoalition.org

Exhibit E



February 22, 2021

Jennifer Casillas
Ventura County Sheriff's Office
Internal Affairs Unit
800 South Victoria Avenue
Ventura, CA 93009
Jennifer.casillas@ventura.org

Ms. Casillas,

I'm writing on behalf of the First Amendment Coalition ("FAC"). We received your letter, dated February 11, 2021, in response to our January 28, 2021 California Public Records Act ("CPRA") request. In that letter, you provide two links to short, publicly available descriptions of an October 4, 2020 deputy-involved shooting ("October 4th incident"). You also state that "records have been identified for January 1, 2020 – present, however, due to active and ongoing investigations, we have no records to disclose at this time." The CPRA and California Penal Code provide *narrow and limited* exceptions to the general rule of prompt disclosure when requested records pertain to active administrative or criminal investigations; they do not, however, provide for blanket protection for all such records. Your office is legally obligated to (1) clarify the nature of the relevant active investigations, (2) specify whether the October 4th incident is the only incident within the scope of our request (3) whether there are any sustained findings of dishonesty by a peace or custodial officer, and (4) provide estimated dates of disclosure, and (4) provide, with specificity, your reasons for delaying disclosure, where applicable. Please note that our request includes video and audio recordings, pursuant to California Government Code Section 6254(f).

You Must Meet Certain Conditions to Delay Records of an Incident Relating to Discharge of Weapon By Reason That the Incident Is Under Active Criminal Investigation and, Even Then, May Only Delay Release for Up to 60 Days After the Incident Occurred

State law provides that during an active criminal investigation of an officer's discharge of a weapon, disclosure of records "may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner." (Pen. Code, § 832.7.) In other words, disclosure may not be delayed for longer than 60 days after the incident occurred.

The law also requires agencies that delay release pursuant to this provision to provide "in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure," as well as an estimated date of disclosure. (*Supra.*)

Please specify whether any records responsive to our request relate to incidents of officer discharge of a firearm and are under active criminal investigation. If they are, please be aware that you may not withhold those records past 60 days after the incident occurred. For instance, records of the October 4th incident, if under criminal investigation, should have been disclosed by December 3, 2020. You must also promptly provide us with an estimated date of disclosure, as well as your agency's analysis of why the interest in delaying disclosure clearly outweighs public interest in disclosure.

You May Not Indefinitely Delay Release of Records of an Incident Relating to Discharge of Weapon By Reason That the Incident Is Under Active Administrative Investigation

State law further provides that, during an administrative investigation into an incident involving discharge of a firearm by an officer, an "agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later." (Pen. Code, § 832.7.)

Again, this provision does not indefinitely shield records from public view. Records of the October 4th incident, if under administrative investigation after the close of criminal investigation, should be disclosed by April 2, 2021. Please specify whether this incident, and any other incidents for which there are responsive records, are under administrative investigation, and promptly release any records that should have been released under this time provision. Because these exemptions are discretionary, as evidenced by the use of the word "may," we ask that you also provide an estimated date of release for records of incidents under administrative investigation.

You May Only Delay Release of Recordings of Critical Incidents for Up to 45 days After Your Agency Knew or Should Have Known About the Incident and, Even Then, You Must Provide Your Analysis for Why Disclosure Would Substantially Interfere with an Investigation and an Estimated Date for Disclosure

Please note that video or audio recordings of critical incidents are included in our request. You may only delay release of such recordings for up to 45 days after the date your agency "knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation." (Cal. Gov't Code § 6254.) You must provide in writing the specific basis for your determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure. (*Id.*)

Thank you for your attention. We look forward to hearing from you soon.

Sincerely,



Sara Beladi
Legal Extern
sbeladi@usfca.edu

cc: Glen Smith, gsmith@firstamendmentcoalition.org