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Mandy Kamphoefner
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9621 Ridgehaven Court
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Dear Ms. Kamphoefner:

The First Amendment Coalition ("FAC") is a nonprofit public interest organization dedicated to advancing free speech, open and accountable government, and public participation in civic affairs. I am writing on behalf of FAC to address your agency's response to a public records request by activist Tasha Williamson.

On July 12, 2022, Ms. Williamson asked the San Diego County Sheriff's Department to disclose:

all reports, internal correspondence, patrol deputies BWC regarding December 21, 2019 DUI checkpoint detention of Black minors and subsequent arrest of the drivers Black father who came to pick him up! Deputies tased the father hitting a lighter in his pocket which caused him to ignite in flames. Deputies proceeded to stomp the father's body with their boots to put the fire out.

I understand the Sheriff's Department responded by disclosing the Computer Aided Dispatch (CAD) report and refusing to disclose any other records or recordings, citing Government Code section 6254, subdivision (f) and Penal Code section 832.7. The response does, however, indicate that the Sheriff's Department has located responsive records with a corresponding case number (19165673).

The California Constitution and California Public Records Act ("CPRA") require state and local agencies to make any public record available for inspection or copying on request unless the record falls within a specific exemption. (Cal. Const., Art. I, § 3(b)(1); Gov. Code, § 6253.) This letter explains why the exemptions asserted by the Sheriff's Department are mistaken and the Sheriff's Department must immediately disclose the requested records.

1. S.B. 1421 requires disclosure of the records requested by Ms. Williamson.

The requested records relate to an incident in which Joe Young was tased during an encounter with San Diego County Sheriff's Deputies. On December 21, 2019, Sheriff's Deputies discharged a taser at Mr. Young and struck a lighter in his pocket. As a result, the lighter exploded, burning Mr. Young in the process. Sheriff's Deputies kicked and stomped on Mr. Young in an effort to extinguish the flames and tackled him to the ground. Deputies proceeded to tase Mr. Young again, this time in the back. Mr. Young sustained bruises to his head and face, a laceration on his lip and injuries/probe marks from the tasers. Mr. Young received treatment at Sharp Coronado Hospital for his injuries. Although Mr. Young was initially charged

with resisting arrest and obstructing an officer, the charges were later dismissed. These facts are described in *Young v. County of San Diego*, Case No. 20-cv-2441-H-AHG (S.D. Cal. Dec. 15, 2020), which I understand has been settled.

Under S.B. 1421, codified in Penal Code section 832.7, subdivision (b), records “relating to the report, investigation or findings” of “[a]n incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury” shall be made available under the CPRA. (emphasis added).

Although the Legislature did not define “resulted in” or “great bodily injury” in Penal Code section 832.7, it necessarily intended to adopt previous judicial constructions of those terms. (*Hughes v. Pair*, 46 Cal. 4th 1035, 1046 (2009); *Brooks v. Mercy Hospital*, 1 Cal. App. 5th 1, 7 (2016)). In addition, Penal Code section 832.7 “shall be broadly construed if it furthers the people’s right of access.” (Cal. Const. Art. I, § 3(b)(2)).

Therefore, the terms “resulted in” and “great bodily injury” must be broadly construed, especially in light of the Legislature’s findings that “[t]he public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society” and “[t]he public has a right to know all about ... serious uses of force” by police officers. (S.B. 1421 §§ 1(b), 4.) Under settled interpretations of “resulted in” and “great bodily injury,” and especially when those terms are broadly construed as they must be, the deputies’ taser use resulted in great bodily injury to Mr. Young.

a. The deputies’ actions “resulted in” injuries to Mr. Young.

When a statute requires that an outcome was a “result” of an action, the action need only have been a “substantial factor” in bringing about the outcome. (See *In re S.O.* (2018) 24 Cal.App.5th 1094, 1101.) Accordingly, courts use the “substantial factor” test to determine causation in a variety of circumstances. (*Mayes v. Bryan* (2006) 139 Cal.App.4th 1075, 1092-1093; *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968-969.)

As the California Jury Instructions explain, “A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. [Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.]” (CACI No. 430, emphasis added.)

“The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical. Thus, a force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage, or loss is not a substantial factor, but a very minor force that does cause harm is a substantial factor.” (*People v. Lockwood* (2013) 214 Cal.App.4th 91, 102-103 [cleaned up, citations omitted]; *Bockrath v. Aldrich Chem. Co.* (1999) 21 Cal.4th 71, 79 [same].)

An officer’s use of force remains a substantial factor in causing injury even if it is one of several independent or “concurrent” causes. (*Major v. R.J. Reynolds Tobacco Co.* (2017) 14 Cal.App.5th 1179, 1195; CACI No. 431 [where a person’s action “was a substantial factor in causing” the harm, then that person “is responsible for the harm” and his or her responsibility is not diminished “just because some other person, condition, or event was also a substantial

factor in causing [the] harm.”.) In sum, an officer’s use of force “results in” injury if a reasonable person would consider the use of force to have contributed to the injury, even if there were other “concurrent” causes of the injury.

The use of force that involved deploying the taser and attempts to extinguish the flames by Sheriffs’ Deputies resulted in Mr. Young’s injuries. Even if deputies did not intend for the lighter to ignite and burn Mr. Young, that is not the standard. The use of a taser just needs to be a substantial factor. The use of force involving the taser contributed to the lighter in Mr. Young’s pocket igniting and burning Mr. Young. It also contributed to injuries sustained by Mr. Young from Deputies attempting to extinguish the flames. A reasonable person would consider the use of a taser to have contributed to Mr. Young’s injury, especially under a broad construction of “resulted in.”

b. This incident meets the definition of “great bodily injury.”

The harm caused to Mr. Young represented “great bodily injury,” requiring disclosure of records related to that incident requested by Ms. Williamson. (Pen. Code, § 832.7(b)(1)(A)(ii), (b)(3)).

The term “great bodily injury” is defined in California law as “a significant or substantial physical injury.” (See, e.g., Pen. Code, § 12022.7, subd. (f).) “Great bodily injury” has been interpreted broadly by the California courts. (See *People v. Washington*, 210 Cal.App.4th 1042, 1047-1048 (2012) (“some physical pain or damage, such as lacerations, bruises, or abrasions” constitutes great bodily injury); *People v. Jung*, 71 Cal.App.4th 1036, 1042 (1999) (same); *People v. Wallace*, 14 Cal.App.4th 651, 665-666 (1993) (cuts and burns from being flex-tied, burning sensation from an insecticide-like substance were great bodily injury).)

The use of a taser causes “excruciating pain that radiates throughout the body.” (*Bryan v. MacPherson*, 630 F.3d 805, 824 (9th Cir. 2010)). The pain inflicted on Mr. Young, combined with the burns, contusions, lacerations and probe marks he suffered, meet the definition of “great bodily injury,” especially in light of the broad definition of that term required by the California Constitution. The CAD report supports that position to the extent it indicates a paramedic responded to the scene, as noted at entries for 12/21/19 at 02:04, which would presumably be unnecessary if significant injuries were not involved. The lawsuit filed by Mr. Young also indicates that he obtained treatment in Sharp Coronado Hospital while he was in custody, indicating that Sheriff’s Deputies decided that Mr. Young’s injuries were severe enough to necessitate medical intervention. Therefore, records “relating to the report, investigation or findings” of this incident must be disclosed under the CPRA.

2. A.B. 748 requires disclosure of the critical incident recordings requested by Ms. Williamson.

Under A.B. 748, codified in Government Code section 6254, subdivision (f), video or audio recordings related to a critical incident must be released. A “critical incident” is defined as “[a]n 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.” (Gov. Code, § 6254, subd. (f)(4)(C)(ii).) As explained above, the police officers’ use of force resulted in Mr. Young’s great bodily injury, necessitating the release of the recordings under the CPRA.

More than two and a half years after the incident in question, the Sheriff's Department may continue to delay disclosure only if it "demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation," explaining in writing "the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure." (Gov. Code, § 6254(f)(4)(A)(ii).) The Sheriff's Department has provided no information that indicates an investigation is still ongoing and it has certainly not articulated the basis for nondisclosure. Indeed, all charges against Mr. Young arising from this incident were dismissed. Therefore, it does not appear the Sheriff's Department may rely on the exception contained in Government Code section 6254, subdivision (f).

3. The juvenile case file exemption does not apply to records concerning the deputies' use of force against Mr. Young.

The Sheriff's Department's response to Ms. Williamson's request also indicates "juvenile case files are exempt from disclosure pursuant to Government Code section 6254(k)" and "Welfare and Institutions Code section 827." While that may be true as a general matter, it is not clear how that rule applies here. For example, the mere mention of a juvenile as a witness or bystander in an incident report involving an adult that is otherwise subject to disclosure under S.B. 1421 does not necessarily make that report part of a "juvenile case file."

Please confirm if this incident generated any documents that are part of a "juvenile case file." To the extent this incident may have generated records about minors subject to juvenile court jurisdiction that are part of a "juvenile case file" (Welf. & Inst. Code, § 827, subd (e)), any such exemption would not apply to Sheriff's Department records about the use of force on an adult such as Mr. Young. If there are concerns about the privacy of minors named in such records, their identifying information may be subject to redaction. (Pen. Code, § 832.7(b)(6); Gov. Code, § 6254(f)(4)(B)(i).)

Very truly yours,

FIRST AMENDMENT COALITION



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