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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**
12

13 SACRAMENTO TELEVISION STATIONS
INC., a Delaware corporation, d/b/a CBS
14 News Sacramento,

15 Petitioner,

16 vs.

17 CITY OF ROSEVILLE, a public agency; and
18 DOES 1-10,

19 Respondents.
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Case No. S-CV-0052277

Hon. Trisha Hirashima

**PETITIONER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF VERIFIED PETITION FOR
WRIT OF MANDATE ORDERING
COMPLIANCE WITH THE
CALIFORNIA PUBLIC RECORDS ACT**

Hearing Date: May 21, 2024

Time: 8:25 a.m.

Department: 42

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1 **I. INTRODUCTION**

2 On April 6, 2023, the California Highway Patrol (“CHP”) attempted to serve a warrant on
3 a suspect in the City of Roseville’s Mahany Park, while dozens of children were attending spring
4 break camps. Shots were fired, and the Roseville Police Department (“RPD”) was dispatched to
5 the scene to assist. As the suspect fled RPD and CHP, he took two innocent civilians hostage and
6 exchanged gunfire with RPD and CHP officers. Both hostages were shot, and one died. The
7 suspect and a CHP officer were also shot.

8 Petitioner Sacramento Television Stations, Inc. d/b/a CBS News Sacramento provided in-
9 depth coverage of this newsworthy incident via its television station, KOVR-TV, which airs local
10 and national news in the greater Sacramento area, including in Roseville. In furtherance of its
11 reporting, CBS News Sacramento requested video footage of the incident from CHP and RPD.
12 Consistent with a transparency law, CHP ultimately complied and produced seven hours of
13 footage. RPD, however, refused to fully comply, relying on a forced construction of the law that
14 defies the statutory text, the undisputed purpose of the law, other law enforcement agencies’
15 understanding of the law, the law’s legislative history, and common sense.

16 CBS News Sacramento then filed the pending Verified Petition seeking an order
17 commanding the City of Roseville to comply with the California Public Records Act (“CPRA”),
18 Government Code Section 7920.000, *et seq.*, and Article 1, Section 3(b) of the California
19 Constitution, by producing all video and audio footage from the officer-involved shooting at
20 Mahany Park on April 6, 2023—from the moment that RPD was dispatched to the park, to the
21 time the scene was secured and the suspect was in custody, approximately one hour later.

22 **II. SUMMARY OF PERTINENT FACTS**

23 **A. The Mahany Park Shooting on April 6, 2023.**

24 The facts underlying CBS News Sacramento’s Petition come largely from RPD’s own
25 statements and admissions and are uncontested unless otherwise noted.¹ On April 6, 2023, CHP

26 _____
27 ¹ As demonstrated in the Answer, the City largely does not dispute the contents of the
28 City’s/RPD’s press releases or communications cited and quoted in the Petition. *See, e.g.*, Answer ¶¶ 11, 13, 15. When it does, it contradicts its own prior statements. *See infra, e.g.*, notes 3, 4. & 5.

1 tried to serve a search warrant on a suspect, Eric J. Abril, at Mahany Park. Verified Petition for
2 Writ of Mandate (“Pet.”) ¶ 13. CHP made this attempt even though Abril was known to be
3 dangerous and possibly armed, and, at the time, Mahany Park’s visitors included several dozen
4 children attending spring break summer camps. *See id.* ¶ 12. At around 12:30 p.m. that afternoon,
5 RPD responded to Mahany Park after hearing “shots fired” broadcast over the police radio and
6 being informed by CHP that an officer had been shot. *Id.* ¶¶ 17, 18.² Upon arriving at the scene,
7 RPD saw Abril fleeing law enforcement and brandishing a gun. *Id.* ¶ 19. As Abril fled, he took
8 two civilian hostages. *Id.* ¶ 20. RPD claims that officers “quickly confronted” and “apprehended”
9 him. *Id.* ¶ 21. Ultimately, although RPD stated that its “officers rescued the hostages,” one of the
10 hostages was pronounced dead on the scene, and the other hospitalized with injuries. *Id.* ¶¶ 26,
11 27. Abril and a CHP officer were shot and hospitalized as well. *Id.* ¶¶ 28, 29.

12 The City admits that, for at least 19 minutes between 12:38 p.m. and 12:57 p.m., RPD
13 “exchanged gunfire” with Abril. *Id.* ¶ 35, Ex. 1; Answer ¶ 35; *see* April 7, 2023 Update on
14 shooting in Mahany Park, City of Roseville, California (Apr. 7, 2023), <http://tinyurl.com/yc36c7yc>
15 [hereinafter “Apr. 7 RPD Press Release”]. RPD estimates that, around 50 rounds were exchanged
16 between law enforcement and Abril.³ *See* April 14, 2023 Update on shooting in Mahany Park,
17 City of Roseville, California (Apr. 14, 2023), <http://tinyurl.com/45dxzhk3> [hereinafter “Apr. 14
18 RPD Press Release”]. Three RPD officers fired their weapons. Answer ¶ 50. Law enforcement
19 apprehended Abril at approximately 1:13 p.m. *Id.* ¶ 23. According to footage produced by other
20 law enforcement agencies, officers then secured the scene at approximately 1:25 p.m.⁴ Pet. ¶ 24.

21 _____
22 ² RPD is a department of the City of Roseville, a public agency subject to the CPRA. Answer to
23 Verified Petition for Writ of Mandate Ordering Compliance with the California Public Records
24 Act (the “Answer”) ¶¶ 3-4, 84.

24 ³ In its Answer, RPD states that CBS News Sacramento misrepresents the number of shots fired.
25 Answer ¶ 34. In fact, it is RPD that contradicts its own press release. *Compare id.* (Answer stating
26 April 14 RPD Press Release reported that “CHP Officers fired approximately 15-20 rounds at the
27 suspect.”) *with* Apr. 14 RPD Press Release (April 14 RPD Press Release reporting “CHP officers
28 fired approximately 15-25 rounds at the suspect during the incident.”).

26 ⁴ RPD denied the allegation regarding the time at which it “secured the scene” on the basis that the
27 phrase “secure the scene” is “vague, ambiguous, and unintelligible.” Answer ¶ 24; *see also id.* ¶
28 36. that very phrase is used in policies to which the RPD is a signatory, so it is unclear why it
cannot answer this allegation. *See, e.g.,* OFFICER INVOLVED CRITICAL INCIDENT

1 In other words, as even RPD’s timeline shows, *nearly an hour* passed between the time RPD
2 arrived on the scene in response to “shots fired” and the time Abril, an armed suspect who
3 “endanger[ed] officers and the public,” was apprehended and the scene was secured. Pet. ¶¶ 17,
4 19, 22-24, 33, 35, Ex. 1; Answer ¶¶ 17, 19, 23, 25, 33, 35. On April 6, RPD acknowledged an
5 officer involved shooting in a press conference, and, on April 7, released a press release
6 confirming the same.⁵ Pet. ¶ 31; Answer ¶ 31.

7 **B. RPD’s Failure to Disclose Recordings Relating to the Mahany Park Shooting.**

8 Government Code § 7923.625, passed by the California Legislature in 2018, sets forth a
9 presumptive disclosure requirement for “video or audio recording[s] that relate[] to a critical
10 incident,” which is defined, as relevant here, as “[a]n incident involving the discharge of a firearm
11 at a person by a peace officer.”

12 Over the course of nearly six months, CBS News Sacramento repeatedly requested that
13 RPD comply with its statutory disclosure obligations and produce all recordings in its possession
14 relating to the nearly hour-long critical incident at Mahany Park on April 6, 2023. RPD repeatedly
15 refused, including in its Answer to the Petition, maintaining that the law only required it to
16 produce a few minutes of footage showing the discharge of a firearm during the critical incident.

17 On June 12, 2023, CBS News Sacramento reporter and anchor Steve Large contacted
18 RPD’s Public Information Officer, Lieutenant Chris Ciampa, to inquire about the release of “body
19 and dash cam” footage of the Mahany Park shooting. Pet. ¶ 43. Ciampa acknowledged
20 possession of responsive records and stated that he would provide them to CBS News Sacramento,
21 but, on June 22, RPD reversed course. *Id.* ¶¶ 44–50. For the first time, Ciampa drew a distinction,

22 _____
23 PROTOCOL, Placer County at 7,
24 <https://www.placer.ca.gov/DocumentCenter/View/42001/Officer-Involved-Shootings-and-Deaths?bidId=>.

25 ⁵ RPD equivocates, arguing that it only confirmed an officer-involved shooting *involving CHP*.
26 Answer ¶ 31. This ignores the very next sentence in its own press release that that RPD
27 “responded to assist CHP, at which time Roseville Officers and CHP officers engaged the
28 suspect.” *See* Apr. 7 RPD Press Release. RPD also argues that CBS News Sacramento
misrepresented when RPD first acknowledged the incident, contending it was April 7 not April 6.
This ignores RPD’s own press conference held on April 6 at Mahany Park. CBS News
Sacramento, *Press conference in fatal Roseville hostage-related shooting*, YouTube (Apr. 6,
2023), <http://tinyurl.com/yu8a54d9>.

1 found nowhere in the text of the statute, between what he described as the “much larger criminal
2 event”—which he acknowledged had occurred on April 6—and a shorter “critical incident.” *See*
3 *id.* ¶¶ 46–48, Ex. 1. Based on that atextual reading, RPD produced just four 39-second body-worn
4 camera video clips totaling less than three minutes, and two clips of dispatch audio totaling less
5 than four minutes. *See id.* ¶¶ 49–52, Ex. 1. Apparently, RPD interpreted “[a]n incident involving
6 the discharge of a firearm at a person by a peace officer” to encompass not the entire critical
7 incident but only the “discharge of a firearm at a person by a peace officer” and a few seconds
8 before and after. *See Pet.*, Ex. 6; Answer ¶ 50. RPD maintained this position even though it now
9 acknowledges that its officers “exchanged gunfire” with Abril for 19 minutes, *Pet.* ¶ 35, Answer ¶
10 35, during a critical incident that itself lasted nearly an hour.

11 On July 26, 2023, CBS News Sacramento reporter and anchor Julie Watts reiterated CBS
12 News Sacramento’s request for “the full footage from all officer Body Worn Cameras (BWC) and
13 dash cameras at the scene of the Mahany Park incident on April 6th—beginning with their arrival
14 at Mahany Park (driving up to the park), through the time the suspect was apprehended and taken
15 into custody (removed from the park).” *Pet.*, ¶ 56, Ex. 1. On August 2, 2023, Ciampa maintained,
16 as the City maintains to this day, that RPD was not required to disclose anything more than the
17 short clips it had already produced. *See id.* He also confirmed that RPD did not assert or establish
18 that any of the specific statutory exemptions for disclosure applied. *See id.*

19 On October 2, 2023, Watts contacted Ciampa again to advise him that CBS News
20 Sacramento had become aware that RPD also possessed drone footage of the Mahany Park
21 shooting that it had not disclosed and requested that RPD promptly disclose it. That same day,
22 Ciampa sent a one-sentence response: “Nothing has changed from the message sent on Aug 2nd
23 on what Roseville PD is releasing.” *See Pet.*, Ex. 2.

24 Twice, in-house counsel for CBS News Sacramento urged the City/RPD’s counsel to
25 reconsider the decision to withhold responsive footage of the Mahany Park shooting. *See Pet.*,
26 Exs. 3, 5. Both times, the City’s counsel refused. *See Pet.* Exs. 4, 6. The first time, the City’s
27 counsel recycled nearly word-for-word the same correspondence it had already sent to Watts.
28 *Compare Pet.*, Ex. 1, *with Pet.*, Ex. 4. Throughout the parties’ six months of written

1 correspondence, as well as the subsequent telephonic conferences between CBS News
2 Sacramento’s outside counsel and the City’s counsel, the City maintained the atextual dichotomy
3 between the supposedly larger “criminal event” and the supposedly narrower “critical incident.”
4 And at no point during the parties’ discussions or in its Answer to the Verified Petition has the
5 City ever made the necessary showing under the law to justify withholding the requested footage.

6 **III. ARGUMENT**

7 **A. The Responsive Records are Presumptively Open Public Records and Any**
8 **Claimed Exemption Must Be Narrowly Construed and Proved by the City.**

9 Under the CPRA, “access to information concerning the conduct of the people’s business
10 is a fundamental and necessary right of every person in this state.” Gov’t Code § 7921.000; *see*
11 *also Int’l Fed’n of Prof’l & Tech. Eng. v. Superior Court*, 42 Cal. 4th 319, 328 (2007) (finding
12 that access to government records is a “fundamental interest of citizenship”) quoting *CBS Inc. v.*
13 *Block*, 42 Cal. 3d 646, 652 n.5 (1986)). By promoting prompt public access to government
14 records, the CPRA “safeguard[s] the accountability of government to the public.” *Register Div. of*
15 *Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893, 901 (1984). The CPRA
16 demands “[m]aximum disclosure.” *Block*, 42 Cal. 3d at 651–52; *see also Pasadena Police*
17 *Officers Ass’n v. Superior Court*, 240 Cal. App. 4th 268, 282 (2015).

18 As such, there is a “strong presumption in favor of disclosure of public records, and any
19 refusal to disclose public information must be based on a specific exception to that policy.”
20 *California State Univ., Fresno Ass’n v. Superior Court*, 90 Cal. App. 4th 810, 831 (2001); *see also*
21 *ACLU v. Superior Court*, 3 Cal. 5th 1032, 1038–39 (2017) (“*ACLU I*”) (quoting *Williams v.*
22 *Superior Court*, 5 Cal. 4th 337, 346 (1993)). Because of the CPRA’s solicitousness towards
23 public access, the public agency bears the burden of proving that an exception to disclosure
24 applies. *ACLU v. Superior Court*, 202 Cal. App. 4th 55, 67 (2011) (“*ACLU II*”); *accord Block*, 42
25 Cal. 3d at 652 n.8. In light of these principles, any “doubtful cases must always be resolved in
26 favor of disclosure.” *Essick v. County of Sonoma*, 81 Cal. App. 5th 941, 950 (2022).

27 In 2004, California voters affirmed the State’s commitment to the above principles when
28 they overwhelmingly approved Proposition 59 (the state’s “Sunshine Amendment”), elevating the

1 public's right of access to public records to constitutional stature. *See* Cal. Const. art. 1, § 3(b)(1).
2 The Amendment mandates that any existing statute, court rule or other authority shall be broadly
3 construed if it furthers the public's right of access and narrowly construed if it limits the right of
4 access. *Id.* at § 3(b)(2); *Cal. State Univ.*, 90 Cal. App. 4th at 831 (recognizing that the same rule
5 of construction stems from the CPRA itself). Applying these rights, the Supreme Court has made
6 clear that where statutory terms are ambiguous, the Sunshine Amendment compels an
7 interpretation that maximizes the public's right of access unless the Legislature has expressly
8 provided otherwise. *See Sierra Club v. Superior Court*, 57 Cal. 4th 157, 175 (2013).

9 **B. To Promote Transparency in Law Enforcement, the Legislature Mandated**
10 **Disclosure of Records Relating to Any Discharge of a Firearm by a Police**
11 **Officer at a Person.**

12 In 2018, the California Legislature again affirmed the State's commitment to the public's
13 right of access by enacting Assembly Bill 748 ("AB 748"). To that end, AB 748 was codified as
14 part of the CPRA to provide that "a video or audio recording that relates to a critical incident, as
15 defined in subdivision (e), may be withheld *only*" in specified circumstances. Gov't Code §
16 7923.625 (emphasis added). Subdivision (e) subsequently provides:

17 (e) For purposes of this section, *a video or audio recording relates to a critical*
18 *incident if it depicts* any of the following incidents:

19 (1) *An incident involving the discharge of a firearm at a person by a*
20 *peace officer* or custodial officer.

21 (2) An incident in which the use of force by a peace officer or custodial
22 officer against a person resulted in death or in great bodily injury.

23 *Id.* § 7923.625(e) (emphases added).⁶ As the Legislative Counsel's Digest explained, "[b]y
24 requiring local agencies to make these recordings available," AB 748 "would impose a state-
25 mandated local program." Stats. 2017–18, ch. 960, Leg. Counsel's Digest.⁷

26 When the author of the bill, Assemblymember Phil Ting was asked whether he intended
27 "to define the critical incident as only the moments of the discharge of the firearm," he answered:

28 ⁶ Subdivision (e) does *not* require that the video or audio recording be made by the officer who
discharged his or her weapon, nor does it require that the recording must have been made by an
officer in the same law enforcement agency as the officer who discharged his or her weapon. *Id.*

⁷ *See* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB748.

1 “Absolutely not. Because if that was the case, that would have been written into law. In order to
2 provide transparency, you need to know what’s happening leading up to the confrontation.”⁸ And,
3 as the City’s counsel acknowledges, “[t]he whole purpose of the law is to provide transparency to
4 the officers’ conduct.” Pet., ¶ 68, Ex. 4 (emphasis added). There is no meaningful transparency in
5 an arbitrarily selected 39-second clip around the mere moment a firearm was discharged.

6 **C. RPD Must Disclose Additional Responsive Recordings.**

7 The dispute here is narrow. The City admits that it is “a public agency and local agency”
8 as defined by the CPRA, and that it is “obligated to disclose video or audio recordings that
9 ‘relate[] to a critical incident’, as defined in California Government Code § 7923.625(e)[.]”
10 Answer ¶¶ 84, 85. It also admits that a “critical incident” took place in Mahany Park on April 6,
11 2023. *Id.* ¶ 86. And, as just noted, it admits the point of the law is transparency. The only
12 question is what constitutes a recording that “relates to a critical incident” pursuant to the statute’s
13 text and purpose and the presumptions underlying access. CBS News Sacramento advances a
14 definition that is consistent with each of these considerations. RPD does not.

15 Specifically, CBS News Sacramento’s position is that the City must disclose exactly what
16 the statute says: all recordings “relating to” the depiction of “*an incident* involving the discharge
17 of a firearm” by an officer at a person. Gov’t Code § 7923.625(e) (emphasis added). The City’s
18 position is that it need only produce recordings “relating to” the depiction of “*the discharge* of a
19 firearm” and an arbitrary few seconds before and after. The City thus writes out of the statute “an
20 incident” to artificially narrow the statute’s reach. To support this view, it then distinguishes
21 recordings of a discharge of a firearm from the “much larger criminal event,” a phrase found
22 nowhere in the statute. In short, CBS News Sacramento’s interpretation properly takes into
23 account each word in the statute, as well as the undisputed principles of transparency that
24 undergird the entire statute, while the City’s deletes words from the statute and creates others out

25 _____
26 ⁸ See Julie Watts, *FAILED POLICIES - PART 2: Why the CHP Roseville park*
27 *shootout could set a concerning precedent for police shootings*, CBS Sacramento (Nov. 14, 2023),
28 <https://www.cbsnews.com/sacramento/video/heres-why-aprils-roseville-park-shootout-could-set-a-concerning-precedent-for-police-shootings>.

1 of thin air to frustrate the statute’s purpose. The City’s self-serving revision should be rejected.

2 **1. Principles of Statutory Interpretation Demonstrate that the**
3 **City’s Interpretation of AB 748 Is Wrong.**

4 The City’s tortured reading of AB 748 is inconsistent with principles of statutory
5 interpretation, and is impermissibly designed to minimize disclosure contrary to the CPRA.

6 In interpreting a statute, the “statutory language typically is the best and most reliable
7 indicator of the Legislature’s intended purpose.” *Larkin v. Workers’ Comp. Appeals Bd.*, 62 Cal.
8 4th 152, 157 (2015). “It is a maxim of statutory interpretation that courts should give meaning to
9 every word of a statute and should avoid constructions that would render any word or provision
10 surplusage.” *Hernandez v. Dep’t of Motor Vehicles*, 49 Cal. App. 5th 928, 935 (2020). Words
11 should be given their ordinary meaning, and phrases like “relating to” should be broadly
12 construed. *San Diego Unified Sch. Dist. v. Yee*, 30 Cal. App. 5th 723, 732-33 (2018). Where the
13 plain meaning of the statute is clear, a court need go no further. *Id.* Where, however, “a statute is
14 theoretically capable of more than one construction [courts] choose that which comports with the
15 intent of the Legislature.” *Id.* at 732. In the context of the CPRA and California Constitution,
16 this means that courts must opt for the reading that vindicates rather than frustrates public access.
17 *See City of San Jose v. Superior Court*, 2 Cal. 5th 608, 629 (2017).

18 As noted, here, a recording “relates to a critical incident if it depicts . . . [a]n incident
19 involving the discharge of a firearm at a person by a peace officer.” Gov’t Code § 7923.625(e).
20 Consistent with this language, CHP disclosed some seven hours of footage that depicted the
21 incident at Mahany Park involving the discharge of a firearm. Pet. ¶ 72. The City, on the other
22 hand, rewrites the statutory language to avoid disclosure. It reads Section 7923.625(e) to define
23 “critical incident” rather than to define what “relates to a critical incident,” and then, reads out of
24 the statute entirely the phrase “incident involving,” leaving only “the discharge of a firearm at a
25 person by a peace officer.” The City’s atextual version of the statute reads, “a video or audio
26 recording of a critical incident is only that which depicts . . . the discharge of a firearm at a person
27 by a peace officer.” The Legislature could have written the statute that way, but it did not.

28 Further, rather than steering the Court and the parties clear of ambiguity, the City’s

1 interpretation actually creates it. The City argues that a recording of a critical incident is only the
2 actual discharge of a firearm. This means that, according to the City, only split seconds of
3 recordings must be disclosed under the statute. Yet, contrary to its own reading, the City disclosed
4 those split seconds but also some indeterminate and arbitrary additional seconds on either side of
5 those discharges. It is unclear the City's reason for doing so or, if it believes that it was required
6 to do so, on what basis it decided that it disclosed enough of the recording on either side of the
7 discharge. CBS News Sacramento's read of the statute provides law enforcement a bright line that
8 is consistent with the statutory language: disclose that much of a recording from the beginning of
9 the critical incident, when the officers first began to respond to it, to the end, when the officers
10 secured the scene. For these reasons, the Court should reject the City's tortured reading and
11 arbitrary implementation of the statute.

12 Despite the statute's plain text, the City misinterprets legislative history in a misplaced
13 attempt to bolster its atextual reading. The City argues that the legislative history demonstrates
14 that the Legislature adopted a narrow definition of recordings that relate to a critical incident.
15 Specifically, it points to the legislative bill analysis for AB 748 and argues that it "clarified"
16 critical incident was defined narrowly. Pet., Ex. 6 at 2. True enough, the analysis stated that
17 Representative Ting "limited this bill to 'critical incidents,' defined as an incident involving the
18 discharge of a firearm at a person by a peace officer." *Id.* But that is exactly the language that
19 supports *CBS News Sacramento's* reading and the same language that made it into the statute.
20 More to the point, the "narrowing" to which the analysis referred had *nothing* to do with *that*
21 definition of critical incident. Instead, the narrowing to which the analysis referred was the
22 removal of *other* definitions of a critical incident *that are not* applicable here.⁹ The City's
23 legislative history argument is a red herring.

24 While this Court need not resort to the legislative history because the plain text of the
25 statute is clear, a fair reading of that history demonstrates that CBS News Sacramento's reading is

26 ⁹ See, e.g., [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180AB748&cversion=20170AB74894AMD)
27 [bill_id=201720180AB748&cversion=20170AB74894AMD](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180AB748&cversion=20170AB74894AMD) (showing redline removing from the
28 statute's reach an incident involving use of non-lethal force as well as the death of an individual in
an agency's custody).

1 correct. The City admits that the “[t]he whole purpose of the law,” i.e., § 7923.625, “is to provide
2 transparency to the officers’ conduct.” Pet. ¶ 68. And it cannot contest that the CPRA must be
3 broadly construed. *City of San Jose*, 2 Cal. 5th at 617. Yet, RPD adopts a narrow interpretation
4 that undermines transparency. Its position, unlike other agencies’ approach to the same disclosure
5 provision discussed below, would frustrate the public’s understanding of officer conduct as it
6 would condone the release of contextless video.

7 Accordingly, any recordings in RPD’s possession that relate to the Mahany Park “incident
8 involving the discharge of a weapon” must be disclosed. This encompasses recordings from the
9 moment that RPD was dispatched after hearing “shots fired,” to the time that law enforcement
10 apprehended the armed suspect and secured the scene, approximately one hour later.

11 **2. The City Does Not Satisfy Its Burden to Show that Any**
12 **Exemption Applies to Disclosure of the Requested Materials.**

13 Because the disclosure statute applies to the records sought by CBS News Sacramento, the
14 videos must be disclosed unless the City carries its burden of demonstrating that an exemption,
15 narrowly construed, applies. *ACLU II*, 202 Cal. App. 4th at 67. There are only two specified
16 circumstances under which recordings of officer-involved shootings may be withheld.

17 First, during an active criminal or administrative investigation, the recordings may be
18 withheld for “no longer than 45 calendar days . . . *if*, based on the facts and circumstances depicted
19 in the recording, disclosure would substantially interfere with the investigation.” Gov’t Code
20 § 7923.625(a)(1) (emphasis added). If the responding party delays disclosure under this
21 exception, it must provide the “specific basis” for the determination and the estimated date for
22 disclosure in writing. *Id.* After 45 days, the responding party can only continue to withhold the
23 recordings for up to a year if it demonstrates that disclosure would substantially interfere with the
24 investigation. *Id.* § 7923.625(a)(2). After a year, it can only continue to delay disclosure if it
25 demonstrates “by clear and convincing evidence that disclosure would substantially interfere with
26 the investigation.” *Id.* If disclosure is delayed more than 45 days, the responding party must
27 reassess and notify the requester every 30 days. *Id.*

28 Second, if the responding party demonstrates that “the public interest in withholding” a

1 recording “clearly outweighs the public interest in disclosure because” disclosure would “violate
2 the reasonable expectation of privacy of a subject depicted in the recording,” the responding party
3 may use limited redactions to protect the privacy interest, which it must explain in writing. *Id.* §
4 7923.625(b).

5 The City acknowledges that these are the only two mechanisms by which to withhold
6 recordings related to “critical incidents.” *See* Answer ¶¶ 39, 41, 62. Although the City asserts an
7 affirmative defense to suggest that it would be entitled to withhold the full recordings under the
8 exemptions set forth in Sections 7923.625(a) and (b), Answer, Resp.’s Affirmative Defenses, ¶ 4,
9 the City also has persistently maintained—even in and throughout its Answer—that no such
10 exemptions need to be invoked because—according to the City—it is not withholding anything.
11 *See* Pet., Ex. 4; Answer ¶¶ 54, 77-78. In any event, the City cannot—indeed, it does not even try
12 to—satisfy its burden under any exemption to justify withholding the requested recordings here.

13 First, under Section 7923.625(a)(2), now that a year has passed since the shootings on
14 April 6, 2023, the City can only continue to delay disclosure if it demonstrates “by clear and
15 convincing evidence that disclosure would substantially interfere with the investigation.” Gov’t
16 Code § 7923.625(a)(2). As the Supreme Court has explained, “clear and convincing” evidence
17 “requires a finding of high probability.” *In re Angelia P.*, 28 Cal. 3d 908, 919 (1981). This
18 “requir[es] that the evidence be so clear as to leave no substantial doubt; sufficiently strong to
19 command the unhesitating assent of every reasonable mind.” *Id.* (cleaned up). The City provides
20 next to no facts supporting its sudden assertion that disclosure of recordings of the events of April
21 6, 2023 would “substantially interfere” with any investigation, and certainly no evidence meeting
22 the “clear and convincing” standard. The closest the City comes is to assert that it “feels
23 confident” it can make such a stringent showing, but the City does not actually advance any facts
24 to support that “feeling.” Answer ¶ 76.

25 Second, the City has made no effort to demonstrate that disclosure would violate any
26 person’s reasonable expectation of privacy. Gov’t Code § 7923.625(b). Nor could it. First, the
27 entire incident took place in a public park filled with bystanders. *See U.S. v. Grace*, 461 U.S. 171,
28 177 (1983) (parks are quintessential public places); *Gill v. Hearst Publ’g Co.*, 40 Cal. 2d 224, 230-

1 231 (1953) (photograph of a couple in a public place is not private); *Sanders v. Am. Broad. Cos.,*
2 *Inc.*, 20 Cal. 4th 907, 914 (1999) (no intrusion when a person “has merely been observed, or even
3 photographed or recorded, in a public place”). Second, facts that are “already public” or have
4 become “part of the public domain” are not private. *Moreno v. Hanford Sentinel, Inc.*, 172 Cal.
5 App. 4th 1125, 1130-31 (2009). Here, the CHP has already released *seven hours* of recordings of
6 the events of April 6, 2023. Pet. ¶ 72.

7 Third, the City’s argument that the “victims and their family do not deserve to have to
8 watch” recordings of the incident, *see* Pet., Ex. 6, would eviscerate AB 748 entirely. If that were a
9 valid basis to assert the exemption provided by Section 7923.625(b)—which it is not—nearly any
10 recording related to officer-involved shootings could be withheld. And, even if the City could
11 demonstrate that any person’s privacy interests were actually at stake, the first remedy would be to
12 use redaction technologies to protect that interest, not to withhold the recording entirely. *See*
13 Gov’t Code § 7923.625(b); *see also National Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488,
14 508 (2020) (public agency must redact, and also bear the cost of redacting, purportedly exempt
15 digital video footage).

16 Even if withholding of similar information were permissible in a different case, it is not
17 permissible here for the additional reason that CHP has already released seven hours of similar
18 footage from Mahany Park when it complied with Gov’t Code § 7923.625. That video is now in
19 possession of news organizations and much of it is publicly available online. Pet. ¶ 72 & n.2. In
20 light of this prior release, the City cannot demonstrate, as it must, how the release of *additional*
21 recordings of the critical incident would somehow cause *further* alleged interference either with
22 law enforcement or personal privacy.

23 Finally, the City has not complied with the procedural requirements for invoking these
24 exemptions. If the City wanted to contend that disclosure would “substantially interfere” with an
25 investigation, it was required to provide “the specific basis” and the estimated date of disclosure,
26 in writing, to CBS News Sacramento, and it was required to reassess and notify CBS News
27 Sacramento every 30 days. Gov’t Code § 7923.625(a). It did not do so. Pet. ¶¶ 62-63. And, if
28 the City contends that disclosure would violate someone’s reasonable privacy expectations, the

1 City was, again required to explain the basis for that determination in writing. *Id.* § 7923.625(b).
2 It never did. The City also has not explained why it cannot use redaction to protect any such
3 privacy interests to the extent they still exist. For all these reasons, no exception applies.

4 **3. The City’s Interpretation is Inconsistent with Other Law**
5 **Enforcement Agencies’ Interpretations of Section 7923.625.**

6 CBS News Sacramento believes that the meaning of the statutory text is plain. But this
7 Court need not take its word for it. Indeed, the City’s interpretation of Section 7923.625 (AB 748)
8 is an outlier among other law enforcement agencies.

9 For example, Los Angeles Police Department release of critical incident video is at odds
10 with RPD’s interpretation of the law. In one 2023 video, LAPD released footage relating to a
11 critical incident that began when the officer arrived on scene through the suspect being detained.
12 *See, e.g., Pacific Area ICD 1/3/2023 (NRF002-23) – Extended*, Los Angeles Police Department,
13 <https://www.youtube.com/watch?v=cCs4ru-S-DI>. Like many other departments, the San Diego
14 Police Department website has a webpage where it publicly posts videos of “critical incidents.”
15 *See Critical Incident Videos*, City of San Diego, [https://www.sandiego.gov/police/data-](https://www.sandiego.gov/police/data-transparency/critical-incident-videos)
16 [transparency/critical-incident-videos](https://www.sandiego.gov/police/data-transparency/critical-incident-videos). Consistent with CBS News Sacramento’s position on
17 interpretation of Section 7923.625(e), several of the videos posted begin where the officers arrive
18 on scene and run throughout the confrontation. *See, e.g., Southeastern Division – 08/28/2023*,¹⁰
19 *Southeastern Division – 07/07/22, S.D.P.D. (July 18, 2022)*.¹¹ Other law enforcement departments
20 take a similar approach. *See, e.g., Critical Incident OIS 20008867 Finalized Use of Force Review*,
21 Pasadena Police Department, [https://www.cityofpasadena.net/police/critical-incident-](https://www.cityofpasadena.net/police/critical-incident-briefings/critical-incident-ois-20008867-finalized-use-of-force-review)
22 [briefings/critical-incident-ois-20008867-finalized-use-of-force-review](https://www.cityofpasadena.net/police/critical-incident-briefings/critical-incident-ois-20008867-finalized-use-of-force-review).¹²

23 Even when it comes to *this specific incident* at Mahany Park, as explained, CHP took a
24 broader approach to disclosure of recordings that is consistent with the statutory language. The

25 _____
26 ¹⁰ Available at <https://www.youtube.com/watch?v=0BcwOmWK6Ek&rco=1>.

27 ¹¹ Available at <https://www.youtube.com/watch?v=VVHSFwOaR7o&rco=1>.

28 ¹² Among many other reasons, the interpretations of AB 748 by other law enforcement agencies around the State that are consistent with CBS News Sacramento’s interpretation easily disposes of the City’s throw-away argument that the Petition at bar is frivolous. Answer, Prayer at ¶ 4.

1 CHP, which was the agency that attempted to execute the warrant on Abril on April 6, 2023,
2 initially released nothing, and then after additional arguments by CBS News Sacramento released
3 nearly a *half hour* of footage—not the mere snippets that RPD disclosed—in response to CBS
4 News Sacramento’s initial request. See Julie Watts, *EXCLUSIVE: CBS Sacramento obtains*
5 *never-before-seen CHP video from deadly Roseville park shootout*, CBS News Sacramento (Nov.
6 13, 2023), [https://www.cbsnews.com/sacramento/news/chpreleases-25-minutes-of-dashcam-](https://www.cbsnews.com/sacramento/news/chpreleases-25-minutes-of-dashcam-footage-from-deadly-roseville-park-shootout)
7 [footage-from-deadly-roseville-park-shootout](https://www.cbsnews.com/sacramento/news/chpreleases-25-minutes-of-dashcam-footage-from-deadly-roseville-park-shootout). And the CHP later released *seven hours* of
8 recordings from the Mahany Park shooting. Pet. ¶ 72.

9 CBS News Sacramento pointed RPD to the scope of these other agencies’ critical incident
10 disclosures prior to filing the Petition, but RPD dismissed those agencies’ interpretations as mere
11 “decisions to release more than the law requires.” See Pet., Exs. 5, 6; Answer ¶ 75. Even the City
12 acknowledges that Section 7923.625 requires disclosure of at least “*some* time period before and
13 after the actual discharge of a firearm,” Pet., Ex. 6 (emphasis added), but the City arbitrarily and
14 unilaterally limited the disclosure to snippets representing just a few seconds surrounding the
15 discharge of firearms, which is a mere fraction of the time relating to or involving the discharge of
16 firearms in Mahany Park. The Court should not credit such an arbitrary approach to public access.

17 **IV. CONCLUSION**

18 The City’s overly narrow interpretation of its disclosure requirements is contrary to the
19 principles of transparency enshrined in California statutory and constitutional law, as well as with
20 basic doctrines of statutory interpretation, and the policies of other law enforcement agencies. The
21 City must disclose *all* video and audio recordings (including body camera, dash camera and drone
22 footage) related to the events that took place on April 6, 2023 at Mahany Park, from the time RPD
23 was dispatched to the scene at approximately 12:30 p.m., to the time the scene was secured about
24 an hour later.

25 Because the City’s unduly narrow interpretation of Government Code section 7923.625(e)
26 does not comport with either the letter or spirit of the CPRA or California Constitution, CBS News
27 Sacramento’s Petition should be granted in full. If the Court is not inclined to grant the Petition in
28 full, at a minimum, the City should be ordered to disclose all recordings “related to” the critical

1 incident from the moment RPD arrived at 12:30 p.m. until the moment that Abril was apprehended
2 at 1:13 p.m., or at the very least for the entire period during which RPD admits it “exchanged
3 gunfire” with Abril, from 12:38 p.m. to 12:57 p.m. Pet. ¶ 35; Answer ¶ 35. As it stands, RPD has
4 disclosed less than three minutes of video footage (of the same 39-second time period) and less
5 than four minutes of audio footage. There is no reading consistent with the law or policy that
6 supports the City’s position.

7 Dated: April 25, 2024

JASSY VICK CAROLAN LLP

8
9 By



JEAN-PAUL JASSY

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11 Attorneys for Petitioner
12 Sacramento Television Stations Inc. d/b/a CBS News
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to this action. My business address is 355 S. Grand Ave., Suite 2450, Los Angeles, CA 90071.

On April 25, 2024, I served true copies of the following document(s) described as:

PETITIONER’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT

on the interested party(ies) in this action as follows:

Joseph Speaker
City Attorney’s Office
311 Vernon Street
Roseville, CA 95678
Email: jspeaker@roseville.ca.us

- BY FEDERAL EXPRESS OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope(s) or package(s) provided by FedEx and addressed to the person(s) at the address(es) listed above. I placed the envelope(s) or package(s) for collection and overnight delivery at an office or a regularly utilized drop box of FedEx.
- BY ELECTRONIC MAIL (E-MAIL):** I caused the said document(s) to be transmitted by e-mail to the person(s) at the email address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on April 25, 2024, at Los Angeles, California.

Marlene Rios