

CASE #: C102316

3d Civ. No.:
Placer County Superior Court No. S-CV-0052277
(The Honorable Glenn Holley)

**IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

**SACRAMENTO TELEVISION STATIONS INC.
d/b/a CBS NEWS SACRAMENTO,**

Petitioner,

vs.

SUPERIOR COURT FOR THE COUNTY OF PLACER,

Respondent,

CITY OF ROSEVILLE,

Real Party in Interest

**VERIFIED PETITION FOR WRIT OF MANDATE OR
OTHER APPROPRIATE RELIEF BY
SACRAMENTO TELEVISION STATIONS INC.**

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CBS NEWS SACRAMENTO

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rule 8.208 of the California Rules of Court, Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento, through their undersigned counsel, hereby identifies the following interested entities:

1. CBS Operations Investments Inc. (parent company)
2. Paramount Global (indirect parent company)

Dated: October 25, 2024

JASSY VICK CAROLAN LLP

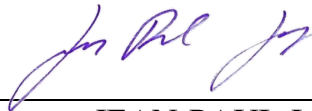
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INTRODUCTION

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

Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento provided in-depth coverage of this newsworthy incident via its television station, KQVR-TV, which airs local and national news in the greater Sacramento area, including in Roseville. In furtherance of its reporting, CBS News Sacramento requested video footage of the incident from CHP and RPD, a division of Real Party in Interest the City of Roseville (the “City”), pursuant to the California Public Records Act, Government Code §§ 7920.000, *et seq.* (the “CPRA”). In particular, CBS News Sacramento invoked a relatively new addition to the CPRA designed to make video footage of officer-involved shootings more transparent to the public, *id.* § 7923.625 (“Section 7923.625”). In service of that goal, the Legislature wrote a capacious statute. It prohibits law enforcement from withholding recordings “relating to” a critical incident, that is, the depiction of “an incident involving the discharge of a firearm” by an officer at a person. Gov’t C. § 7923.625(e).

CHP ultimately complied with the statute and produced to CBS News Sacramento seven hours of footage of the incident involving the discharge of a firearm: the Mahany Park incident. RPD, however, refused

to comply with the Legislature's directive. Breaking with CHP, it advanced a forced construction of Section 7923.625 that is contrary to its plain meaning, its undisputed purpose, its legislative history, and common sense. Confirming as much, RPD's interpretation of the statute is not only contrary to CHP's but other law enforcement agencies around the state. Nevertheless, on the basis of its lonely construction, the City released a mere 39 seconds of video from four body cameras, two audio tracks totaling less than 3.5 minutes and no drone footage from the critical incident in Mahany Park. This, despite the Mahany Park incident lasting nearly an hour.

RPD's non-compliance with the statute required CBS News Sacramento to file a verified petition for a writ of mandate in the superior court seeking an order commanding the City to comply with Section 7923.625 by producing all video and audio footage from the officer-involved shooting at Mahany Park on April 6, 2023—from the moment that RPD was dispatched to the park, to the time the scene was secured and the suspect was in custody, approximately one hour later. The Respondent Superior Court agreed with CBS News Sacramento that the City's limited disclosure "provides insufficient context to satisfy the statute."

Up to that point, the Respondent Superior Court was clearly correct. In what came next, it erred. Despite rejecting RPD's forced construction, the Respondent Superior Court went on to find that disclosure was nevertheless not required. Instead, it found that Section 7923.625's limited exemption for active criminal investigations applied. This was error for at least four reasons. First, the Respondent Superior Court never delineated the scope of records actually subject to Section 7923.625 and, therefore, had no basis to find that the disclosure of these unidentified records could

somehow interfere with an active investigation. Even had it undertaken that predicate step of identifying the records, there was no evidence of the existence of an active criminal investigation. Nor did RPD offer the requisite clear and convincing evidence that the disclosure sought by CBS News Sacramento would substantially interfere with any such investigation. Finally, the Respondent Superior Court's interpretation is contrary to the California Constitution, the CPRA and case law, all of which require that disclosure be construed broadly and any exemption to the contrary be read narrowly.

This Court should grant this Petition, find that Section 7923.625 prohibits the City's withholding of recordings from the beginning of the critical incident to the cessation of that incident (here, from the time RPD was dispatched to the scene to the time the scene was secured), order the relevant recordings to be released because no exemption prevents their disclosure, and award fees and costs to CBS News Sacramento as the prevailing party.

VERIFIED PETITION FOR WRIT OF MANDATE

A. Jurisdiction, Venue and Timeliness of Petition

1. This Court has jurisdiction over this matter pursuant to Government Code § 7923.500(a), which provides that a superior court's order denying access to documents under the CPRA is "immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." Such trial court orders "shall be reviewable on their merits" through the writ process. *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325, 1336 (1991). Review of CPRA cases through writ proceedings was meant "to speed appellate review." *Id.* at 1334. The

California Supreme Court has made clear that when it comes to review in CPRA cases, “a reviewing court’s discretion is quite restricted,” and “where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no other plain, speedy and adequate remedy in the ordinary course of law, he or she is entitled as a matter of right to the writ, or perhaps more correctly, in other words, it would be an abuse of discretion to refuse it.” *Powers v. City of Richmond*, 10 Cal.4th 85, 113-14 (1995) (cleaned up). As such, “[w]hen writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.” *Id.* at 114.

2. Although not necessary for writ review in this proceeding, CBS News Sacramento’s Petition here relates to important issues because it seeks the disclosure of video footage of an officer-involved shooting in a public park pursuant to a relatively new state law providing for the disclosure of such materials.

3. This Court also has jurisdiction over this matter under article I, section 3 and article VI, section 10 of the California Constitution, the California common law, and Code of Civil Procedure §§ 1085 and 1060.

4. Venue is proper under Code of Civil Procedure §§ 393 and 395.5 because the Real Party in Interest, and respondent/defendant in the court below, is the City of Roseville, California, which is located in Placer County, and the records sought by this Petition are also located there.

5. This Petition is timely. Under Government Code § 7923.500(b), a petition to the Court of Appeal must be filed 20 days after service of the superior court’s written order. If notice is served by mail, “the period within which to file the petition shall be increased by five days.” Gov’t C. § 7923.500(c); *MinCal Consumer Law Group v. Carlsbad Police Dep’t.*, 214 Cal.App.4th 259, 265 (2013) (clerk’s mailing of minute order to the parties triggered the beginning of the 25-day time period within which to file a writ petition). Here, Respondent served its order by mail on October 2, 2024. The last day to file this Petition, therefore, is October 28, 2024. Gov’t C. § 7923.500(b), (c); C.C.P. § 12a(a).

B. Authenticity of Exhibits and Reporters’ Transcripts

6. All exhibits accompanying this Petition in the Petitioner’s Appendix in Support of Verified Petition for Writ of Mandate (“Petitioner’s Appendix” or “PA”) are true and correct copies of documents filed in the trial court, except for the reporters’ transcripts of two hearings in the trial court on July 23 and August 28, 2024. True and correct copies of the two certified reporters’ transcripts, as obtained from the respective court reporters, are included in the Petitioner’s Appendix. The pages in the Petitioner’s Appendix are numbered consecutively and are referenced herein as “PA___.”

C. Beneficial Interest of Petitioner/Capacity of Parties

7. Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento, a Delaware corporation, operates KOVR-TV, a television station that exhibits, *inter alia*, local and national news in the greater Sacramento metropolitan area. CBS News Sacramento reporters often rely on public records in their newsgathering efforts, including public records sourced from California police departments.

8. CBS News Sacramento brought the current action under the CPRA seeking to enforce its right of access to public records held by Real Party in Interest the City of Roseville (the “City”), which was the respondent/defendant in the court below and is a public agency and local agency under the CPRA. The records at issue are in the possession, custody or control of the Roseville Police Department (“RPD”), a department of the City. PA 7.

9. Respondent, the Superior Court of the State of California for the County of Placer, is a duly constituted court, exercising judicial functions in connection with the litigation described in this Petition. On October 1, 2024, Respondent denied CBS News Sacramento’s Petition in its entirety. PA 415-21.

D. Factual and Procedural Background

10. Mahany Park is in the City of Roseville, California. It is “a 225-acre park located at the corner of Pleasant Grove Boulevard and Woodcreek Oaks Boulevard. It includes a dog park, playground, multiple ballfields, fitness center, library, Roseville Utility Exploration Center, pool and natural areas with trails.” PA 7. On April 6, 2023, Mahany Park was also hosting “33 children attending spring break camps.” *Id.*

11. According to RPD, on April 6, 2023, CHP officers “attempt[ed] a search warrant service on 35 year old suspect Eric J. Abril of Roseville” at Mahany Park. *Id.* The execution of that warrant went horribly wrong and had life-and-death consequences for civilians, officers and the suspect. According to a press release from RPD, CHP “planned to make contact” with Mr. Abril “at Mahany Park.” *Id.* While RPD says it was “aware of the surveillance by CHP in the area,” it had no “details of a search warrant service.” PA 8.

12. RPD says that at about “12:30 p.m.” on April 6, 2023, it responded to Mahany Park “after ‘shots fired’ was broadcast over the police radio.” *Id.* CHP then “advised Roseville emergency dispatch, a CHP officer had been shot in the area of Mahany Park.” *Id.* When RPD officers arrived on the scene around 12:30 p.m., they observed a suspect (Mr. Abril) “carrying a gun and fleeing from CHP.” *Id.* During Mr. Abril’s flight from CHP and RPD, he managed to take “two innocent civilian hostages.” *Id.* As RPD describes it, officers then “quickly confronted the suspect.” *Id.*

13. During the chaotic confrontation, law enforcement on the scene, including RPD, exchanged crossfire. *Id.* Eventually, at approximately 1:13 p.m., law enforcement apprehended Mr. Abril. *Id.* And, at approximately 1:25 p.m., law enforcement secured the scene. *Id.*

14. By the time of Mr. Abril’s apprehension, RPD says he had “shot both” of the civilian hostages. *Id.* And, while RPD states that its “officers rescued the hostages,” “[o]ne of the hostages was pronounced deceased on scene.” *Id.* The other hostage was transported to a local hospital with “non-life-threatening injuries.” *Id.* In addition to the hostages, RPD reports that Mr. Abril “sustained gunshot wounds and was transported to a local area hospital.” *Id.* It also reports that a CHP officer “had been shot.” *Id.*

15. While RPD was unsure whether its officers or CHP officers shot Mr. Abril, it was “confident,” “[b]ased on evidence and statements,” that it was Mr. Abril who shot the victims. *Id.*

16. On April 6, 2023, after the apprehension of Mr. Abril, law enforcement held a press conference, reporting that the “incident” began sometime “around 12:30 p.m. when a CHP taskforce officer advised . . .

that shots had been fired and a CHP officer had been struck by gunfire near Mahany Park.” PA 9.

17. Subsequently, on April 7, 2023, RPD confirmed in a press release that “an Officer Involved Shooting [(“OIS”)] occurred” in Mahany Park, involving CHP and RPD officers. *Id.*

18. While initially light on details, a little over a week after April 6, RPD characterized the OIS as follows:

The Roseville Police Department can confirm CHP had six officers involved in the OIS during the initial confrontation with suspect Eric Abril prior to RPD responding to assist. As Roseville Police Officers arrived, the suspect continued to endanger officers and the public in the open space area. At which time, three Roseville Officers engaged suspect Eric Abril during the OIS encounter. *Id.*

At that time, RPD estimated that during the incident Mr. Abril and law enforcement from RPD and CHP exchanged several dozen rounds. *Id.*

19. RPD later confirmed to CBS News Sacramento that “Roseville officers exchanged gunfire” with Mr. Abril “between approximately 12:38pm and 12:57pm.” PA 9, 23.

20. By the time law enforcement secured the scene around 1:25 p.m., approximately 55 minutes had elapsed since RPD was dispatched and 47 minutes had elapsed since RPD first exchanged gunfire with Mr. Abril.

21. On June 12, 2023, over 45 days after the April 6, 2023 incident, CBS News Sacramento reporter and anchor Steve Large contacted Lieutenant Chris Ciampa, the RPD Public Information Officer, by email to inquire about the “release of police body cam video and dash cam video” of the Mahany Park shooting. PA 10. The request was made pursuant to the CPRA, and specifically Section 7923.625, which sets forth a presumptive

disclosure requirement for “video or audio recording[s] that relate[] to a critical incident,” and “critical incident” is defined, as relevant here, as “[a]n incident involving the discharge of a firearm at a person by a peace officer or custodial officer.” Gov’t C. § 7923.625. Under the statute, such recordings “may be withheld” only if certain showings are made or exemptions apply; none of which were made or apply here. *Id.* § 7923.625(a)-(b).

22. On June 13, 2023, Lieutenant Ciampa acknowledged receipt of CBS News Sacramento’s request for records and advised that RPD had responsive records in its possession, which RPD would provide to CBS News Sacramento within 10 days. PA 10.

23. On June 22, 2023, Lieutenant Ciampa provided CBS News Sacramento the purportedly responsive audio and video records related to the Mahany Park shooting. *Id.* In fact, however, it was apparent from this production that RPD was reversing its decision to provide the responsive records. For the first time, Lieutenant Ciampa asserted: “While a much larger criminal event occurred, the incident involving the discharge of a firearm at a person is the only ‘critical incident’ involving the city of Roseville Police Department.” *Id.* RPD advanced this argument despite the phrase “criminal event” (as distinct from the statutorily defined “critical incident”) being nowhere found in Section 7923.625. Lieutenant Ciampa added, “All disclosable City of Roseville Police Department records are limited to audio and video records related to this ‘critical incident’ only (as is required by California law).”

24. On the basis of its narrow reading of Section 7923.625, RPD produced just four 39-second body-worn camera video clips totaling less

than three minutes from an incident that began around 12:30 p.m. and did not end until 1:25 p.m. Specifically, RPD produced the following:

(a) Recording 1: Footage from one body-worn camera running from 12:38:10 to 12:38:49 (39 seconds).

(b) Recording 2: Footage from one body-worn camera running from 12:40:15 to 12:40:54 (39 seconds).

(c) Recording 3: Footage from one body-worn camera running from 12:40:40 to 12:41:19 (39 seconds).

(d) Recording 4: Footage from one body-worn camera running from 12:57:16 to 12:57:55 (39 seconds) (together, the “Disclosed Recordings”).¹ PA 11.

25. During these exchanges of correspondence, RPD never asserted that disclosure of the Disclosed Recordings would interfere with any active criminal investigation or violate victim privacy under Section 7923.625. But, RPD did include a boilerplate disclaimer on its initial production, without explanation, stating that “no additional records aside from the legally required audio/video records . . . would be produced” as disclosure of those unidentified records would be inappropriate “[o]ut of respect for the privacy of the victims involved and the integrity of the criminal prosecution.” PA 12.

26. On July 26, 2023, CBS News Sacramento reporter and anchor Julie Watts responded to Lieutenant Ciampa, reiterating CBS News Sacramento’s request for “the full footage from all officer Body Worn Cameras (BWC) and dash cameras at the scene of the Mahany Park

¹ Consistent with this narrow interpretation, RPD also produced two audio clips of dispatch audio totaling less than four minutes that also contained audio discussing shots being fired.

incident on April 6th—beginning with their arrival at Mahany Park (driving up to the park),” *i.e.*, approximately 12:30 p.m., “through the time the suspect was apprehended and taken into custody (removed from the park),” *i.e.*, approximately 1:25 p.m. *Id.*

27. Lieutenant Ciampa responded on August 2, 2023, maintaining and emphasizing that RPD had already provided “ALL audio and video records” that it was required to produce. PA 12, 20 (emphasis in original).

28. On October 25, 2023, Ms. Watts contacted Lieutenant Ciampa again via email to state that CBS News Sacramento had become aware that RPD also possessed drone video footage of the April 6 incident that it had not disclosed, in violation of the CPRA. PA 12. Ms. Watts requested that RPD promptly provide the drone video. *Id.* That same day, Lieutenant Ciampa replied simply: “Nothing has changed from the message sent on Aug 2nd on what Roseville PD is releasing.” PA 12, 27.

Lieutenant Ciampa made this assertion despite the Section 7923.625(a)(2) requirement that an agency withholding records under the exemption for records that would substantially interfere with an ongoing investigation proactively “reassess withholding and notify the requester every 30 days.” PA 13. In fact, RPD has never proactively reassessed its withholding every 30 days as required nor has it ever notified CBS News Sacramento of the result of that mandatory reassessment. *Id.*

29. On October 27, 2023, in-house counsel for CBS News Sacramento sent to Lieutenant Ciampa a letter, urging RPD to reconsider its withholding, as it was contrary to Section 7923.625 as well as the California Constitution, which requires the CPRA to be broadly not narrowly construed. PA 13, 30.

30. On October 30, 2023, RPD responded to that letter, this time through the Assistant City Attorney for the City of Roseville, Joseph Speaker. PA 13. In the October 30 response, RPD admitted that “[t]he whole purpose of the law,” *i.e.*, Section 7923.625, “is to provide transparency to the officers’ conduct.” *Id.* In contrast to its prior correspondence, RPD also no longer purported to rely on another provision of law, which has no application to this case, to support its withholding of additional recordings. *Id.* (removing a sentence that invoked Penal Code § 832.7 as a basis for withholding). PA 13, 33.²

31. Counsel for the parties engaged in additional correspondence and telephone calls, but were unable to come to a resolution. PA 13-15. During the course of those communications, counsel for CBS News Sacramento reiterated that it is seeking all footage—including body worn camera, dash camera and drone footage—from the time RPD was dispatched on April 6, *i.e.*, at approximately 12:30 p.m., to the time the scene at Mahany Park was secured with the suspect in custody, *i.e.*, at approximately 1:25 p.m. PA 15. Counsel for the City reiterated that RPD would not disclose more than the short excerpts in the Disclosed Recordings.

32. On February 26, 2024, CBS News Sacramento filed a Verified Petition for Writ of Mandate Ordering Compliance with the CPRA against the City in the Superior Court for the County of Placer, which the City answered on April 12, 2024. PA 5.

33. On April 25, 2024, CBS News Sacramento filed a Memorandum of Points and Authorities in support of its petition in the

² And Penal Code § 832.7 has never been mentioned by the City since then, so any arguments related to that provision have been waived.

court below. PA 77. The City filed opposition papers on May 8, 2024. PA 99. CBS News Sacramento filed reply papers on May 14, 2024. PA 173.

34. Meanwhile, in the criminal prosecution of Mr. Abril, *People v. Eric Abril*, Placer County Superior Court, No. 62-191073, the prosecution and defense signed a stipulated request to seal specific materials that had been introduced at the preliminary hearing in that matter (the “Stipulation to Seal”). PA 272-73. The Stipulation to Seal maintained that it was “the People’s concern” that should certain evidence, most all of which are not records requested by CBS News Sacramento here, presented at the preliminary hearing be released publicly “it would create traumatic publicity for the victims and would greatly impair the defendant’s ability to receive a fair jury trial.” PA 273, *see also id.* 294-97.

35. The criminal court entered the order, sealing those materials, as requested, presented at the preliminary hearing (the “Sealing Order”). The body worn camera and dash camera footage sought by CBS News Sacramento, however, were not presented at that hearing and are not subject to the Sealing Order by its own terms. PA 270, 294-297.

36. Shortly thereafter, on July 23, 2024, Respondent, the Superior Court, the Honorable Glenn Holley, presiding, held a hearing on CBS News Sacramento’s CPRA petition, and ordered the parties to prepare supplemental briefing. PA 187, 229-39. The City filed its supplemental briefing on August 6, 2024. PA 254. CBS News Sacramento filed its supplemental briefing on August 20, 2024. PA 280.

37. The court below held a second hearing on the CPRA petition on August 28, 2024. PA 366. The parties agreed that it was not necessary for the trial court to conduct an in camera review in order to render its ruling. PA 285, 293 393.

38. On October 1, 2024, the trial court entered an order denying the CPRA petition (the “October 1 Order”). PA 415-21. As part of the October 1 Order, the trial court held that the “incident involving the discharge of a firearm by a peace officer” language from § 7923.625(e) “reasonably applies to the act of discharging a weapon and some portion of the event or occurrence wherein discharging the weapon took place. Recordings of firearm discharge and, seconds before and after, provides insufficient context to satisfy the statute.” PA 418. The court also held that it was not “bound by a sealing order outside of the criminal case in which it was made.” PA 419.

39. Nevertheless, the Superior Court, citing only the criminal case *Stipulation to Seal*, held that disclosure of the recordings under the CPRA was not required because there was “clear and convincing evidence that further disclosure of requested audio or video recordings would substantially interfere with the ongoing, active investigation” in the criminal case. PA 420. The Respondent Superior Court came to this conclusion even though the *Stipulation to Seal* contains no facts or evidence, expresses only the “People’s concern” if certain evidence is released, does not mention any investigation, does not explain what kind of interference might arise from disclosure of the records sought by CBS News Sacramento, does not explain how any interference would substantially impair any investigation, and does not apply to body worn camera or dash camera footage because no such footage was introduced at the preliminary hearing.³ PA 272-73.

³ Respondent court also came to this conclusion even though the City has not satisfied any of the procedural prerequisites for invoking the Section 7923.625(a) exemption. PA 93, 181-82.

E. Absence of Other Remedies

40. CBS News Sacramento has no plain, speedy and adequate remedy, other than the relief sought in this Petition. Orders denying disclosure of public records sought under the CPRA, are not appealable; they are reviewable only by petition for the issuance of an extraordinary writ. Gov't C. § 7923.500(a); *Powers*, 10 Cal.4th at 114.

PRAYER

Therefore, Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento respectfully requests that this Court:


1. Expedite review of Respondent Superior Court's October 1 Order.
2. Issue a writ of mandate or other appropriate relief, without hearing or further notice, directing Respondent to set aside its October 1 Order denying the CPRA petition filed below and to enter a new order granting the CPRA petition filed below, ordering the disclosure of all audio and video footage in the City's and RPD's possession from April 6, 2023 from the time RPD officers arrived on the scene at Mahany Park at approximately 12:30 p.m. to the time the scene was secured by law enforcement with the suspect in custody at about 1:25 p.m. the same day.
3. In the alternative, issue an alternative writ of mandate setting a briefing schedule on the issue of why Respondent's Order should not be set aside and a writ of mandate should not issue, and setting a prompt hearing date in this Court on the cause;
4. Find that CBS News Sacramento is a prevailing party in this litigation;

5. Order a recovery of court costs and reasonable attorneys' fees by CBS News Sacramento; and

6. For such other and further relief as this Court may deem just and proper.

DATED: October 25, 2024

JASSY VICK CAROLAN LLP

By: 
Jean-Paul Jassy

Attorneys for Petitioner
Sacramento Television Stations Inc.
d/b/a CBS News Sacramento

VERIFICATION

I, Julie A. Watts, declare as follows:

1. I am an investigative reporter and anchor for CBS News Sacramento. I participated in the correspondence with the Roseville Police Department's Lieutenant Christopher Ciampa regarding the footage at issue in this Petition and am familiar with the additional communications my colleagues and CBS News Sacramento's counsel had with Lieutenant Ciampa and Assistant City Attorney Joseph Speaker regarding the requested footage. I am also familiar with the pleadings filed, and hearings held in the Superior Court in this matter as I reviewed each pleading and attended each hearing. I am the reporter at CBS News Sacramento primarily responsible for investigating and reporting on news stories concerning and relating to the events at Mahany Park on April 6, 2023, and I have followed the events of that day and the prosecution of Mr. Abril closely.

2. I have read the foregoing Petition for Writ of Mandate or Other Appropriate Relief and know its contents. The facts alleged in this Petition are true based on my own personal knowledge.

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

Executed in Rocklin, CA on October 25, 2024.

Signed by:

Julie Watts

638428BB293649A...

Julie A. Watts

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENTS

Section 7923.625 is a relatively new addition to the CPRA, which mandates the disclosure of a recording that “relates to a critical incident if it depicts . . . [a]n incident involving the discharge of a firearm at a person by a peace officer.” Gov’t C. § 7923.625(e). The provision is designed to enhance the transparency of officer-involved shootings by providing for the disclosure of video footage, including body worn camera, dash camera and drone footage, of such events. As with all provisions of the CPRA, there is a presumption in favor of disclosure. The trial court correctly determined that the City’s interpretation of Section 7923.625’s disclosure requirement was incorrect, but ultimately erroneously denied CBS News Sacramento’s CPRA petition because it determined that an exemption applied.

An agency, such as the City here, that seeks to withhold presumptively public records must show that an exemption applies. All exemptions to the CPRA are construed narrowly. There are only two specified circumstances under which recordings of officer-involved shootings may be withheld under the statute, and only one is at issue here: where, as here, more than a year has passed since the incident at issue occurred, the agency can only continue to delay disclosure if it proves that there is an “active criminal or administrative investigation,” Gov’t C. § 7923.625(a)(1), and also proves “by clear and convincing evidence that disclosure would substantially interfere with the investigation.” *Id.* § 7923.625(a)(2). Also, if disclosure is delayed more than 45 days, the responding party must reassess and notify the requester every 30 days. *Id.*

The trial court’s denial of CBS News Sacramento’s CPRA petition

based on this exemption was erroneous for myriad reasons. It failed to identify what recordings were subject to Section 7923.625, failed to identify any active criminal investigation, and failed to enforce the statutory command that the City must demonstrate by clear and convincing *evidence* that disclosure of the specific recordings would substantially interfere with a specific active criminal investigation. Instead, the trial court permitted withholding where the Legislature has required disclosure on the slender reed of the Stipulation to Seal, which states only that the People were “concerned” over the release of the information. Mere professed concern does not satisfy the exacting evidentiary standard of Section 7923.625.⁴

In addition to misapplying an exemption, the trial court below erred by not ordering the City to disclose all of its footage related to the critical incident at Mahany Park on April 6, 2023. The City’s interpretation of Section 7923.625 rewrites the statutory language and is contrary to the purpose of the statute. The City argues that a recording of a critical incident is only the actual discharge of a firearm—a split second. It reads Section 7923.625(e) to define “critical incident” rather than to define what “*relates to* a critical incident,” and then, reads out of the statute entirely the phrase “incident *involving*,” leaving only “the discharge of a firearm at a person by a peace officer.” The City’s atextual version of the statute reads, “a video or audio recording of a critical incident is only that which depicts

⁴ Recordings of officer-involved shootings are also exempt from disclosure if the agency proves that “the public interest in withholding” a recording “clearly outweighs the public interest in disclosure because” disclosure would “violate the reasonable expectation of privacy of a subject depicted in the recording,” all of which the agency must explain in writing. *Id.* § 7923.625(b). While the City had two rounds of briefing to do so, it failed to adduce evidence or argument to support this exemption, and it was not a basis for the trial court’s denial of CBS News Sacramento’s CPRA petition. Therefore, this exemption does not permit withholding either. *See infra* at Section III.F.

... the discharge of a firearm at a person by a peace officer.” The Legislature could have written the statute that way, but it did not.

This means that, according to the City, it need only release the “blink of an eye” moments when bullets left officers’ guns at Mahany Park. That reading is nonsensical. The City’s own disclosures prove as much. Rather than release these mere flashes in time, the City disclosed footage containing the discharge of a firearm but also some indeterminate and arbitrary additional seconds on either side of those discharges. Presumably, it did so because releasing fractions of a second—all that is required under its read—would be self-evidently absurd, and, more importantly, contrary to the express purpose of the statute to provide greater public transparency surrounding critical incidents.

CBS News Sacramento’s read of the statute, on the other hand, is consistent with the plain meaning of the statute and its purpose. It also has the benefit of providing a clear framework for law enforcement agencies to apply. The statute’s command on CBS News Sacramento’s read is simple: disclose that much of a recording from the beginning of the critical incident, when the officers first began to respond to it, to the end, when the officers secured the scene, so the public better understands what transpired. For these reasons, the Court should reject the City’s tortured reading and arbitrary implementation of the statute.

CBS News Sacramento respectfully urges this Court to grant this Petition, reverse the trial court on its application of any exemption to Section 7923.625, and direct a new order granting the CPRA petition.

II. STANDARD OF REVIEW

A superior court's order denying access to documents under the CPRA is "immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ," Gov't C. § 7923.500(a), and such orders "shall be reviewable on their merits" through the writ process. *Times Mirror*, 53 Cal.3d at 1336. Indeed, "[w]hen writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner[.]" *Powers*, 10 Cal.4th at 114 (cleaned up).

Respondent's Order is subject to this Court's "independent review." *CBS Broadcasting v. Superior Court*, 91 Cal.App.4th 892, 906 (2001). "[T]he interpretation of the [CPRA] and its application to undisputed facts presents questions of law subject to *de novo* appellate review." *Id.* at 906. Generally, "factual findings made by the trial court will be upheld if based on substantial evidence," *id.* (quotations omitted), but a finding that evidence is sufficient to be clear and convincing can be upheld only when based on substantial evidence "from which a reasonable fact finder could have found it *highly probable that the fact was true.*" *Conservatorship of O.B.*, 9 Cal.5th 989, 1011 (2020) (emphasis added).

III. ARGUMENTS

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

Under the CPRA, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person

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

In 2004, California voters affirmed the State’s commitment to the above principles when they overwhelmingly approved Proposition 59 (the state’s “Sunshine Amendment”), elevating the public’s right of access to public records to constitutional stature. *See* Cal. Const. art. 1, § 3(b)(1). The Amendment mandates that any existing statute, court rule or other authority shall be broadly construed if it furthers the public’s right of access and narrowly construed if it limits the right of access. *Id.* at § 3(b)(2); *California State Univ., Fresno Ass’n v. Superior Court*, 90 Cal.App.4th 810, 831 (2001) (recognizing that the same rule of construction stems from the CPRA itself). Applying these rights, the Supreme Court has made clear that where statutory terms are ambiguous, the Sunshine Amendment compels an interpretation that maximizes the public’s right of access unless the Legislature has expressly provided otherwise. *See Sierra Club v. Superior Court*, 57 Cal.4th 157, 175 (2013).

Consistent with these principles of openness, there is a “strong presumption in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific exception to that

policy.” *Cal. State Univ.*, 90 Cal.App.4th at 831; *see also ACLU v. Superior Court*, 3 Cal.5th 1032, 1038–39 (2017) (“*ACLU P*”) (quoting *Williams v. Superior Court*, 5 Cal.4th 337, 346 (1993)). Because of the CPRA’s solicitousness towards public access, the withholding public agency bears the burden of proving that an exception to disclosure applies. *ACLU v. Superior Court*, 202 Cal.App.4th 55, 67 (2011) (“*ACLU IP*”); *accord Block*, 42 Cal.3d at 652 n.8. Any “doubtful cases must always be resolved in favor of disclosure.” *Essick v. County of Sonoma*, 81 Cal.App.5th 941, 950 (2022).

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

In 2018, the California Legislature again affirmed the State’s commitment to the public’s right of access by enacting Assembly Bill 748 (“AB 748”), which requires proactive disclosure of certain law enforcement records. AB 748 was codified at Section 7923.625 as part of the CPRA to provide that “a video or audio recording that relates to a critical incident, as defined in subdivision (e), may be withheld *only*” in specified circumstances. Gov’t C. § 7923.625 (emphasis added). Subdivision (e) subsequently provides:

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

- (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 in great bodily injury.

Id. § 7923.625(e) (emphases added).⁵ As the Legislative Counsel’s Digest explained, “[b]y requiring local agencies to make these recordings available,” AB 748 “would impose a state-mandated local program.” Stats. 2017–18, ch. 960, Leg. Counsel’s Digest.⁶

When the author of the bill, Assemblymember Phil Ting, was asked whether he intended “to define the critical incident as only the moments of the discharge of the firearm,” he answered: “Absolutely not. Because if that was the case, that would have been written into law. In order to provide transparency, you need to know what’s happening leading up to the confrontation.”⁷ And, as the City acknowledged in the court below, “[t]he *whole purpose* of the law is to provide transparency to the officers’ conduct.” PA 33 (emphasis added). There is no meaningful transparency in an arbitrarily selected 39-second clip around the mere moment a firearm was discharged. In fact, the City’s reading of the statute is likely to mislead the public. An officer might appear in a split second to have unreasonably discharged her firearm. But, in the context of the broader incident, the officer’s reaction might prove entirely reasonable.

⁵ 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.*

⁶ Available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB748.

⁷ See Julie Watts, *FAILED POLICIES - PART 2: Why the CHP Roseville park shootout could set a concerning precedent for police shootings*, CBS Sacramento (Nov. 14, 2023), <https://www.cbsnews.com/sacramento/video/heres-why-aprils-roseville-park-shootout-could-set-aconcerning-precedent-for-police-shootings>.

C. Contrary to Respondent’s October 1 Order, the City Did Not Prove with Clear and Convincing Evidence that Disclosure Would “Substantially Interfere” with an “Active Criminal Investigation”

Reinforcing the statutory bias against withholding, a law enforcement agency must disclose recordings relating to critical incidents unless it “demonstrates by *clear and convincing evidence* that disclosure would substantially interfere with [an] investigation.” Gov’t C. § 7923.625(a)(2) (emphasis added). This exacting standard of proof is reserved for determinations where “particularly important . . . rights are at stake.” *Conservatorship of O.B.*, 9 Cal.5th at 1006. It “reflects ‘a very fundamental assessment of the comparative social costs of erroneous factual determinations.’” *Id.*

“[A]n appellate court must account for the clear and convincing standard of proof when addressing a claim that the evidence does not support a finding made under this standard.” *Id.* at 1011. The question before this court “is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true.” *Id.* This requires evidence that is “so clear as to leave no substantial doubt: as to its truth. *In re Angelia P.*, 28 Cal.3d 908, 919 (1981) (cleaned up). The evidence must be “sufficiently strong to command the *unhesitating assent of every reasonable mind.*” *Id.* (emphasis added). Unsurprisingly then, speculative or non-particularized evidence will not suffice. *Long Beach Police Officers Ass’n v. City of Long Beach*, 59 Cal.4th 59, 66, 74 (2014).

The City bears the burden of demonstrating that an exemption, narrowly construed, applies to the disclosure of public records. *ACLU II*,

202 Cal.App.4th at 67. Initially, the City did not invoke any exemptions in this case. *See* PA 12, 14-15, 33-34, 60, 66-67. Then in its brief opposing the CPRA petition, it claimed that no further footage can be released because that would supposedly “substantially interfere with an investigation” pursuant to the exemption found in Government Code § 7923.625(a)(2) (the “Active Investigation Exemption”). PA 115. In doing so, the City acknowledged that, because a year has passed since it knew of the incident in question, *i.e.*, the critical incident in Mahany Park, it must meet its burden to demonstrate that the Active Investigation Exemption applies with “clear and convincing evidence.” PA 116 (quoting Gov’t C. § 7923.625(a)(2)). Yet, it based its entire argument on a single declaration submitted in the criminal prosecution of Abril, the Mahany Park shooter, that contained no factual averments but only “the People’s concern” that release of *other records* would interfere (not substantially so) with an unidentified investigation. PA 273. It offered no other evidence.

The Respondent Superior Court below erred in concluding that the City had “met its burden and has shown by clear and convincing evidence that further disclosure of requested audio or video recordings would substantially interfere with the ongoing, active investigation” in the criminal case. PA 420.

1. The City Presented No Evidence of an “Active Investigation”

The Active Investigation Exemption requires the existence of an actual “active criminal or administrative exemption.” Gov’t C. § 7923.625(a)(1). There was ***no*** evidence presented to the court below of ***any*** “active investigation.”

The City presented no evidence of any active investigation in any

form, including in the Stipulation to Seal. *See generally* PA. The Stipulation to Seal does not reference any investigation at all; indeed, it does not even use the word “investigation.” PA 272-73. Nor did Respondent Superior Court actually identify any active investigation in its October 1 Order. PA 415-21. But the trial court could not find that release of the recordings would interfere with an active criminal investigation without first identifying the active criminal investigation.⁸

In the court below there was some suggestion that the City was purporting to withhold the full recordings because of the mere pendency of the criminal court proceedings against Mr. Abril. If the Legislature meant to delay withholding through a criminal prosecution and trial—rather than just an active criminal investigation—it could have said so. Another law, SB 1421, makes such a distinction, but AB 748—which is at issue here—does not. *Compare* Stats. 2017–18, ch. 988, Leg. Counsel’s Digest (SB 1421) (stating, “The bill would allow the delay of disclosure, as specified, for records relating to ***an open investigation or court proceeding***, subject to certain limitations”) *with* Stats. 2017–18, ch. 960, Leg. Counsel’s Digest (AB 748) (stating only, “This bill would . . . allow a video or audio recording that relates to a critical incident, as defined, to be withheld for 45 calendar days if disclosure would substantially interfere with ***an active investigation***, subject to extensions, as specified.”) (emphases added). Similarly, Penal Code section 832.7 authorizes withholding of other records once “criminal charges are filed related to the incident in which misconduct occurred or force was used.” Penal Code § 832.7(b)(8)(B). Section

⁸ To be sure, there is a passing reference in the criminal court’s *Sealing Order* to an “on-going investigation.” But the trial court found that it was not “relying on the criminal court’s ruling to determine whether an exemption applies.” PA 419.

7923.625 contains no such provision, and instead refers only to “active” investigations. Thus, the criminal prosecution itself cannot be a substitute for the actual language in the exemption, which requires the existence of an active investigation.

2. The City Presented No Evidence—Let Alone Clear and Convincing Evidence—that Disclosure Would “Substantially Interfere” with an Active Investigation

The Superior Court also erred in concluding that there was clear and convincing evidence that disclosure would “substantially interfere” with an active investigation. PA 420. As an initial matter, the absence of evidence of an active investigation means *a fortiori* that there can be no evidence of interference with an active investigation, let alone the requisite clear and convincing evidence of “substantial interference” with an “active investigation.” Gov’t C. § 7923.625(a).

Moreover, invocation of the Active Investigation Exemption *requires* that the City provide to CBS News Sacramento “the specific basis” for withholding records in writing, and to provide updates every 30 days. Gov’t Code § 7923.625(a)(2). But the City never provided a specific basis for withholding records in writing, much less provided any updates on that withholding, pursuant to § 7923.625(a)(2). It did not do so because it did not seriously believe it had any basis to ever invoke the Active Investigation Exemption. PA 12, 14-15, 60, 66-67. In fact, the City has maintained throughout these proceedings that it is *not* invoking the exemption. *See* PA 33-34, 60, 66-67, 115, 260; *see also* PA 328 (“We were never claiming an exemption.”). By failing to invoke the exemption, the City has waived it.

Even if the City did not waive the exemption, it made no real effort to satisfy its strict requirements. In all of its correspondence and briefing, the City provided **zero** evidence of how the disclosure of any additional footage would “substantially interfere” with any active investigation, and it certainly has not provided evidence “to command the unhesitating assent of every reasonable mind.” *See generally* PA; *In re Angelia P.*, 28 Cal.3d at 919 (cleaned up). Instead, it pointed to a single five-paragraph stipulation filed in Mr. Abril’s criminal case. This falls far short of meeting the “clear and convincing” evidence standard for at least three reasons:

- First, the Stipulation to Seal has nothing to do with the body worn camera or dash camera footage requested here. *See* PA 270-273, 294-297. It concerned evidence that the People presented at the preliminary hearing. But the People did not present any body worn camera or dash camera footage sought by CBS News Sacramento. So it necessarily cannot be evidence showing how disclosure of those records would substantially interfere with an active investigation.
- Second, even if the Stipulation to Seal did speak to the recordings at issue here, it still is not a basis to permit withholding because *nowhere* in the Stipulation to Seal is there any factual averment identifying any interference (let alone substantial interference) with any investigation. *See* PA 272-73.
- Third, and relatedly, the Stipulation to Seal only expresses “the People’s concern”—nothing more—that release of evidence presented at the preliminary hearing would either be traumatic for the victims or impair the defendant’s fair trial right. *Id.* Nothing about an active criminal investigation.

Despite this, the Respondent Superior Court found that the City had carried its burden of demonstrating with clear and convincing evidence that release of the recording would “substantially interfere” with an active investigation solely on the basis of the Stipulation to Seal. This was error. Indeed, nothing in the Respondent Superior Court’s October 1 Order identifies what kind of “substantial interference” might accompany release of the records sought. PA 415-21. It does not do so because the Stipulation to Seal neither points to nor establishes any such interference. To permit withholding on the circumstances of this case—where the only evidence offered was an immaterial stipulation filed in another case—would be tantamount to writing the clear and convincing evidence standard out of the statute.

Although Respondent makes clear that it is not “relying on the criminal court’s” Sealing Order in making its holding, PA 419, even its reference to the Sealing Order is misplaced because that order does not apply to the vast majority of records sought by CBS News Sacramento. We know this because the Sealing Order sets forth exactly what records are subject to it. Specifically, it states: “IT IS ORDERED THAT: the exhibits marked and presented during the course of the preliminary hearing in case 62-191073 be sealed” PA 270. The referenced exhibit list then identifies the exhibits that were marked and presented during the preliminary hearing. PA 296-97. While the preliminary hearing exhibit list does identify “CD- 911 call and drone video,” it does ***not*** identify and therefore does not cover any footage from body cameras—footage at the heart of CBS News Sacramento’s Petition. *See id.* Therefore, by its own terms, the Sealing Order and the Stipulation to Seal in support thereof do not preclude disclosure of body worn camera or dash camera footage

sought by CBS News Sacramento.⁹

Moreover, the trial court correctly concluded that the Sealing Order was not, in any event, “bound by a sealing order outside of the criminal case in which it was made.” PA 419. The trial court’s correct conclusion on this point is supported by ample authorities. Nearly thirty years ago, in *Morgan v. U.S. DOJ*, 923 F.2d 195, 197 (D.C. Cir. 1991), that court held that “the mere existence of [a] seal, without inquiring into its intended effect” is insufficient to support withholding under the federal Freedom of Information Act (“FOIA”).¹⁰ It explained that “only those sealing orders intended to operate as the functional equivalent of an injunction prohibiting disclosure can justify an agency’s decision to withhold records that do not fall within one of the specific FOIA exemptions.” *Id.* at 199. Because the district court in that case had merely “relied on the existence of the court seal,” the appellate court reversed the order dismissing the FOIA complaint. *Id.*

Time and again, courts around the country have followed the teaching of the D.C. Circuit in *Morgan* that the mere existence of a sealing

⁹ The Sealing Order does state that “a *substantial probability* exists that the overriding interest based upon the on-going investigation will be prejudiced if the *affidavit* is not sealed.” PA 270 (emphasis added). But CBS News Sacramento is not seeking any “affidavit” so that finding in the Sealing Order is immaterial. Second, even if that somehow related to what CBS News Sacramento actually does seek (although there is no evidence that it does) a “substantial probability” is a far cry from what “clear and convincing” evidence requires, which is evidence that is “so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind.” *In re Angelia P.*, 28 Cal.3d at 919 (cleaned up).

¹⁰ Because the CPRA is modeled after FOIA and serves the same purpose, California courts often rely on federal decisions under the FOIA to construe the CPRA. See, e.g., *Los Angeles Unified Sch. Dist. v. Super. Ct.*, 228 Cal.App.4th 222, 238 (2014). The D.C. Circuit is generally recognized as the leading authority on the FOIA.

order is an insufficient basis on which to deny a public records request. *See First Amendment Coalition v. U.S. DOJ*, 2021 U.S. Dist. LEXIS 205392, at *4 (N.D. Cal. Apr. 16, 2021) (“An agency bears the burden of demonstrating that a sealing order was intended to operate as an injunction prohibiting disclosure.”); *Hohner v. U.S. DOJ*, 2018 WL 1942540, at *3-4 (C.D. Cal. Feb. 8, 2018) (fact that requested documents were under seal did “not demonstrate that the seal prohibits Defendants from disclosing them”; refusing to deny FOIA petition based on sealing order); *ACLU of N. Cal. v. DOJ*, 2014 U.S. Dist. LEXIS 182727, at *31 (N.D. Cal. Sep. 30, 2014) (similar); *Jeanty v. FBI*, 2014 U.S. Dist. LEXIS 118277, at *24 (S.D. Fla. Aug. 25, 2014) (similar); *Concepcion v. FBI*, 699 F.Supp.2d 106, 112 (D.D.C. 2010) (similar). In each case, courts have required something more, usually in the form of extrinsic evidence demonstrating that the sealing order operates as an injunction against disclosure. *Morgan*, 923 F.2d at 197-98.

Here, the City made no showing that the Sealing Order operates as the functional equivalent of an injunction prohibiting the City’s disclosure of the 911 call or drone footage, and the Superior Court correctly held that it was not “bound by a sealing order outside of the criminal case in which it was made.” PA 419. The Sealing Order by its own terms does not enjoin the City from releasing the 911 call or the drone footage. It orders only that certain exhibits filed in the court record in the Abril prosecution not be available on the public docket. In this way, the Sealing Order “may be only to prohibit the public from viewing the [records] in the public court record” but not “to affect any future decision by the [agency] to release” the records pursuant to the public records act. *Morgan*, 923 F.2d at 197; *Hohner*, 2018 WL 1942540, at *3 (“[T]he fact that the 23 pages remain under seal does

not demonstrate that the seal prohibits Defendants from disclosing them.”). The Sealing Order, therefore, does not prohibit the City from disclosing *any* of the records. *ACLU of N. Cal.*, 2014 U.S. Dist. LEXIS 182727, at *31.

D. Respondent Erred by Not Ordering Disclosure of All of the Requested Materials

The CPRA provides that records shall be made available “promptly.” Gov’t C. § 7922.530(a). Contrary to the City’s arguments, the court below correctly determined that the “incident involving the discharge of a firearm by a peace officer” language of § 7923.625(e) “reasonably applies to the act of discharging a weapon and some portion of the event or occurrence wherein discharging the weapon took place. Recordings of firearm discharge and, seconds before and after, provides insufficient context to satisfy the statute.” PA 418. But it erroneously failed to identify precisely what records must be released under the statute. This was error.

In order to apply the exemption, the Respondent Superior Court necessarily must first identify the scope of the records sought before being able to determine whether release of the records would substantially interfere with the investigation. It did not do so. Further, because the court applied the Active Investigation Exemption it also did not “determine[e] how much additional disclosure is required[.]” PA 418-19.

This Court should identify the records subject to the statute, both because it must in order to test the City’s evidence (or lack thereof) relating to interference, but also because, on a finding that the City has not carried its burden, it should order release of those records. Here, the relevant records are all video footage in the City’s and RPD’s possession from April 6, 2023 from the time RPD officers arrived on the scene at Mahany Park at

approximately 12:30 p.m. to the time the scene was secured by law enforcement with the suspect in custody at about 1:25 p.m. the same day.

The City had another view of the records subject to the statute—a view that this Court should reject as the trial court below did. The City believes it did not need to disclose more than an arbitrary 39 seconds of footage from each of the body cameras. This reading of the statute is nonsensical. It would require the Court to add words that are not in the statute and remove words that are. It would also do violence to the Legislature’s purpose in enacting the statute, namely, to provide the public with important context about critical incidents.

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

In the court below, the City ignored these principles and improperly

minimized the significance of Section 7923.625's use of the phrase "relates to." Instead of construing that phrase broadly, as required, *see San Diego Unified Sch. Dist.*, 30 Cal.App.5th at 733, the City read the phrase out of the statute entirely. *See* PA 109. In doing so, it rewrote the statute to read: "For purposes of this section, a video or audio recording depicts a critical incident if it depicts any of the following incidents" But as the City itself admitted, "courts should give meaning to every word of a statute." PA 111 (quoting *Hernandez*, 49 Cal.App.5th at 935). The phrase "relates to" in Section 7923.625 cannot be written out of the statute. In fact, the CPRA, the California Constitution's mandate, and California Supreme Court precedent, requires that it be interpreted "in a way that maximizes the public's access to information." *See Sierra Club*, 57 Cal.4th at 175.

The City's interpretation also reads the words "incident involving" out of Section 7923.625 by taking a position that the statute only requires disclosure of "video or audio recording" that "depicts the discharge of a firearm." The problem is this is not what the statute says. Instead, it requires disclosure of recordings depicting "an *incident involving* the discharge of a firearm at a person by a peace officer or custodial officer." Gov't C. § 7923.625(e) (emphasis added). Neither the words "incident" nor "involving" can be ignored any more than "relates to" can be. Instead, they all must be accounted for, and accounted for consistent with the CPRA's bias in favor of disclosure.

Also, while there appears to be no case law directly addressing the use of the word "involving" in the context of Section 7923.625(e), in the absence of such authority, this Court should turn to general, controlling principles to interpret that phrase. *City of San Jose*, 2 Cal.5th at 617. The first such principle is the California Constitution as interpreted by the

California Supreme Court. Specifically, where a statute furthers the People’s right of access, like Section 7923.625(e) does, the Constitution commands that it “be broadly construed.” *Id.* (citing Cal. Const., art. I, § 3, subd. (b)(2)). Thus, where one California city attempted to artificially (if plausibly) narrow a statute, the Supreme Court rejected it, finding that a “broad construction [was] mandated by the Constitution.” *Id.* at 619; *see also id.* at 620 (rejecting a reading that “is inconsistent with the constitutional directive of broad disclosure”).

The next principle the Court should follow is that words provided by the Legislature in statutes should be given their ordinary meaning. Here, “involving”—like the phrase “relating to”—is a capacious not stingy word. *See San Diego Unified Sch. Dist.*, 30 Cal.App.5th at 732-33; *see also, e.g., Judicial Watch, Inc. v. United States DOD*, 715 F.3d 937, 941 (D.C. Cir. 2013) (“‘pertains’ is ‘not a very demanding verb’” and suggesting equivalence to “involving”).

Properly interpreted, Section 7923.625 requires disclosure of that footage from the time that RPD arrived on scene at the critical incident to the time the scene was secured. This reading not only follows the constitutional command that statutes like those at issue here be interpreted in favor of disclosure, it also gives the word “involving” its regular meaning rather than writing it out of the statute. There is also support for this reading in the case law. In *Moore v. City & County of San Francisco*, 2020 WL 7260530, at *1-3, *7 (N.D. Cal. Dec. 10, 2020), for example, the defendants moved to seal body camera footage of an incident involving the discharge of a firearm. The District Court denied the motion to seal largely on the basis of Cal. Penal Code § 832.7, which contains some similar language to Section 7923.625. *Id.* at *18-19. The court there found that the

body camera footage—including footage before the officers discharged any weapons, when subjects were identified, as well as footage after the weapons were discharged—should not be sealed because the footage fell within the confines of “[a]n incident involving the discharge of a firearm” to which the public had access under that statute. *Id.*

Not content only to read words out of the statute, the City also *adds* words to Section 7923.625 to improperly narrow its reach. In the court below, the City repeatedly asserted that the statute requires depictions of “actions.” *See, e.g.*, PA 111, 113, 117. But the word “action” appears nowhere in the statute. If the Legislature had wanted the statute to focus on the particular “action” of an officer discharging a weapon, there were many ways for it to draft an “action”-focused disclosure requirement. For example, the Legislature could have written: “a video or audio recording relates to a critical incident if it depicts any of the following **actions**” Or, it could have limited the disclosure requirement to the “act” of discharging a weapon by writing simply that “a video or audio recording relates to a critical incident if it depicts the discharge of a firearm” But the Legislature did neither of those things. It required disclosure of recordings relating to an **incident involving** the discharge of a firearm.

The City also resorted to other atextual narrowings. Its opposition brief in the court below suggested that the disclosure requirement is limited only to recordings depicting **RPD**’s discharge of firearms and not CHP’s. *See, e.g.*, PA 104. But the statute does not say that the responding agency must only disclose footage of incidents involving its *own* officers’ discharges of weapons. It simply refers to “incident[s] involving the discharge of **a** firearm at a person by **a** peace officer or custodial officer”—meaning any peace officer or custodial officer. *See* Gov’t C. §

7923.625(e)(1) (emphases added). Courts have previously refused to read this kind of agency-specific creation requirement into the CPRA because if the Legislature intended to include one it “easily could have.” *Becerra v. Superior Ct.*, 44 Cal.App.5th 897, 919 (2020).

Then, having imposed this artificial limitation on the statute, RPD goes further still in narrowing its reading. RPD previously represented that “Roseville officers exchanged gunfire with suspect Eric J[.] Abril between approximately 12:38pm and 12:57pm.” PA 9, 23. The City admits having done so. PA 53. Despite this, in the trial court, the City shrank the period of RPD’s gunfire from 19 minutes to “less than three (3) seconds,” with no explanation. PA 104. Even if Section 7923.625 could be read to limit the City’s disclosure obligations to recordings depicting an incident involving RPD’s discharge of firearms alone—which it cannot—it must include *at least* the full 19 minutes during which “Roseville officers exchanged gunfire.”

The CPRA must be interpreted broadly. Yet, under the City’s interpretation of Section 7923.625, it is only required to disclose the split second a bullet left the gun. PA 105-07, 110, 112, 204, 209. Here, it disclosed that split second plus an additional—and totally arbitrary—38.99 seconds from four body cams. But we know there is at least approximately ***four hours*** of additional RPD body camera footage (approximately one hour from each of four different body cameras) from the Mahany Park incident involving the discharge of a firearm that exists. The City’s self-serving attempt to avoid disclosing that footage is without basis in law.

This Court should reject the City’s many attempts to narrow the application of the statute contrary to the CPRA and California’s Constitution. The City’s repeated contention that the entire “critical

incident” at issue took place in barely three seconds upon RPD’s arrival at Mahany Park at 12:38 p.m. is based on a statute that does not exist.

**E. Public Policy Supports Disclosure of All Records
Requested by CBS News Sacramento**

The City acknowledged in the court below that “[a]ll public records are subject to disclosure unless the Public Records act expressly provides otherwise.” PA 108 (quoting *ACLU II*, 202 Cal.App.4th at 66). The City also acknowledged that the purpose of AB 748 was to “provide transparency.” PA 110; PA 33 (“The whole purpose of the law is to provide transparency into the officers’ conduct.”). As the Supreme Court has held in the context of public records requests related to “officer-involved shootings,” “the public’s interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death.” *Long Beach Police Officers Ass’n*, 59 Cal.4th at 74. The City’s theory of this case is inconsistent with these principles.

In order to for the public to understand “the officers’ conduct,” it must have access to enough footage to put those officers’ conduct in context. The City acknowledges this. PA 110. But then it inexplicably limits that context to an undefined “time leading up to the decision to discharge a firearm, the actual discharge of the firearm, and then the cessation of the discharge.” *Id.* The City does not explain how this definition advances the public’s interest in and transparency into the officer’s conduct. On the front end, the minutes leading up to the discharge of a firearm might well vindicate an officer’s use of such force by capturing context that is not evident from just a few seconds prior to a discharge of a firearm. For example, the presence of children at play in a park with a gunman on the loose might help explain an officer’s choice, or footage

showing a suspect's position or whether they are armed might do so, as well.

On the back end, context matters too. For example, an officer who discharged the weapon might make comments about what they did and who they shot, or witnesses might react verbally or nonverbally to the discharge of the weapon. Footage capturing the moments after the discharge of a weapon might demonstrate the presence and positions of witnesses, weapons, and other relevant contextual items. Or it might capture an officer's exertion of additional force short of discharge of a firearm—which is itself a “critical incident” under Section 7923.625(e) if it results in bodily injury or death. *See* Gov't C. § 7923.625(e)(2). “Transparency” is the entire point of AB 748—and the CPRA at large. The City's unilateral decision not to provide meaningful context for the officers' conduct frustrates that purpose.

CBS News Sacramento believes that the meaning of the statutory text is plain. But this Court need not take its word for it. Indeed, the City's interpretation of Section 7923.625 (AB 748) is an outlier among other law enforcement agencies. For example, Los Angeles Police Department release of critical incident video is at odds with RPD's interpretation of the law. In one 2023 video, LAPD released footage relating to a critical incident that began when the officer arrived on scene through the suspect being detained. *See, e.g., Pacific Area ICD 1/3/2023 (NRF002-23) – Extended*, Los Angeles Police Department, <https://www.youtube.com/watch?v=cCs4ru-S-DI>. Like many other departments, the San Diego Police Department website has a webpage where it publicly posts videos of “critical incidents.” *See* Critical Incident Videos, City of San Diego, <https://www.sandiego.gov/police/data->

[transparency/critical-incident-videos](#). Consistent with CBS News Sacramento’s position on interpretation of Section 7923.625(e), several of the videos posted begin where the officers arrive on scene and run throughout the confrontation. *See, e.g.,* Southeastern Division – 08/28/2023,¹¹ Southeastern Division – 07/07/22, S.D.P.D. (July 18, 2022).¹² Other law enforcement departments take a similar approach. *See, e.g.,* Critical Incident OIS 20008867 Finalized Use of Force Review, Pasadena Police Department, <https://www.cityofpasadena.net/police/critical-incident-briefings/critical-incident-ois-20008867-finalized-use-of-force-review>.¹³

Even when it comes to *this specific incident* at Mahany Park, as explained, CHP took a broader approach to disclosure of recordings that is consistent with the statutory language. The CHP, which was the agency that attempted to execute the warrant on Abril on April 6, 2023, initially released nothing, and then after additional arguments by CBS News Sacramento released nearly a *half hour* of footage—not the mere snippets that RPD disclosed—in response to CBS News Sacramento’s initial request. *See* Julie Watts, *EXCLUSIVE: CBS Sacramento obtains never-before-seen CHP video from deadly Roseville park shootout*, CBS News Sacramento (Nov. 13, 2023), <https://www.cbsnews.com/sacramento/news/chpreleases-25-minutes-of-dashcam-footage-from-deadly-roseville-park-shootout>. And the CHP later

¹¹ Available at <https://www.youtube.com/watch?v=0BcwOmWK6Ek&rco=1>.

¹² Available at <https://www.youtube.com/watch?v=VVHSFwOaR7o&rco=1>.

¹³ 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. PA 71.

released *seven hours* of recordings from the Mahany Park shooting. PA 14.

CBS News Sacramento pointed RPD to the scope of these other agencies' critical incident disclosures prior to filing the Petition, but RPD dismissed those agencies' interpretations as mere "decisions to release more than the law requires." See PA 39, 44, 65. The more obvious explanation, however, is not that all of these agencies are voluntarily releasing more than the law requires but simply that these agencies take a similar approach because they are complying with the plain text of the statute.

Accordingly, any recordings in RPD's possession that relate to the Mahany Park "incident involving the discharge of a weapon" should be disclosed promptly. This encompasses recordings from the moment that RPD was dispatched after hearing "shots fired," to the time that law enforcement apprehended the armed suspect and secured the scene, approximately one hour later.

F. The Only Other Exemption for the Disclosure of Footage of "Critical Incidents" Also Does Not Apply Here

The City acknowledges that there are only two mechanisms to withhold records related to "critical incidents." PA 54, 62; *see also* Gov't C. § 7923.625. The first is the Active Investigation Exemption, which does not apply as discussed above. And the second is where the responding party demonstrates that "the public interest in withholding" a recording "clearly outweighs the public interest in disclosure because" disclosure would "violate the reasonable expectation of privacy of a subject depicted in the recording," the responding party may use limited redactions to protect the privacy interest, which it must explain in writing. *Id.* § 7923.625(b).

Here, the City made no effort to demonstrate that disclosure would violate any person's reasonable expectation of privacy. Gov't Code § 7923.625(b). Nor could it. First, the entire incident took place in a public park filled with bystanders. *See U.S. v. Grace*, 461 U.S. 171, 177 (1983) (parks are quintessential public places); *Gill v. Hearst Publ'g Co.*, 40 Cal.2d 224, 230-231 (1953) (photograph of a couple in a public place is not private); *Sanders v. Am. Broad. Cos., Inc.*, 20 Cal.4th 907, 914 (1999) (no intrusion when a person "has merely been observed, or even photographed or recorded, in a public place"). Second, facts that are "already public" or have become "part of the public domain" are not private. *Moreno v. Hanford Sentinel, Inc.*, 172 Cal.App.4th 1125, 1130-31 (2009). Here, the CHP has already released *seven hours* of recordings of the events of April 6, 2023. PA 14.

Similarly, the City's argument that the "victims and their family do not deserve to have to watch" recordings of the incident, *see* PA 44, would eviscerate Section 7923.625 entirely. If that were a valid basis to assert the exemption provided by Section 7923.625(b)—which it is not—nearly any recording related to officer-involved shootings could be withheld. And, even if the City could demonstrate that any person's privacy interests were actually at stake, the first remedy would be to use redaction technologies to protect that interest, not to withhold the recording entirely. *See* Gov't C. § 7923.625(b); *see also National Lawyers Guild v. City of Hayward*, 9 Cal.5th 488, 508 (2020) (public agency must redact, and also bear the cost of redacting, purportedly exempt digital video footage).

Even if withholding of similar information were permissible in a different case, it is not permissible here for the additional reason that CHP has already released seven hours of similar footage from Mahany Park

when it complied with Gov't Code § 7923.625. That video is now in possession of news organizations and much of it is publicly available online. PA 14. In light of this prior release, the City cannot demonstrate, as it must, how the release of *additional* recordings of the critical incident would somehow cause *further* alleged interference either with law enforcement or personal privacy.

Finally, if the City seriously contended that disclosure would violate someone's reasonable privacy expectations, the City was required to explain the basis for that determination in writing. Gov't C. § 7923.625(b). It never did. The City also has not explained why it cannot use redaction to protect any such privacy interests to the extent they still exist. For all these reasons, no exemption applies.

CONCLUSION

The only reading of the statute here that comports with the language and purpose of the California Constitution and the California Public Records Act is the one offered by CBS News Sacramento. As such, CBS News Sacramento respectfully requests that the Court grant its Petition in full, and order the disclosure of all recordings held by the City "related to" the incident "involving" the officer-involved shooting on April 6, 2023 at Mahany Park, from the time RPD was dispatched to the scene at approximately 12:30 p.m., to the time the scene was secured about an hour later.

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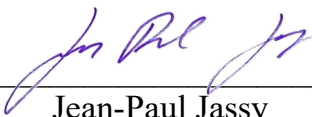
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DATED: October 25, 2024

JASSY VICK CAROLAN LLP

By: 
Jean-Paul Jassy

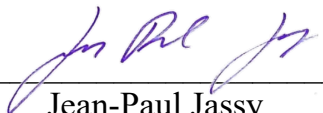
Attorneys for Petitioner
Sacramento Television Stations Inc.
d/b/a CBS News Sacramento

CERTIFICATE OF COMPLIANCE

I, Jean-Paul Jassy, certify pursuant to California Rule of Court 8.204(c), the text of the foregoing Verified Petition and Memorandum of Points of Authorities in support thereof consists of 12,279 words in 13-point Times New Roman type as counted by the word-processing program used to prepare the brief.

DATED: October 25, 2024

JASSY VICK CAROLAN LLP

By: 
Jean-Paul Jassy

Attorneys for Petitioner
Sacramento Television Stations Inc.
d/b/a CBS News Sacramento

3d Civ. No.:
Placer County Superior Court No. S-CV-0052277
(The Honorable Glenn Holley)

**IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

**SACRAMENTO TELEVISION STATIONS INC.
d/b/a CBS NEWS SACRAMENTO,**

Petitioner,

vs.

SUPERIOR COURT FOR THE COUNTY OF PLACER,

Respondent,

CITY OF ROSEVILLE,

Real Party in Interest

CERTIFICATE OF SERVICE

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STATIONS INC. d/b/a

CBS NEWS SACRAMENTO

CERTIFICATE 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 18 and not a party to the above-captioned action. My business address is 355 South Grand Avenue, Suite 2450, Los Angeles, California, 90071.

On, October 25, 2024, I served true copies of the following documents described as:

**VERIFIED PETITION FOR WRIT OF MANDATE OR
OTHER APPROPRIATE RELIEF BY SACRAMENTO
TELEVISION STATIONS INC.**

**EXHIBITS TO PETITION FOR WRIT OF MANDATE, FILE
1 OF 2, VOLUME 1, PP. 1-275**

**EXHIBITS TO PETITION FOR WRIT OF MANDATE, FILE
2 OF 2, VOLUME 2, PP. 276-423**

on the interested parties in this action as follows:

☒ **Served by Electronic Service**

Joseph Speaker (jspeaker@roseville.ca.us)
City Attorney's Office
311 Vernon Street
Roseville, CA 95678

☒ **Served by U.S. Mail**

The Honorable Glenn M. Holley
Placer County Superior Court of Roseville
10820 Justice Center Drive, Department 45
Roseville, CA 95678

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

Dated: October 25, 2024



Marlene Rios