

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

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

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF PLACER,

Respondent.

CITY OF ROSEVILLE,

Real Party in Interest

Court of Appeal Case No. C102316

Trial Court Case No. S-CV-0052277

On Appeal From Placer County Superior Court

Honorable Glenn Holley

**RETURN OF REAL PARTY IN INTEREST CITY OF ROSEVILLE
TO PETITION FOR WRIT OF MANDATE OR OTHER
APPROPRIATE RELIEF**

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APPELLANT/ SACRAMENTO TELEVISION STATIONS INC. d/b/a CBS NEWS PETITIONER: SACRAMENTO RESPONDENT/ SUPERIOR COURT FOR THE COUNTY OF PLACER REAL PARTY IN INTEREST: CITY OF ROSEVILLE	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): City of Roseville

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	
<input type="checkbox"/> Continued on attachment 2.	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: December 27, 2024

Gregg Kettles, Esq.
 (TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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Introduction

The Public Records Act has long exempted law enforcement investigatory records from disclosure. (Gov. Code, § 7923.600, subd. (a).) The Legislature recently carved out a limited exception for audio or video recordings that “depict” a “critical incident,” which includes an “incident involving the discharge of a firearm at a person by a peace officer.” (Gov. Code, § 7923.625, subd. (e).) Section 7923.625 gives the public some access to a critical incident record, except where disclosure would substantially interfere with an active investigation, or where the privacy rights of someone depicted in the recording outweigh the public interest in disclosure. (*Id.*, § 7923.625, subds. (a), (b).)

Real Party in interest City of Roseville (“Roseville”) responded to a California Highway Patrol (“CHP”) emergency call at a Roseville park. CHP was attempting to serve a warrant on a suspect, when the suspect drew a weapon and started firing. Roseville Police Department (“Roseville PD” or “RPD”) officers arrived on scene. Three Roseville PD officers fired a total of six shots at the suspect over the course of a three minute period in an effort to contain the suspect. Roseville PD then pivoted from containment to a hostage response because the suspect fled and took two hostages. The suspect eventually shot both hostages, killing one. The suspect was arrested and the scene secured about an hour after Roseville PD arrived on scene.

Roseville disclosed what it believes constitute all the “critical incident” recordings from that event in response to Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento’s (“CBS”) Public Records Act request. These disclosed records consist of four body worn camera (“BWC”) clips and two radio traffic audio clips, showing: 1) the events leading up to the officer’s firearm discharge, 2) the actual firearm discharge, and 3) the officer disengaging and moving away from the

suspect. (See Roseville's Produced Records, <https://f.io/tSfZIVTu>.) Each BWC clip is 39 seconds long. The longer of the two radio clips is about three minutes long. CBS contends that Section 7923.625 requires that Roseville disclose more than this. It wants all recordings during the hour-long period running from when Roseville PD arrived on scene until the scene was secured and the suspect taken into custody. CBS filed a petition for writ of mandate against Roseville in the Respondent Superior Court, which was denied.

The trial court's order denying the petition should be affirmed because the additional recordings CBS seeks do not come within Section 7923.625(e)'s "critical incident" exception, as they do not "depict" an "incident involving" the discharge of a firearm at a person by a police officer. The additional recordings CBS seeks depict only the larger criminal event, a hostage situation, and not any shots fired by any police officer. This interpretation is compelled by the statute's plain meaning, legislative history, and public policy.

Alternatively, the trial court's order denying the petition should be affirmed because substantial evidence supports the trial court's finding that the disclosure of the additional records would substantially interfere with an active investigation, which makes these records exempt from disclosure under Section 7923.625(a). Prosecutors and the suspect filed a joint request to seal images, including drone footage, presented at a preliminary hearing in a criminal action that has been filed against the suspect, on the ground that the images would further traumatize the victims and impair the suspect's right to a fair trial. The same evidence and reasoning counsels that the additional records CBS seeks be exempt from disclosure here.

The additional records sought by CBS are also protected from disclosure by the victims' and family members' privacy rights under Section 7923.625(b).

For the foregoing reasons, CBS's writ petition should be denied.

**Return by Answer to Petition for Writ of Mandate or Other
Appropriate Relief**

In answer to the Petition for Writ of Mandate or Other Appropriate Relief ("Writ Petition"), Roseville admits, denies, and alleges as follows:

A. Answering Jurisdiction, Venue, and Timeliness of Petition

1. Answering Paragraphs 1-5, Roseville admits that this Court has jurisdiction over this matter, that venue is proper, and that the Writ Petition is timely. Except as admitted, Roseville denies these allegations.

B. Answering Authenticity of Exhibits and Reporters' Transcripts

2. Answering Paragraph 6, Roseville admits these allegations.

C. Answering Beneficial Interest of Petitioner/Capacity of Parties

3. Answering Paragraph 7, Roseville lacks information and belief sufficient to answer, and on that basis denies, each and every allegation in it.

4. Answering Paragraph 8, Roseville denies that all the records at issue are in its possession, custody or control. Roseville admits the remaining allegations.

5. Answering Paragraph 9, Roseville admits these allegations.

D. Answering Factual and Procedural Background

6. Answering Paragraphs 10-12, Roseville denies Mahany Park was "hosting," as that term is vague and ambiguous, but admits the remainder of allegations contained therein, insofar as those were statements contained in the "April 6 RPD Press Release," "April 7 RPD Press Release," or "April 14 RPD Press Release."

7. Answering Paragraph 13, Roseville contends that the allegations and assumptions, including the statements "during the chaotic

confrontation,” “crossfire,” “eventually,” and “secured the scene” are vague and ambiguous and contain argument, speculation, and conclusions of law, rather than allegations of fact, and therefore do not require a response.

Roseville denies law enforcement exchanged “crossfire.” Roseville admits that at approximately 1:13 p.m., law enforcement apprehended the suspect.

8. Answering Paragraphs 14-15, Roseville admits the allegations contained therein, insofar as those were statements contained in the “April 6 RPD Press Release” or “April 14 RPD Press Release.”

9. Answering Paragraph 16, Roseville admits the allegations contained therein, insofar as those were statements contained in the April 6, 2023 press conference.

10. Answering Paragraph 17, Roseville denies the allegation, insofar as it misstates the “April 7 RPD Press Release,” as the “April 7 RPD Press Release” confirmed only an Officer Involved Shooting between CHP and the suspect. The “April 14 RPD Press Release” confirmed that an Officer Involved Shooting occurred between RPD and the suspect.

11. Answering Paragraph 18, first sentence (commencing with “While” and ending with “encounter. *Id.*”), Roseville contends the statement “[w]hile initially light on details” is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact and on that basis denies that portion of the allegations. Roseville admits the remainder of the allegations contained therein, insofar as those were statements contained in the “April 14 RPD Press Release.” Answering Paragraph 18, second sentence (commencing with “At that time” and ending with “rounds. *Id.*”), Roseville denies the allegation, insofar as it misquotes the “April 14 RPD Press Release” and says the suspect and law enforcement exchanged “several dozen rounds,” as the “April 14 RPD Press Release” stated that the suspect “fired approximately 15-20 rounds at officers and victims,” “CHP Officers fired approximately

15-20 rounds at the suspect,” and “Roseville officers fired 6 rounds at the suspect.”

12. Answering Paragraph 19, Roseville admits the allegations contained therein.

13. Answering Paragraph 20, Roseville contends that the use of the word “secured the scene” is vague, ambiguous, and unintelligible and on that basis denies the allegation.

14. Answering Paragraph 21, first sentence and second sentence, first clause (commencing with “The request” and ending with “the CPRA”), Roseville admits that Steve Large emailed Roseville PD’s Public Information Officer Chris Ciampa more than 45 days after the April 6 shooting, but denies the email asked for records related to the “Mahany Park shooting” (or even referenced it in any way), and denies that the request referenced “Section 7923.625” or the Public Records Act at all, as alleged.

15. Answering Paragraph 21, second sentence, second clause (commencing with “which sets” and ending with “Gov’t C. § 7923.625.”) and third sentence, first clause (commencing with “Under” and ending with “apply;”), Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact and on that basis denies the allegations.

16. Answering Paragraph 21, third sentence, second clause (commencing with “none” and ending with “7923.625(a)-(b).”), insofar as this allegation is implying that Roseville is withholding any recordings, Roseville denies that it has withheld any recordings that depict an incident involving the discharge of a firearm at a person by a peace officer or custodial officer (which is all that is required to be produced), and contends all such recordings have been provided to Petitioner. Roseville denies that it made no required showings and denies that no exemptions apply here.

17. Answering Paragraph 22, Roseville admits the allegations contained therein.

18. Answering Paragraph 23, Roseville contends the statements “purportedly” and “[f]or the first time,” are vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact and on that basis denies that portion of the allegations. Roseville contends that the allegation “despite the phrase ‘criminal event’ (as distinct from the statutorily defined ‘critical incident’) being nowhere found in Section 7923.625” contains argument, speculation, and conclusions of law, rather than allegations of fact and on that basis denies that allegation. Roseville denies that it was reversing its decision to provide the responsive records. Roseville admits the remainder of the allegations contained Paragraph 23.

19. Answering Paragraph 24, Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact and on that basis denies the allegation. Notwithstanding the foregoing and without waiving the same, Roseville admits it produced *the only video recordings (four (4) body-worn camera clips) it possesses that relate to the critical incident*, each totaling 39 seconds. Roseville contends that the times provided in Paragraph 24 are based on the time stamps displayed on the actual videos, and that the time of day shown for Recording 4 is not the actual time of day (due to a docking station issue that did not allow the camera to “sync” with the actual time of day). Roseville also produced two (2) audio tracks, one being 2 minutes and 55 seconds long, and the other being 27 seconds long. (A copy of the audio and video released can be found here: <https://f.io/tSfZIVTu>.)

20. Answering Paragraph 25, Roseville contends the terms “asserted,” “under,” and “boilerplate disclaimer” are vague and ambiguous and contain argument, speculation, and conclusions of law, rather than

allegations of fact and on that basis denies that portion of the allegations. Roseville denies that it “never asserted that disclosure of the Disclosed Recordings would interfere with any active criminal investigation or violate victim privacy under Section 7923.625.” Roseville admits and avers that Roseville PD’s June 22, 2023 email from Chris Ciampa to Steve Large (CBS’s Trial Court Petition, Exhibit 1, 1-PA-23-24)¹ stated the following:

To the extend you are requesting records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of the City of Roseville Police Department, such records are exempt from disclosure under Government Code Sections 7923.600, 7923.605, 7923.610, 7923.615, and/or 7923.620, as there is an *active criminal investigation and criminal prosecution* occurring and disclosure of such records would endanger the safety of witnesses, other person involved in the investigation, and the successful completion of the investigation and/or a related investigation. Out of respect for the *privacy of the victims* involved and the *integrity of the criminal prosecution*, no additional records aside from the legally required audio/video records discussed above will be produced.

(1-PA-24, emphasis added.)

21. Answering Paragraph 26, including footnote 1, Roseville denies Ms. Watts provided any time estimates in her correspondence, but admits the remaining allegations contained therein.

22. Answering Paragraph 27, Roseville admits the allegations contained therein.

23. Answering Paragraph 28, Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact. Notwithstanding the foregoing and without waiving the same, Roseville admits that Julie Watts contacted

¹ Citations to CBS’s Exhibits to Petition for Writ of Mandate are denominated “[volume]-PA-[page].”

Chris Ciampa via email on October 25, 2023, to state that CBS had become aware that Roseville PD also possessed drone video footage and requested it, and that Lieutenant Ciampa emailed back that “Nothing has changed from the message sent on Aug 2nd on what Roseville PD is releasing.” Roseville denies that Roseville PD “had not disclosed [drone video footage], in violation of the CPRA.” Roseville PD has never disputed that it deployed a drone that day (in fact the drone is being readied in the body-worn camera footage that was released to CBS in June of 2023), but video eventually captured by that drone does not “relate to a critical incident” as it does not depict the “critical incident” as evidenced by the fact it is seen, in its case on the ground, in the body-camera footage that was released. Roseville denies that it has “never proactively reassessed withholding every 30 days” or “ever notified CBS News Sacramento of the result of that mandatory reassessment.” Roseville has repeatedly advised CBS that there is an active criminal investigation regarding the larger criminal event, including at the hearings on the merits of CBS’s Trial Court Petition.

24. Answering Paragraph 29, Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact. Notwithstanding the foregoing, Roseville admits that on October 27, 2023, in-house counsel for CBS sent a letter to Chris Ciampa, but Roseville denies that it withheld any recordings that are legally required to be produced.

25. Answering Paragraph 30, including footnote 2, Roseville contends that it is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact, including an incomplete citation, and on that basis denies the allegation. Roseville admits that in its October 30 email to CBS it analyzed Section 7923.625 in several paragraphs and one sentence states: “The whole purpose of the law is to provide transparency to the officers’ conduct.”

Roseville avers and admits that in its August 22 email to CBS, Roseville stated, “to the extent [CBS is] seeking records related to a ‘critical incident’, as defined by Penal Code Section 832.7 (i.e. SB 1421/SB 16), those records are exempt from disclosure, pursuant to 832.7(b)(8)(B), as criminal charges have been filed.” Roseville avers that CBS did not respond to this. Except as admitted, Roseville denies the allegations in Paragraph 30.

26. Answering Paragraph 31, first sentence, Roseville contends the allegation is vague and ambiguous in its use of the phrase “unable to come to a resolution” and “short excerpts.” Notwithstanding the foregoing and without waiving the same, Roseville admits that counsel for CBS and Roseville corresponded and spoke on the telephone. Roseville admits that CBS stated that Roseville was required to disclose more recordings. Roseville admits and avers that it stated it had not withheld any recordings that depict an incident involving the discharge of a firearm at a person by a peace officer or custodial officer and contends all such recordings have been provided to CBS. Roseville admits and avers that its counsel stated repeatedly that Roseville had already disclosed all recordings the law required Roseville to disclose. Roseville admits and avers that in a December 1, 2023 email from Joseph Speaker to CBS’s counsel, Roseville stated, for the sake of argument, that even if CBS’s unsupported view of the law is correct, that because of Government Code §§ 7923.625(a)(2) and (b), CBS would still not be entitled to release of any additional recordings. (CBS’s Trial Court Petition, Exhibit 6, 1-PA-42-44.) Roseville stated that there is an active criminal investigation and also cited to privacy concerns. Except as admitted, Roseville denies Paragraph 31.

27. Answering Paragraph 32, Roseville admits that CBS’s Verified Petition for Writ of Mandate Ordering Compliance with the California Public Records Act (“CBS Trial Court Petition”) bears a file

stamp with a February 26, 2024 date. Roseville admits that it filed an answer on April 12, 2024. Roseville is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 and denies them on that basis.

28. Answering Paragraph 33, Roseville admits that CBS's memorandum of points and authorities in support of its Trial Court Petition bears a file stamp with a April 25, 2024 date. Roseville admits that it filed opposition papers on May 8, 2024. Roseville admits that CBS's reply papers bears a file stamp with a May 14, 2024 date. Roseville is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 and denies them on that basis.

29. Answering Paragraph 34, Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact, including an incomplete citation, and on that basis denies the allegation. Roseville denies that the prosecution and defense signed a "stipulated" request. Roseville admits and avers that the prosecution and defense signed a joint request. Roseville admits the remaining allegations in Paragraph 34. Roseville avers that the Request and Order to Seal Exhibit, filed July 15, 2024, speaks for itself and is the best evidence of its contents. (1-PA-272-274.)

30. Answering Paragraph 35, Roseville contends the allegation is vague and ambiguous and contains argument, speculation, and conclusions of law, rather than allegations of fact, including an incomplete citation, and on that basis denies the allegation. Roseville is without knowledge or information sufficient to form a belief as to the truth of the allegation that the body worn camera and dash camera footage sought by CBS was not presented at that hearing and denies that allegation on that basis. Roseville avers that the Order Sealing Exhibits Presented During the Preliminary Hearing, filed July 15, 2024, and Exhibit List, dated July 16, 2024, speak

for themselves and are the best evidence of their contents. (1-PA-270; 2-PA-296-297.)

31. Answering Paragraph 36, Roseville admits that CBS's supplemental briefing bears a file stamp with an August 20, 2024 date. Answering Paragraph 36's remaining allegations, Roseville admits them.

32. Answering Paragraph 37, Roseville admits that the court below held a second hearing on CBS's Trial Court Petition on August 28, 2024. Roseville admits that CBS argued in its supplemental papers that it was not necessary for the trial court to conduct an in camera review in order to render its ruling. Roseville avers that it argued that it would not be necessary for the trial court to conduct an in camera review in order to deny CBS's Trial Court Petition (1-PA-234-235; 2-PA-393), but Roseville argued that the court should conduct an in camera review if the court were inclined to order release of additional records (1-PA-263; 2-PA-393). Except as admitted, Roseville denies the allegations contained in Paragraph 37.

33. Answering Paragraph 38, Roseville avers that each and every allegation in it consists of legal argument and conclusions, including incomplete citations, to which no answer is required. Roseville admits that the Superior Court entered a seven (7) page order denying CBS's Trial Court Petition on October 1, 2024 ("Order"). (2-PA-415-421.) Roseville avers that the Order speaks for itself and is the best evidence of its contents. Roseville denies any attempts to characterize, paraphrase, or expand the contents, meaning, intent, or interpretation of the Order.

34. Answering Paragraph 39, including footnote 3, Roseville avers that each and every allegation in it consists of legal argument and conclusions, including incomplete citations, to which no answer is required. Roseville admits that the Superior Court entered a seven (7) page order denying CBS's Trial Court Petition on October 1, 2024 ("Order"). (2-PA-

415-421.) Roseville admits that prosecutors and the suspect's defense counsel signed a joint request to seal exhibits presented at a preliminary hearing, Request and Order to Seal Exhibit, filed July 15, 2024. (1-PA-272-274.) Roseville avers that the Order and the Request and Order to Seal Exhibits speak for themselves and are the best evidence of their contents. Roseville denies any attempts to characterize, paraphrase, or expand the contents, meaning, intent, or interpretation of the Order or the Request and Order to Seal Exhibits.

E. Answering Absence of Other Remedies

35. Answering Paragraph 40, Roseville avers that each and every allegation in it consists of legal argument and conclusions to which no answer is required. Roseville admits that this Court has jurisdiction over this matter. Roseville contends that Government Code section 7923.500(a) and *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113-114 speak for themselves and are the best evidence of their contents. Roseville denies any allegations contrary to the plain language, meaning, or context of this statute and this case.

Prayer

WHEREFORE, real party in interest Roseville prays that this court:

1. Discharge the Court's November 27, 2024 Order to Show Cause;
2. Order that CBS's Petition for Writ of Mandate or Other

Appropriate Relief is denied; and

3. Order that Roseville be awarded costs of suit.

Dated: December 27, 2024

BEST BEST & KRIEGER LLP

By: /s/ Gregg W. Kettles

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Interest

CITY OF ROSEVILLE

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Verification

As a public agency, Real Party in Interest City of Roseville is exempted from verification requirements pursuant to Code of Civil Procedure section 446. (*See Hall v. Superior Court (People)* (2005) 133 Cal.App.4th 908, 914 fn. 9 (collecting cases) (rejecting request to strike public entity's unverified return).)

Document received by the CA 3rd District Court of Appeal.

Memorandum

Factual and Procedural Background

A. The California Highway Patrol attempted to serve a warrant on a suspect and shots were exchanged between the California Highway Patrol and the suspect

A serious criminal event unfolded in Roseville on April 6, 2023.

The California Highway Patrol (“CHP”) attempted to serve a warrant on a suspect, Eric Abril (“Abril” or the “suspect”), without informing the Roseville Police Department (“Roseville PD”). (1-PA-7:18-8:2; April 14, 2023 Update on shooting in Mahany Park, City of Roseville California (Apr. 14, 2023), <http://tinyurl.com/45dxzhk3> [“Apr. 14 Roseville PD Press Release”].) During CHP’s attempted warrant service, Abril fired his firearm at CHP officers, prompting return gunfire by CHP officers. (1-PA-8:3-8; April 7, 2023 update on shooting in Mahany Park, City of Roseville California (Apr. 7, 2023), <http://tinyurl.com/yc36c7yc> [“Apr. 7 RPD Press Release”]; Apr. 14 Roseville PD Press Release.) Several rounds were fired. (*Ibid.*)

This warrant service and subsequent CHP officer-involved shooting incident—a “critical incident” in the language of Section 7923.625(e)—took place in Mahany Park before Roseville PD knew about CHP’s activities, before Roseville PD was called to the scene, and before Roseville PD arrived on scene. (*Ibid.*) Roseville PD first learned of the events that had transpired between CHP and Abril when a call for emergency assistance was made to Roseville PD at approximately 12:32 pm. (1-PA-8:3-6; Update on shooting in Mahany Park, City of Roseville California (Apr. 6, 2023), <http://tinyurl.com/4n8nnup7> [“Apr. 6 Roseville PD Press Release”].)

B. Roseville PD responded to the emergency call, and fired six (6) shots at the suspect within the first few minutes of Roseville PD's arrival on scene

Roseville PD arrived on scene at approximately 12:38 pm (minutes after first learning of the unfolding event). (Roseville PD Produced Records, <https://f.io/tSfZIVTu> ("Roseville Produced Records"), Body Worn Camera video and audio clip, ROSE113_LL0113 ("BWC #1"); 1-PA-8:7-8.) The first responding Roseville PD officers focused on containing the fleeing suspect and ensuring the safety of those present at the scene. (Roseville Produced Records, BWC #1, Body Worn Camera video and audio clip, ROSE103_LL0103 ("BWC #2), Body Worn Camera video and audio clip, ROSE023_LL0023 ("BWC #3), Body Worn Camera video and audio clip, ROSE033_LL0033 ("BWC #4"), Radio Traffic – Main_Final audio clip ("Radio Traffic—Main "), Radio Traffic-ETAC ("Radio Traffic—ETAC"); Apr. 7 RPD Press Release.)

It was during the first few minutes of arrival on scene that Roseville PD had its "critical incident," i.e., an incident involving a peace officer's discharge of a firearm at a person. (*Ibid.*; 1-PA-23.) The only shots fired by Roseville PD were fired during this limited initial confrontation with the suspect. (*Ibid.*) Three Roseville PD officers fired their weapons, all from different locations around the suspect, and all from over 100 yards away. (*Ibid.*) The three officers discharged a total of six (6) rounds. (*Ibid.*) It took less than three (3) seconds for all six (6) shots to be fired. (*Ibid.*) The shots were fired near the beginning of Roseville PD's arrival on scene. (*Ibid.*) The entire incident involving the discharge of firearms by Roseville PD took place within a three (3) minute window at the beginning of its response. (*Ibid.*)

C. The suspect fled and took hostages, and Roseville PD pivoted from a containment response to a hostage situation; the suspect was taken into custody nearly an hour after Roseville arrived on scene

Roseville PD's initial containment response aimed to prevent the suspect from fleeing. (*Ibid.*) Unfortunately, the suspect was able to flee to the open space area behind Mahany Park and took two hostages. (Apr. 6 RPD Press Release.) Roseville PD's response then changed from containment to a hostage situation. Abril was not taken into custody until nearly an hour later. (1-PA-82:21.)

It is believed that Abril shot both hostages. (Apr. 6 RPD Press Release.) One hostage was pronounced deceased on the scene. (1-PA-83:9-10) The other hostage was transported to a hospital. (1-PA-83:10) Abril sustained gunshot wounds and was also transported to a hospital. (1-PA-83:11)

D. Roseville disclosed to CBS body worn camera video and audio recordings totaling nearly three (3) minutes and radio recordings totaling nearly three and a half (3 ½) minutes

CBS emailed Roseville PD requesting the "release of police body cam *video* and dash cam *video of the officer involved shooting* in Roseville on April 6, 2013." (1-PA-24-25, emphasis added.) Roseville PD wrote back to CBS the day following its request (well within the 10 days allowed under Gov't Code § 7922.535(a)). (1-PA-24.) Roseville PD had no responsive records for that "2013" date. (1-PA-55:18-19.) Nonetheless, in an effort to assist the requestor and be transparent, Roseville PD asked if CBS meant April 6, "2023" and, if so, told CBS that Roseville had responsive records that Roseville would provide CBS. (1-PA-24.)

Roseville provided those responsive records to CBS by email nine days later. (1-PA-23-24.) Roseville's email stated that these responsive records fell within Government Code section 7923.625(e)'s definition of a

“critical incident.” (1-PA-23.) Roseville acknowledged that “a much larger criminal” event had occurred, but that these responsive records were the only disclosable records. (*Ibid.*) To the extent CBS was requesting records of investigations, those were exempt from disclosure under specified Government Code provisions “as there is an *active criminal investigation and criminal prosecution* occurring and disclosure ...would endanger the safety of witnesses, other person involved in the investigation, and the successful completion of the investigation and/or a related investigation.” (*Id.* at 24, emphasis added.) Roseville added: “Out of respect for the *privacy of the victims* involved and the *integrity of the criminal prosecution*, no additional records aside from the legally required audio/video records discussed above will be produced.” (*Ibid.*, emphasis added.)

Despite CBS asking only for “video,” and video only “of the officer involved shooting,” Roseville provided CBS more than CBS requested in the interest of transparency. (1-PA-24-25.) Roseville provided both audio and video content. (1-PA-23) Roseville provided CBS all audio and video that related to the critical incident. (*Ibid.*)

Roseville provided CBS with four (4) video and audio clips from body worn cameras (“BWC”) and two (2) radio traffic audio clips. (*Ibid.*) Each of the four (4) BWC clips Roseville provided CBS is thirty-nine (39) seconds long, and the four (4) BWC clips total approximately three (3) minutes of audio and video recording. (Roseville Produced Records, <https://f.io/tSfZIVTu>.) One of the radio traffic audio clips Roseville provided CBS is two (2) minutes, fifty-five (55) seconds long. (*Ibid.*) The other radio traffic audio clip Roseville provided is twenty-seven (27) seconds long. (*Ibid.*) Roseville did not have or utilize dash cameras in its vehicles on April 6, 2023. (1-PA-105:1.)

The four (4) BWC video and audio clips and two (2) radio audio

clips Roseville provided CBS depict the following:

Body Worn Camera Clip #1

The first of the BWC produced by Roseville, labeled “ROSE113_LL0113” (“BWC #1”), begins just after one of the first Roseville PD officers arrives on scene after activating their BWC, pursuant to department policy. (See Roseville Produced Records: <https://f.io/tSfZIVTu>.) BWC #1 depicts four (4) rounds fired in rapid succession upon the Roseville PD officer’s arrival on the scene and encountering the suspect fleeing. (*Ibid.*) The video begins at approximately 12:38 pm (based on its timestamp), which Roseville contends is accurate. (*Ibid.*)

The video begins with the officer inside a police vehicle arriving at the scene. (*Ibid.*) The video shows the officer putting the vehicle in park and quickly exiting the vehicle, followed by the officer engaging the suspect (who is not visible in the frame of the video), discharging four (4) rounds from a weapon in rapid succession. The video then shows the officer disengaging from the suspect to run and take protective cover away from the suspect. (*Ibid.*) This BWC clip depicts the totality of that incident involving the discharge of a firearm at a person. It shows: 1) the events leading up to the officer’s discharge, 2) the actual discharge, and then 3) cessation of the officer involved shooting as evidenced by the officer disengaging and moving away from the suspect. BWC #1 is all of the video that depicts that incident involving the discharge of a firearm.

Body Worn Camera Clip #2

The second BWC produced by Roseville, labeled “ROSE103_LL0103” (“BWC #2”), shows another first responding Roseville PD officer and the discharge of a single round. (*Ibid.*) BWC #2 begins just after the officer arrives on scene, after activating the BWC, and shows officers exiting their vehicle doorways. (*Ibid.*) The video begins at

approximately 12:40 pm (based on its timestamp), which Roseville contends is accurate.

The suspect is not visible in the frame, but the officer is heard saying the suspect “is still shooting off rounds” and then the officer fires a single round. (*Ibid.*) Due to the distance between the suspect and the officer, the officer is seen disengaging with the suspect after firing a lone round, and lowering the weapon to move over and assist the drone operator nearby, who asks for assistance with deploying the drone. (*Ibid.*) BWC #2 depicts the totality of that incident involving the discharge of a firearm at a person. It shows: 1) the officer responding to the scene prior to the discharge of a weapon, 2) the decision to discharge the weapon due to the suspect firing at officers, and then 3) the officer disengaging and moving to assist a nearby officer with drone deployment.

Body Worn Camera Clip #3

The third BWC produced by Roseville, labeled “ROSE023_LL0023” (“BWC #3”), was from an officer who did not actually discharge a firearm, but who was near the officer in BWC #2. (*Ibid.*) BWC #3 depicts the same discharge of a firearm seen in BWC #2, but from another angle. (*Ibid.*) The video begins at approximately 12:40 pm (based on its timestamp), which Roseville contends is accurate.

BWC #3 shows two officers (including the officer wearing the BWC in BWC #2, who fired a round) arriving on scene and taking a position outside of their vehicle on the driver’s side. (*Ibid.*) It depicts the officer wearing the BWC in BWC #3 taking drone equipment out of their vehicle just after they arrived on scene and setting that equipment up. (*Ibid.*) BWC #3 depicts the totality of that incident involving the discharge of a firearm at a person. It shows: 1) the BWC #2 officer responding to the scene prior to the discharge of their weapon, 2) the decision by BWC #2 officer to discharge their weapon due to the suspect firing at officers, and then 3) the

BWC #2 officer disengaging and moving to assist the BWC #3 officer with drone deployment. BWC #2 and #3 are all of the video that depicts that incident involving the discharge of a firearm.

Body Worn Camera Clip #4

The fourth BWC produced by Roseville, labeled “ROSE033_LL0033” (“BWC #4”), was the only other video depicting an incident involving the discharge of a firearm at a person by a peace officer. (*Ibid.*) The timestamp of the video begins at approximately 12:57 pm, however it was learned that this timestamp does not accurately reflect the actual time of day. (1-PA-58:7-9.) A docking station issue did not allow the camera to “sync” with the actual time of day. (1-PA-106:20-21.) It is believed the actual time captured in the video is closer to the other three (3) videos produced, as they were all part of that initial response. (1-PA-106:21-23.)

BWC #4 shows officers arriving on scene and taking protective cover near a berm. (See Roseville Produced Records: <https://f.io/tSfZIVTu>.) It shows officers taking position and communicating the location of the fleeing suspect. (*Ibid.*) The video shows an officer discharge a single round. (*Ibid.*) The officer wearing the BWC in BWC #4 did not discharge his firearm; he was kneeling near the officer who did, and BWC #4 captured that discharge. (1-PA-59:20-23.) The suspect is not visible in the video. (Roseville Produced Records: <https://f.io/tSfZIVTu>.) The video concludes with an officer advising he cannot get an accurate shot because of the height of his weapon, and the officers disengage. (*Ibid.*) The other officers in the video either did not have BWCs, or did not have BWCs that depicted the incident involving the discharge. (See 1-PA-59:23-28.). BWC #4 depicts the totality of that incident involving the discharge of a firearm at a person. It shows: 1) the officers responding to the scene prior to the discharge of the weapon, 2) one

officer's decision to discharge their weapon due to the suspect fleeing, and then 3) the officer disengaging. BWC #4 is the only video that depicts that incident involving the discharge of a firearm.

Radio Traffic – Main

One radio traffic clip provided by Roseville, labeled “Radio Traffic-Main_Final” (“Radio Traffic—Main”), depicts an incident involving the discharge of a firearm at a person by a peace officer. (Roseville Produced Records: <https://f.io/tSfZIVTu>.) The clip plays the communications among officers and dispatch. (*Ibid.*) Officers report that the suspect is still shooting, request equipment, report their and the suspect's locations, and report that one officer took shots at the suspect. (*Ibid.*) The recording ends with a report that a CHP officer is down and that there is active gunfire. (*Ibid.*)

Radio Traffic – ETAC

The other radio traffic clip provided by Roseville, labeled “Radio Traffic-ETAC” (“Radio Traffic—ETAC”), depicts an incident involving the discharge of a firearm at a person by a peace officer. (Roseville Produced Records: <https://f.io/tSfZIVTu>.) The clip plays the communications among officers and dispatch captured in BWC #1, this time recorded from a radio rather than from the BWC. (*Ibid.*)

E. Roseville confirmed that it provided CBS all records that depict a “critical incident” and added that, even if Roseville had not, additional records would be exempt from disclosure because of an ongoing criminal investigation and the victims’ right to privacy

A month later CBS emailed Roseville PD stating CBS was “appealing” Roseville PD's response to CBS's records request. (1-PA-21.) CBS asked that Roseville produce BWC and dash camera footage beginning with officers' “arrival at Mahany Park (driving up to the park) through the time the suspect was apprehended and taken into custody

(removed from the park).” (*Ibid.*) Roseville PD responded within a week. (1-PA-20-21.) Roseville explained in detail why the law requires no additional audio or video to be produced. (*Ibid.*)

Roseville did not hear from CBS again until almost three (3) months after it provided CBS with the BWC and radio traffic clips. (1-PA-27.) When it did hear from CBS, CBS accused Roseville PD of withholding “drone video” footage. (*Ibid.*) CBS did so even though it had asked for only BWC and dash camera footage of an officer-involved shooting, and had never before asked for drone footage. (1-PA-24-25.) Roseville PD responded that same day, stating that nothing had changed from its last detailed response from almost four (4) months earlier. (*Id.* at 27.)

CBS sent two (2) additional pieces of correspondence to Roseville PD making the same arguments, and asking for the same records CBS claimed were being wrongfully withheld. (1-PA-29-31, 36-40.) Roseville provided a detailed and substantive response to each, explaining that *all* records related to the critical incident had been released, and provided legal and statutory authority to support Roseville’s position. (1-PA-33-34, 42-45.) Roseville explained why the additional footage sought by CBS did not fall within the definition of “critical incident” (e.g., 1-PA-42-43), and that even if it did, Roseville would not be required to disclose it because “there is an active criminal investigation and substantial privacy concerns” (1-PA-44). “Given the nature of this specific criminal event, the victims and their family do not deserve to have to watch that day play out over and over (especially when they and other witnesses in the criminal case live locally and cannot have their recollection tainted by viewing evidence in advance of the criminal trial).” (*Ibid.*)

F. CBS filed a petition for writ of mandate against Roseville; while it was pending the criminal court granted the prosecution's and the suspect's joint request to seal the evidence presented at the preliminary hearing

CBS initiated this lawsuit on February 26, 2024, filing a petition for writ of mandate ordering compliance with the California Public Records Act ("Trial Court Petition"). (1-PA-5-46.) Roseville answered the Trial Court Petition, and the parties filed briefs and supporting papers on the merits. (1-PA-48-75, 77-97, 99-118, 120-171, 173-185.) CBS argued that Roseville withheld records responsive to CBS's request that are presumptively open public records. (1-PA-84-87.) CBS argued that the Legislature adopted Assembly Bill 748 ("AB 748") to mandate disclosure of records relating to any discharge of a firearm by a police officer at a person. (1-PA-87-88.) CBS argued that Roseville was required to disclose the withheld recordings because AB 748 compelled it, Roseville did not show that the withheld materials were exempt, and Roseville's interpretation of AB 748 was inconsistent with other law enforcement agencies' interpretation. (1-PA-88-95.)

Roseville argued that Government Code section 7923.625(e)'s "critical incident" definition – an "incident involving the discharge of a firearm at a person by a peace officer" – does not extend to a larger criminal event in which the discharge occurred. (1-PA-109-112.) Roseville pointed to AB 748's language and legislative history, and the fact that the Legislature and other law enforcement agencies routinely separate officer involved shooting reviews from larger criminal events and investigations. (1-PA-112-114.) Roseville further argued that decisions made by other law enforcement agencies to release information was irrelevant and that, even if the withheld materials came within the definition of a critical incident, they were exempt from disclosure because of an active criminal investigation and criminal court case ("Criminal Case") that had

been opened against Abril. (1-PA-114-117.) CBS filed a reply. (1-PA-173-185.)

The criminal court held a preliminary hearing. The prosecution and Abril made a joint request to seal exhibits presented during the preliminary hearing to preserve Abril's right to a fair trial. (1-PA-272-274.) The court granted that request, ordering those exhibits sealed ("Sealing Order"). (1-PA-270.)

G. The trial court denied CBS's petition following a supplemental briefing and two hearings on the merits

CBS's Trial Court Petition came on for hearing on the merits, and the parties made argument. (1-PA-187-239.) The parties informed the court of the Sealing Order and argued its significance. (1-PA-206:19-207:24.) The court asked the parties to file supplemental briefs about the Sealing Order and certain other issues, and continued the hearing. (1-PA-229:22-231:10, 238:19-239:15.)

The parties filed supplemental briefs and supporting papers. (1-PA 254-265, 267-275; 2-PA-280-364.) Roseville argued that the Sealing Order precluded the release of the additional records sought by CBS because it would prejudice the criminal investigation and trial, and that Government Code section 7923.625(a)(2) exempted the records from disclosure because to do so would substantially interfere with the ongoing criminal investigation. (1-PA-257-263.) Roseville argued that an in camera review of the records would only be necessary if the court sought to order the records released. (1-PA-263.) CBS argued that the Sealing Order had limited effect on the Trial Court Petition because the Sealing Order relates only to drone footage and a 911 call, not BWC or dash cam footage, and does not override Roseville's obligations under the Public Records Act. (2-PA-285-288.) CBS argued that Roseville had not shown that an exemption applied, that "involving" in Section 7923.625(e) must be interpreted

broadly, and that in camera review was unnecessary. (2-PA-288-293.)

The Trial Court Petition came on for a second hearing on the merits, and the parties made further argument. (2-PA-366-403.) The court then took the matter under submission. (2-PA-403.) The court issued a seven (7) page ruling denying CBS's petition. (2-PA-415-421.) The trial court summarized the facts and set out the Public Records Act provisions at issue. (2-PA-416-418.) The trial court acknowledged that Section 7923.625(e)'s definition of "critical incident" "does not specify any period of time immediately preceding or following the discharge of a firearm that must be disclosed." (2-PA-418:19-20.) The trial court stated that "[r]ecordings of firearm discharge and, seconds before and after, provides insufficient context to satisfy the statute," but added that the court was not determining "how much additional disclosure is required, as the court finds by clear and convincing evidence that an exemption applies." (2-PA-418:27-419:2.)

The trial court acknowledged that Roseville claimed the additional recordings sought by CBS were exempt because further disclosure would substantially interfere with the criminal investigation. (2-PA-419:7-9.) The court rejected CBS's argument that Roseville had waived all exemptions. (*Id.* at 419:9-13) The court stated it was not bound by the Sealing Order and was not relying on that ruling to determine whether an exemption applied. (*Id.* at 419:19-21) The court could, however, rely on evidence presented in support of the Sealing Order. (*Id.* at 419:21-25) The court quoted the prosecution and Abril's joint request at length and found that "the release of various photographs, audio, and video exhibits would interfere with the investigation." (2-PA-420:17-18.) The trial court stated: "After careful consideration, this court finds respondent 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 62-191073.” (*Id.* at 420:18-21)

The trial court denied CBS’s petition, although it directed Roseville to comply “with the procedural requirements of Section 7923.625(a)(2).” (*Id.* at 420:27-28) Roseville “shall reassess withholding and notify the requester every 30 days and any recording shall be disclosed promptly when the specific basis for withholding is resolved.” (2-PA-421:1-3, internal quotation marks omitted.) The trial court’s ruling was filed on October 1, 2024 and mailed to the parties the following day. (2-PA-415, 423.) CBS timely filed this Writ Petition on October 25, 2024.

Standard of Review

Roseville agrees that the “interpretation of the CPRA and its application to undisputed facts present questions of law subject to de novo appellate review.” (CBS’s Writ Petition (“Pet.”) 29, internal quotation marks omitted; *L. A. Unified School Dist. v. Super. Ct.* (2014) 228 Cal.App.4th 222, 236-237.)

The trial court’s finding that “further disclosure would substantially interfere with the ongoing, active investigation” is reviewed for “substantial evidence.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011.) “[T]he question before the appellate 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.” (*Ibid.*) “[A]n appellate court reviewing such a finding is to view the record in the light most favorable to the judgment below; it must indulge reasonable inferences that the trier of fact might have drawn from the evidence[.]” (*Id.* at 1008.)

Discussion

- A. The additional records CBS seeks do not come within Section 7923.625(e)'s "critical incident" exception for records that "depict" an incident involving the discharge of a firearm at a person by a police officer**
- 1. Law enforcement investigatory records are generally exempt from disclosure**

The Public Records Act maintains a "substantive balance between the public's right of access to information concerning the conduct of public business and competing interests." (Assem. Bill No. 473 (2021 – 2022 Reg. Sess.) § 8, subd. (a) ("AB 473").) "[T]he act recognizes that certain records should not, for reasons of privacy, safety, and efficient governmental operation, be made public." (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1064 (*Haynie*).) "The Legislature has assembled a diverse collection of exemptions from disclosure...." (*Id.* at 1068.) One long-standing exemption is for law enforcement investigatory records and investigatory files—the "Investigation Exemption." (Gov. Code, § 7923.600, subd. (a).) The Investigation Exemption was previously codified at Section 6254(f) (*Haynie, supra*, 26 Cal.4th at p. 1068), and was recently recodified at Section 7923.600 (*Castañares v. Super. Ct.* (2023) 98 Cal.App.5th 295, 305-306 (*Castañares*); AB 473 § 2, div. 10).

The Supreme Court has characterized the Investigation Exemption as a "broad" exemption. (*Williams v Super. Ct.* (1993) 5 Cal.4th 337, 348.) Courts have repeatedly applied it to protect law enforcement investigatory records from disclosure, including audio and video recordings like those sought by CBS. (E.g., *Castañares, supra*, 98 Cal.App.5th at p. 310 (drone footage); *Haynie, supra*, 26 Cal.4th at p. 1067 (recordings of radio broadcasts, tape recordings of suspect's conversations with sheriff's deputies during stop, and any statements from the suspect).)

CBS argues that the records it seeks are “presumptively open public records” and any claimed exemption must be “narrowly construed” and “proved by the City.” (Pet. 29-31.) As indicated above, the Investigation Exemption specifically applies here. CBS argues that the newly-adopted carve-out for investigatory records depicting a “critical incident” applies to the additional records it seeks. That is a question of statutory interpretation, about which neither party bears the burden of proof. The critical incident exception does not apply here and, even assuming it did, the trial court’s finding that further disclosure would substantially interfere with the active investigation in the Criminal Case is supported by substantial evidence.

2. Section 7923.625(e)’s “critical incident” carve-out applies to records that “depict” an incident involving the discharge of a firearm, and not the larger criminal event that might come before or after it

The Legislature recently amended the Investigation Exemption to treat certain “critical incident” records differently from other investigatory records. (Gov. Code, § 7923.625.) Section 7923.625(e) states that “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[;]” and “(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.*, at § 7923.625, subd. (e).) The parties dispute how to interpret this language. “If the statutory language is clear and unambiguous, the plain meaning of the statute governs.” (*Absher v. AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 339 quoting *People v. Lopez* (2003) 31 Cal.4th 1051, 1056.)

Section 7923.625(e) embraces a recording only if it “depicts” either of the two types of incidents. The statute does not define “depicts.” However, the Supreme Court has equated “depicts” with “show.” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 952 quoting *People v. Mayfield* (1997)

14 Cal.4th 668, 747, which was abrogated on another ground in *People v. Scott* (2015) 61 Cal.4th 363, 390 fn. 2 (“A video recording is authenticated by testimony or other evidence ‘that it accurately depicts what it purports to show.’”).) Merriam-Webster’s online dictionary offers a similar definition of “depict:” “to represent by or as if by a picture.” (<https://www.merriam-webster.com/dictionary/depict>, definition #1.) Section 7923.625(e) embraces a recording only if it “shows” or “represents” either of the two types of listed incidents.

The parties have focused on the first type of incident, “An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.” The parties dispute how to interpret the phrase “incident involving.” CBS argues the phrase means the time from Roseville PD’s arrival on scene to the scene being secured and the suspect in custody—about one hour. (Pet. 41-42.) Roseville contends the phrase means the context leading up to the discharge, the discharge itself, and the officer’s disengagement following the discharge—here no more than thirty-nine (39) seconds for each discharge. The statute does not define “incident involving,” but Court of Appeal decisions and California Department of Justice (“CalDOJ”) policy in closely-related contexts offer guidance.

In *Castañares* the petitioner made a Public Records Act (“PRA”) request for over ninety-one (91) hours of video footage captured by a city’s police department using a drone. (*Castañares*, *supra*, 98 Cal.App.5th at 307.) The Court stated that it expected that some footage was either part of an investigatory file or used to determine if a crime had occurred and was thus protected by the Investigation Exemption. (*Id.* at 310.) Some other footage was used only to make a factual inquiry to determine what kind of assistance is required, and would not be protected by the Investigation Exemption. (*Ibid.*) “The drone video footage should not be treated as a monolith, but rather, it can be divided into separate parts corresponding to

each specific call.” (*Id.* at 312.) *Castanares* shows that different parts of a single recording may be categorized differently under the PRA. Here that means that portions of a recording that depict an incident involving a firearm discharge may be treated as a “critical incident” recording, while other portions of that recording may not.

CalDOJ policy on police shooting investigations confirms that “incident involving” a firearm discharge means the context leading up to the discharge, the discharge itself, and the officer’s disengagement following the discharge. Law enforcement agencies have long had a standard practice of reviewing an officer’s use of force, including firearm discharges, and such “use of force” reviews are now required by law. (Pen. Code, § 835a, Gov. Code, § 7286.) CalDOJ has promulgated a set of guidelines for certain use of force reviews (“Guidelines”). (1-PA-124-155.) The CalDOJ Guidelines state that the incident involving the officer involved shooting is distinct from the larger criminal event. (1-PA-124-155.) It states:

Any other criminal investigations associated with the [officer involved shooting] will be the responsibility of the appropriate [law enforcement agency]. For example, the unarmed civilian decedent was driving a stolen car and committing a bank robbery prior to the [officer involved shooting] incident, the investigation of the stolen vehicle and bank robbery would be the responsibility of the appropriate [law enforcement agency] that has jurisdiction.

(*Ibid.*)

The CalDOJ Guidelines demonstrate that portions of a recording that depict an incident involving a firearm discharge may be treated as a “critical incident” recording while other portions of that recording that concern a larger criminal event should not be treated that way.

Merriam-Webster’s online definitions of “incident” and “involving” are consistent with this. “Incident” means “an occurrence of an action or

situation that is a separate unit of experience.” (<https://www.merriam-webster.com/dictionary/incident>, definition #1.) “Involving” means “to have within or as part of itself : include.” (<https://www.merriam-webster.com/dictionary/involving>, definition #2.) An incident involving a firearm discharge is an action or situation that is a separate unit of experience that includes a firearm discharge.

3. Section 7923.625(e) does not require that Roseville disclose recordings after the shots were fired and Roseville PD pivoted to a hostage situation

CBS argues that Section 7923.625(e) requires that Roseville disclose recordings from the time of Roseville PD’s arrival on scene to the time the scene was secured and the suspect in custody. (Pet. 41-42.) This time period covers not only the initial few minutes when Roseville PD discharged their weapons at the suspect in an effort to contain him, but also the time period when Roseville PD had pivoted to a hostage situation and fired no shots. CBS’s argument is supported by neither the statute’s plain language, its legislative history, nor public policy.

CBS contends that Roseville’s interpretation of Section 7923.625(e) reads “relates to” out of the statute, and that phrase must be broadly construed. (Pet. 42-43.) That phrase is defined in the statute itself: “A video or audio recording that *relates to* a critical incident, *as defined in subdivision (e)*, may be withheld only as follows.” (Gov. Code, § 7923.625, emphasis added.) Subdivision (e) states that a 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.” (*Id.* § 7923.625, subd. (e), emphasis added.) The statute has already defined “relates to” as requiring that the recording “depict” an “incident involving” There is no occasion for CBS to substitute its own interpretation of that phrase.

CBS similarly argues that Roseville’s interpretation of Section 7923.625(e) reads “incident involving” out of the statute. (Pet. 42-44.) If that were true, Roseville would have only disclosed the instance of actual firearm discharge, about one to two seconds for each discharge. Roseville has accounted for the words “incident involving” by also disclosing the before and after. CBS argues that “involving” is a “capacious not stingy word.” (Pet. 43-44, citing *San Diego Unified School Dist. v. Yee* (2018) 30 Cal.App.5th 723, 732-733 (*Yee*), *Judicial Watch, Inc. v. U. S. Dept. of Defense* (D.C. Cir. 2013) 715 F.3d 937, 941 (*Judicial Watch*).) Both cases are distinguishable. *Yee* interprets “related to,” not “involving.” (*Yee*, *supra*, 30 Cal.App.5th at pp. 732-733.) *Judicial Watch* held that 52 post-mortem images of Osama bin Laden taken during the operation that resulted in his death were protected from disclosure under the Freedom of Information Act because they “pertain” to foreign activities of the United States, as every image documents events “involving” American military personnel thousands of miles outside of American territory. (*Judicial Watch*, *supra*, 715 F.3d at p. 941.) The Court of Appeal has treated “involving” as a limiting term. (*People v. Coca* (2023) 96 Cal.App.5th 451, 458-460 (holding that receiving stolen property was not a crime “involving” moral turpitude); see also *Prudencio v. Holder* (4th Cir. 2012) 669 F.3d 472, 481 (refusing to interpret “involving” in “crime involving moral turpitude” expansively).)

CBS argues that its reading of Section 7923.625(e) is support by *Moore v. City and County of S. F.* (N.D. Cal., Dec. 10, 2020, , No. 18-CV-00634-SI) 2020 WL 7260530 (*Moore*). (Pet. 44-45.) *Moore* is inapposite. There the defendant local agency in a civil rights lawsuit moved to seal body camera footage from a 12-minute encounter between the plaintiff and police officers. (*Id.* at pp. *1-*3, *7.) The court denied the motion relying in part on Penal Code section 832.7(b), which applies to personnel records.

(*Id.* at p. *7.) That section does not define “relating to” as “depict” or require that the personnel record “depict” the “incident involving” firearm discharge at all. (*Ibid.*) The court ordered only the “relevant” footage be made public. (*Ibid.*)

CBS contends Roseville wrongfully “adds” words to Section 7923.625(e) to say it requires depictions of “actions.” (Pet. 45, citing 1-PA-111, 113, 117.) Roseville did not add anything. “Actions” is merely a shorthand way to sum up Roseville’s interpretation of Section 7923.625(e) as embracing the context before the shots fired, the actual firearm discharge, and the officer disengaging after firing. (See 1-PA-111, 113, 117.) This is in contrast to CBS’s unsupported interpretation that Section 7923.625(e) extends to the entire “timeline” starting when Roseville PD arrived on scene, and ending when the scene was secured and the suspect was taken into custody. (1-PA-111.)

CBS asserts that Roseville “suggested” in its brief below that Roseville need disclose recordings depicting only Roseville PD’s weapon discharges, and not also CHP’s. (Pet. 45-46, citing 1-PA-104.) Roseville’s trial brief does not say that. (1-PA-104.) Roseville stated at the hearing that it has no recordings of CHP’s firearm discharges to disclose. (1-PA-223:1-224:1.) CBS complains that Roseville stated in its PRA response that Roseville PD officers “exchanged gunfire” with the suspect “between approximately 12:38 pm and 12:57 pm.,” but then in its trial brief Roseville “shrank” the period of Roseville PD’s gunfire to less than three (3) seconds. (Pet. 46, citing 1-PA-9, 23, 53, 104.)

This is not an accurate representation of the record below. Roseville stated in its trial brief that it “took less than three (3) seconds for all six (6) shots to be fired,” and the “entire incident involving the discharge of a firearm by Roseville PD lasted only a few minutes at the beginning of their response.” (1-PA-104.) Roseville originally stated that it exchanged

gunfire until 12:57 p.m. because that is the latest time stamp on any of the four BWC recordings, BWC #4. (See Roseville Produced Records, <https://f.io/tSfZIVTu>, BWC #4.) Roseville later determined that BWC #4 was not accurate to the actual time of day due to a docking station issue, but that the actual time was closer to the other three (3) BWC clips that were produced. Roseville alerted CBS to the issue in Roseville's answer and provided an explanation in Roseville's trial court brief. (1-PA-58:7-9, 106:19-24.)

CBS contends that the BWC clips Roseville produced, thirty-nine (39) seconds in each of the four (4) BWC clips, is "totally arbitrary." (Pet. 46.) That is not the case. Each of the four (4) BWC clips shows at minimum the context before the shot or shots fired, the actual firearm discharge, and the officer disengaging after firing. The clips are over-inclusive in showing these things. Because each clip depicts at least the incident involving the firearm discharge, it does not matter that they are all the same length. Section 7923.625 provides: "An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this section." (Gov. Code, § 7923.625, subd. (c).)

4. Section 7923.625's legislative history confirms that its "critical incident" carve-out applies to records that "depict" an incident involving the discharge of a firearm, and not the larger criminal event that might come before or after it

CBS argues that Section 7923.625 should be interpreted to require disclosure of recordings from Roseville PD's arrival on scene to when the scene was secured and the suspect taken into custody based on comments attributed to the bill "author" in a television news program. (Pet. 32.) This is an incomplete picture of legislative intent. The Legislature enacted Section 7923.625 through the passage of AB 748. AB 748 initially proposed a significant change to the PRA's "broad," decades-old

Investigation Exemption. But there was significant opposition to the bill due to the concern over the integrity of criminal investigations and the privacy interests of victims, suspects, witnesses, and officers. AB 748's proponents had to make many concessions in order to get the bill passed, including limiting Section 7923.625's application to only two narrowly-defined "critical incidents." An AB 748 legislative bill analysis states:

- 6) Recent amendments narrow the bill to address oppositions' concerns:** In seeking to address a number of concerns raised by the opposition, the author has agreed to a variety of amendments. . . .

Notably, the author also limited this bill to "critical incidents," defined as an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or 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.

(1-PA-168-169, emphasis in original.)

The purpose of AB 748 was to provide the public access to audio or video recordings of the incident involving the discharge of the firearm, not every minute of an underlying criminal event. The California News Publishers Association, who was a co-sponsor of AB 748, made a statement that supports this view.

The public's interest in public access to information about law enforcement activity is "particularly great" when an officer fires a gun, or uses force that results in serious bodily injury or death. Regular disclosure *of this footage* reassures the public that law enforcement is not suppressing facts to support its version of events in critical incidents.

(1-PA-167, emphasis added.)

The legislative history, along with the plain language of the statute, makes clear that the bill intentionally and narrowly defines "depicts" an

“incident involving” to mean in relation to “discharge of a firearm at a person by a peace officer,” not the entire criminal event in which such discharge occurred.

5. Public policy considerations do not require Roseville to disclose more recordings

CBS argues that considerations of public policy support the disclosure of all records sought by CBS, that is recordings from the time Roseville PD arrived on scene to when the scene was secured and the suspect taken into custody. (Pet. 47-50.) Public policy dictates the opposite.

The trial court correctly observed that Section 7923.625(e) “does not specify any period of time immediately preceding or following the discharge of a firearm that must be disclosed.” (1-PA-418:19-20.) CBS does not dispute that Roseville provided CBS with two (2) audio clips and four (4) BWC clips with firearm discharges, and that each of the firearm discharges took 1-2 seconds. Nor does CBS dispute that each of the four (4) BWC clips Roseville produced was thirty-nine (39) seconds long, and some of this thirty-nine (39) seconds depicts the incident involving the discharge before the weapon is fired, or “context,” and some of this time depicts the incident involving the discharge after the weapon is fired, when the officer is disengaging. CBS wants more time, nearly an hour more. But there is no policy justification for that.

That amount of time does not advance the Section 7923.625(e)’s goal of preserving the confidentiality of investigative records while enhancing public access to audio and video recordings depicting police officer firearm discharges and certain other uses of force. What if the suspect here had fled and forced a multi-day manhunt? Under CBS’s interpretation these several days of manhunt recordings would have to be disclosed even though those recordings from other days would shed no

light on the first day's discharges. CBS's interpretation would swallow the Investigation Exemption.

CBS speculates that "minutes" leading up to the firearm discharge and more time after it might capture additional context and further explain the officer's decision to fire. (Pet. 47-48.) Roseville is entitled to a presumption that it has "...reasonably and in good faith complied with the obligation to disclose responsive information." (*American Civil Liberties Union of Northern Cal. v. Super. Ct.* (2011) 202 Cal.App.4th 55, 85.) This includes a presumption that Roseville has disclosed all recordings showing the context for each firearm discharge. The radio and BWC clips produced themselves demonstrate that the context has been provided.

CBS contends that more is needed because an officer might make after-the-fact comments about "what they did and who they shot[.]" (Pet. 48.) That sounds like a reaction to the incident, not a depiction of it. Section 7923.625(e) carves out for disclosure objective evidence of the incident, namely the recordings themselves, not subjective reactions to the incident. CBS also asserts that an officer might follow the firearm discharge with a different use of force that results in bodily injury or death. But CBS acknowledges that would be disclosed anyway as a critical incident. (Pet. 48, citing Gov. Code, § 7923.625, subd. (e)(2).) CBS's conclusion that Roseville has made a "unilateral decision not to provide meaningful context" is speculation. (See Pet. 48.)

CBS contends that Roseville's interpretation of Section 7923.625 must be wrong because it is an "outlier among other law enforcement agencies." (Pet. 48-50.) CBS argues that these other agencies release more because the law requires it—characterizing CBS's argument as the "more obvious explanation." (Pet. 50.) This is speculation. Section 7923.625(c) permits a law enforcement agency to release *more* audio or video than the narrow categories required by law to be disclosed. Whether another agency

has elected to release more than required is irrelevant to determining what Roseville is required to disclose. For example, CBS holds up LAPD's disclosure practices as Section 7923.625 compliant. LAPD's own Release Policy states: "This release shall consist of relevant video imagery that *depicts the actions and events leading up to and including the 'Critical Incident.'*" (1-PA-158, emphasis added.) LAPD's policy requires no more than what Roseville has done here.

B. Even assuming the additional records sought by CBS come within the "critical incident" exception, the trial court correctly found they are exempt from disclosure under Section 7923.625(a)(2) because disclosure would substantially interfere with an active investigation

1. An agency may withhold critical incident recordings if disclosure would substantially interfere with an active investigation

Even if the additional records sought by CBS come within the "critical incident" exception, they need not be disclosed. The trial court correctly found they are exempt from disclosure under Section 7923.625(a)(2) because disclosure would substantially interfere with an active criminal investigation. The showing an agency must make to invoke this "active investigation" exemption varies depending on how much time has elapsed. Where, as here, more than a year has passed, the agency must demonstrate that "disclosure would substantially interfere with the investigation[]" by "clear and convincing evidence[.]" (Gov. Code, § 7923.625, subd. (a)(2).) In that event, the "...agency shall reassess withholding and notify the requester every 30 days[.]" and disclose the record "...when the specific basis for withholding is resolved." (*Ibid.*)

2. Substantial evidence supports the trial court's finding that there is an active criminal investigation

The suspect in Roseville's recordings is the defendant in a criminal

proceeding pending in Placer County Superior Court, case number 62-191073 (“Criminal Court” and “Criminal Case”). (1-PA-270, 272-274.) The Criminal Court held a preliminary hearing a week before the first hearing on CBS’s Trial Court Petition. (*Ibid.*; 1-PA-187-239.) The matter is still pending and has not yet gone to trial. The trial court’s finding that there is an active criminal investigation is supported by substantial evidence. (2-PA-419-420.)

CBS emphasizes that the standard of proof is clear and convincing evidence, such that a “reasonable fact finder could have found it highly probable that the fact was true.” (Pet. 33-34.) The trial court acknowledged that is the standard of proof, and found that the standard had been met. (2-PA-419, 420.)

CBS argues Roseville presented no evidence of an active investigation. Not so. Roseville presented the prosecution’s and Abril’s joint request (“Joint Request”) for a Sealing Order from the Criminal Case. CBS points out that the Joint Request did not itself use the word, “investigation.” (Pet. 34-36.) That does not matter. The fact of active investigation is evident from the Joint Request and its context. The Sealing Order granted the Joint Request, stating that the “on-going investigation” will be prejudiced without sealing. (1-PA-270:9.) CBS argues that the trial court did not “actually identify” an active investigation in its October 1, 2024 Order denying CBS’s Trial Court Petition (“Petition Order”). (Pet. 35.) The Petition Order quotes extensively from the Joint Request, which, with the Sealing Order, is in the record (1-PA-270, 272-274), and the Petition Order identifies the Criminal Case by case number. (2-PA-420.) It does not matter that the Petition Order said it was not relying on the criminal court’s ruling to determine whether an exemption applied. (Pet. 35 fn. 8; see 2-PA-419.) The Petition Order stated this in the context of a statement that no authority was provided that the court “is bound by a

sealing order.” (2-PA-419:20.) “The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58 (*Fladeboe*).)

CBS contends there was “some suggestion below” that Roseville declined to disclose the additional recordings requested by CBS because of the mere pendency of the “criminal court proceedings.” (Pet. 35.) CBS’s contention is not supported by a record citation. (*Ibid.*) CBS argues this matters because while Penal Code section 832.7 authorizes withholding records once “criminal charges are filed,” Section 7923.625(a)(1) does not. (*Ibid.*) This is irrelevant. The Investigatory Exemption has long been framed in terms of records of “investigations” and “investigatory” files, and video and audio recordings have long been exempt regardless whether criminal proceedings were contemplated or not. (See Gov. Code, § 7923.600; *Haynie, supra*, 26 Cal.4th at pp. 1067-1068.) Investigations remain active through trial and sentencing. (*Smith v. Super. Ct. of Sac. County* (2020) 52 Cal.App.5th 57, 69 (“A defendant in a criminal proceeding has constitutionally protected rights to prepare his or her defense, including the right to investigative and ancillary defense services[.]”); *Corenevsky v. Super. Ct.* (1984) 36 Cal.3d 307, 312-313 (the constitutional right to investigative and ancillary defense services is “a necessary corollary of the right to effective assistance of counsel[.]”); *People v. Doolin* (2009) 45 Cal.4th 390, 453 (“A criminal defendant has a constitutional right to counsel at all critical stages of a criminal prosecution, including sentencing.”).)

3. Substantial evidence supports the trial court’s finding that disclosure would substantially interfere with the investigation

The Joint Request for a Sealing Order in the Criminal Case stated

that the Criminal Case has generated an extreme level of publicity. (1-PA-272.) Prosecutors intended to present a number of images of items of evidence at the preliminary hearing, and that it would create “traumatic publicity for the victims and would greatly impair the defendant’s ability to receive a fair jury trial” if the images were released to the public. (*Id.* at 273.) The Petition Order quoted the request at length before finding that disclosure of the additional recordings sought by CBS would substantially interfere with the Criminal Case investigation. (2-PA-419-420.) The trial court’s findings are supported by substantial evidence.

CBS contends that Roseville never provided the 30-day updates required by Section 7923.625(a)(2) and said earlier it was not invoking an exemption, and has therefore waived it. (Pet. 36.) Roseville invoked the active investigation exemption before CBS filed its lawsuit, and relied on it as an alternative basis to withhold the additional records sought by CBS. (1-PA-24, 44, 115-117.) CBS cites no authority in support of its contention that not providing 30-day updates or Roseville’s other acts or omissions regarding this exemption result in waiver. Roseville has not waived this exemption.

CBS argues that the Joint Request for a Sealing Order does not constitute substantial evidence supporting the trial court’s finding that disclosure would substantially interfere with the investigation. (Pet. 37.) CBS contends that the Joint Request was not premised on the BWC footage requested here. (Pet. 38-39.) The Joint Request was premised on drone footage (2-PA-297 no. 56) and one or more of the many listed photos may have been made from BWC footage (See 2-PA-296-297, nos. 1-43, 49, 57-60). The trial court could have reasonably found that public release of the additional recordings requested by CBS would have also substantially interfered with the investigation, based on the length and contents of the Joint Request exhibit list.

CBS also argues that the Joint Request for a Sealing Order does not constitute substantial evidence to support the trial court's finding that disclosure would substantially interfere with the investigation because the request does not identify any interference with an investigation, just a "concern" about "traumatic" impacts on victims and Abril's "fair trial right." (Pet. 37.) The law does not set so high a bar. Courts may rely on a combination of expert opinion, common sense, and human experience to form their conclusions about likely consequences of a disclosure. (*Los Angeles Unified School Dist. v. Superior Court*, *supra*, 228 Cal.App.4th at p. 245 ("Courts have not necessarily required conclusive evidence that the feared consequences of public disclosure would actually occur[]"); *Humane Society of the U.S. v. Super. Ct. of Yolo County* (2013) 214 Cal.App.4th 1233, 1258-1259 (relying on expert opinion and human experience to draw conclusions on chilling effect on academic research from release of records).) There was already a great deal of publicity about the Criminal Case. (1-PA-272-273.) The court could have reasonably concluded that release of evidence about the Criminal Case would have substantially interfered with the investigation based on the evidence that its release would have caused trauma to the victims and interfered with Abril's right to a fair trial. That release could have made it more difficult to obtain the cooperation of witnesses and gather evidence as part of the investigation.

CBS argues that the trial court's Petition Order did not identify what kind of substantial interference might accompany release of the records sought. (Pet. 38.) CBS cites no authority that the trial court was required to elaborate on its ruling. This Court must infer that the trial court made all factual findings necessary to support the judgment. (*Fladeboe*, *supra*, 150 Cal.App.4th at p. 58.)

CBS contends that the trial court's mere "reference" to the Sealing

Order is “misplaced.” (Pet. 39.) CBS then argues at length that the mere existence of a sealing order does not operate as an injunction with respect to a public records act request. (Pet. 39-40.) CBS’s argument is beside the point. None of its cited authorities concern the Public Records Act, but rather the federal Freedom of Information Act (“FOIA”). The Sealing Order was issued pursuant to California Rule of Court 2.550. This rule codified *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.* (1999) 20 Cal.4th 1178, which held that the public’s interest and right to access records and court proceedings under the First Amendment may be limited if the court makes the required findings of an overriding interest. (*Id.* at 1217-1218.) Government Code section 7927.705 provides that the Public Records Act does not require disclosure of records which are exempted or prohibited from disclosure pursuant to federal or state law. The Supreme Court has held that the rules exempting law enforcement investigatory records—now codified at Sections 7923.600 to 7923.625—should not be interpreted as it incorporated FOIA criteria because the Legislature amended this part of the PRA in ways that differ from FOIA on this issue. (*Williams v. Superior Court, supra*, 5 Cal.4th at pp. 348-354.)

CBS nit-picks the Sealing Order, arguing that it states only the on-going investigation will be prejudiced if the “affidavit” is not sealed. (Pet. 39 fn. 9.) The entire Sealing Order and its context confirms it determined that the on-going investigation will be prejudiced if all the materials presented at the preliminary hearing are not sealed. (1-PA-270, 272-274.) CBS further contends that the Sealing Order applied a lower standard of proof than clear and convincing. (Pet. 39 fn. 9.) But the Sealing Order’s characterization of the standard, “substantial probability,” is a fair approximation of the clear and convincing standard, “highly probable.” (*Conservatorship of O.B., supra*, 9 Cal.5th at p. 1011.)

The trial court found that disclosure would substantially interfere

with an ongoing investigation. Its finding is supported by substantial evidence. Even if it is not, the active investigation exemption still applies because the Sealing Order made that finding.

C. The additional records sought by CBS are also protected from disclosure by the right to privacy

Section 7923.625's carve out for records of a "critical incident" also contains an exception to protect the privacy of third parties. It states that an agency may withhold a video or audio recording where release of the recording would "...violate the reasonable expectation of privacy of a subject depicted in the recording[.]" (Gov. Code, § 7923.625, subd. (b)(1).) The agency may withhold the recording if it demonstrates that the public's interest in withholding the recording clearly outweighs the public's interest in disclosure because of the subject's reasonable expectation of privacy. (*Ibid.*)

Abril took two hostages here. He shot both, and killed one. The additional recordings sought by CBS include footage of this. CBS claims Roseville "made no effort" to demonstrate that disclosure would "violate any person's reasonable expectation of privacy" or put this "determination in writing." (Pet. 51-52.)

This is belied by the record. Roseville's initial PRA response letter stated that Roseville was withholding additional responsive records "[o]ut of respect for the privacy of the victims involved[.]" (1-PA-24.) Roseville elaborated on the victims' right to privacy in subsequent correspondence with CBS: "Given the nature of this specific criminal event, the victims and their family do not deserve to have to watch that day play out over and over[.]" (1-PA-44.) Roseville cited the victims' and their family members' right to privacy in its papers below and argued it at one of the hearings on the Trial Court Petition. (1-PA-114:22-23, 205:21-206:7.) Roseville explained that the drone footage, which was shown at the preliminary

hearing in the Criminal Case and ordered sealed, shows the suspect committing “heinous acts.” (1-PA-205:21-206:7.)

CBS argues that no privacy rights are implicated because “the entire incident took place in a public park filled with bystanders.” (Pet. 51.) The victims did not volunteer to be taken hostage nor shot. They did not waive their right to privacy. (See *Thompson v. Spitzer* (2023) 90 Cal.App.5th 436, 458 (misdemeanants adequately alleged that they did not provide knowing and voluntary waivers of their right to privacy when they signed forms to participate in program that authorized prosecutors to obtain DNA samples from alleged misdemeanants in exchange for dropped or reduced charges).)

CBS argues that the victims no longer have a privacy interest in the additional recordings sought by CBS because CHP has already released seven hours of footage of that day’s events. (Pet. 51.) A release of one recording does not diminish the privacy interests in different recordings. (*Pasadena Police Officers Assn. v. Super. Ct. of L.A.* (2015) 240 Cal.App.4th 268, 294 (“Absent an express waiver of the privilege with respect to the confidential personnel information found in the Report, the officers retain *Pitchess* protections as to that information, even if the information is the same as or similar to information available elsewhere in the public domain.”).)

CBS contends that Roseville’s argument would mean that nearly any recording “related to” officer-involved shootings could be withheld. (Pet. 51.) Not so. The recordings Roseville seeks to withhold on grounds of privacy show both victims. One victim is not moving, presumably having already been shot by the suspect. The other victim is being held hostage and then shot by the suspect. These recordings do not show Roseville shooting at anyone. (1-PA-205:18-22.) CBS argues that Roseville’s “first remedy” would be to redact the recordings. (*Id.*, citing Gov. Code, §

7923.625, subd. (b).) Section 7923.625(b) provides only that an agency “may” use redaction technology, not that it must. (Gov. Code, § 7923.625, subd. (b)(1).) CBS contends that CHP has already released “similar” footage and Roseville cannot show how release of additional recordings would either interfere with law enforcement or personal privacy. (Pet. 51-52.) Again, CHP’s release of similar footage does not eliminate the victim’s and surviving family members’ privacy interest in different footage. (See *Catsouras v. Dept. of Cal. Highway Patrol* (2010) 181 Cal.App.4th 856, 864, 874 (surviving family members have a privacy right in the death images of a decedent).) Their privacy interest in footage showing one victim already shot by the suspect and the second victim held hostage and then shot by the suspect clearly outweighs the public’s interest in disclosure because this additional footage does not show Roseville PD shooting at anyone. Other information about the criminal event is available to CBS. (E.g., Apr. 6 RPD Press Release. See Gov. Code, § 7923.610 (requiring agency, subject to certain exceptions, to make public arrest information, including the name of the arrestee, facts surrounding the arrest, and charges); *City of San Jose v. Super. Ct.* (1999) 74 Cal.App.4th 1008, 1011-1012 (PRA requester not entitled to names and addresses of people who complained about airport noise where agency made a monthly “noise report” that provided “a wealth of information about airport noise complaints”).)

Conclusion

For the foregoing reasons, Roseville respectfully requests that the Order to Show Cause be discharged and CBS's Writ Petition denied.

Dated: December 27, 2024

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