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. SCV0052277
On Appeal From Placer County Superior Court
Honorable Glenn Holley

ANSWER TO AMICUS CURIAE BRIEF OF FIRST AMENDMENT COALITION, ET AL.

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Introduction

The amicus brief filed by the First Amendment Coalition, et al. ("Coalition Amici") fails to show that the additional recordings sought by CBS should be disclosed. Coalition Amici argue that the California Constitution requires that the Public Records Act's Investigation Exemption and newly-adopted Critical Incident carve-out must be construed broadly in favor of transparency, and narrowly against secrecy. Yet Coalition Amici's cited constitutional provisions demonstrate that that rule of construction does not apply here. Article I, section 3 expressly preserves statutes "protecting the confidentiality of law enforcement and prosecution records." (Cal. Const., art. I, § 3, subd. (b)(5).) It also states that it does not "affect[] the construction of any statute" to the extent it "protects th[e] right to privacy" (*id.*, subd. (b)(3)), and does not modify due process rights (*id.*, subd. (b)(4)). This includes a criminal defendant's right to a fair trial. (Cal. Const., art. I, § 15.)

Coalition Amici contend that Assembly Bill 748's ("AB 748") legislative history shows that it must be interpreted to require the City of Roseville ("Roseville") to disclose all recordings from the time officers first respond to the time the scene is secured. One of Coalition Amici's cited legislative committee analyses, a copy of which is attached as Attachment 2, shows that AB 748 "seeks to strike a balance between the competing interests of privacy, public safety, and the people's right to know what is happening in their government." (Sen. Judiciary Com., Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 2 (Background); Attachment 2. See Coalition Amici Amicus Brief ("CAB") 18, citing this committee analysis at p. 7.) Roseville's disclosed body worn camera ("BWC") recordings, which show the context before the shot or shots fired, the actual firearm discharge, and the officer disengaging after firing, satisfy this standard and strike that appropriate balance the

Legislature intended.

The additional recordings sought by CBS show a hostage situation, including the suspect holding one hostage at gunpoint, the suspect shooting that hostage, and the other hostage lying motionless, presumably having already been shot by the suspect. The additional recordings sought by CBS do not show shots fired by a police officer. They are protected from disclosure to protect public safety and privacy interests.

Coalition Amici argue that recordings from the hostage situation should be disclosed because "the public has a strong interest in learning whether officers promptly rendered first aid, secured the scene, and refrained from contaminating or planting evidence." (CAB 19.) This argument is disconnected from AB 748's adopted language and legislative history. Coalition Amici's cited legislative history recognizes that "failing to protect the privacy of individuals may have the unintended consequence of chilling the public's willingness to engage with police investigations," and "may also cause undue harm to victims and their survivors." (1-PA-166-167. See CAB 17, quoting this report at 1-PA-165.)

Coalition Amici claim that Roseville did not prove that disclosure would substantially interfere with an active investigation. Yet the prosecution's and Abril's joint request ("Joint Request") to seal exhibits presented during the preliminary hearing ("Sealing Order") (1-PA-272-274) shows an ongoing investigation by the prosecution and Eric Abril's ("Abril") criminal defense counsel, both of which are protected by the active investigation exemption. The Criminal Case has generated intense media interest. Disclosure of the hostage situation recordings might make witnesses especially hostile to the accused, unsympathetic to the victims, or angry at Roseville for making the recordings and releasing them. Disclosure might cause the surviving victim and the victims' family to suffer additional trauma. The trial court could have reasonably concluded

that disclosure would have caused witnesses, the surviving victim, and the victims' family to refuse to cooperate with the investigation as a result. The trial court's finding that disclosure would substantially interfere with an active investigation is supported by substantial evidence under a clear and convincing standard.

Coalition Amici also argue that the additional records sought by CBS may not be withheld under the Public Records Act's privacy or catch-all exemptions. The intense media coverage and recordings' depiction of a hostage situation and suspect's shooting of the victims demonstrate the privacy interests of the surviving victim and the victims' family. The Critical Incident carve-out's statutory language confirms that the catch-all exemption is available as an alternative basis to protect the recordings from disclosure. Disclosure would not only interfere with the Criminal Case investigation and violate the surviving victim and victims' family's right to privacy, it would also prevent Abril from getting a fair trial and undermine the Criminal Court's Sealing Order.

Discussion

A. Coalition Amici's cited California Constitution provisions on government transparency preserve statutes "protecting the confidentiality of law enforcement and prosecution records," and neither apply to the construction of a statute "to the extent it protects th[e] right of privacy" nor limit a criminal defendant's right to a fair trial

Coalition Amici argue that AB 748's newly-adopted carve-out for investigatory records depicting a "critical incident" must be interpreted to require disclosure of all recordings "from the time officers first respond to the time the scene is secured." (CAB 16.) Coalition Amici argue this is required "especially in light of the constitutional mandate to construe the statute broadly in favor of transparency and narrowly against secrecy." (*Id.*, citing Cal. Const., art. I, § 3, subd. (b)(2); *Sierra Club v. Superior*

Court (2013) 57 Cal.4th 157, 175.) Coalition Amici's cited authorities do not support their argument.

Article I, section 3(b)(5), on law enforcement records, states: "This subdivision *does not repeal or nullify, expressly or by implication, any constitutional or statutory exception* to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, *any statute protecting the confidentiality of law enforcement and prosecution records*." (Cal. Const., art. I, § 3, subd. (b)(5) (emphasis added).) The Investigation Exemption at Government Code section 7923.600 expressly applies here. There is no basis to narrowly construe it, in light of this constitutional provision affirming that protection.

Article I, section 3(b)(3), on the right to privacy, states: "*Nothing* in this subdivision *supersedes or modifies* the *right of privacy* guaranteed by Section 1 *or affects the construction of any statute*, court rule, or other authority *to the extent that it protects that right to privacy, including* any statutory procedures governing discovery or *disclosure of information concerning the official performance* or professional qualifications *of a peace officer*." (*Id*., subd. (b)(3) (emphasis added).) This provision expressly supersedes other rules of construction, including Section 3(b)(2)'s rule of construction advocated by Coalition Amici.

Section 3(b)(2) does not apply to statutes to the extent they protect the right to privacy, including information concerning the official performance of a peace officer. The Investigation Exemption at Government Code section 7923.600 is such a statute. (Gov. Code, § 7923.625.) It protects law enforcement investigatory records and investigatory files, which may contain information about suspects, victims, witnesses, and peace officers. (*See id*. at subd. (a).) The Critical Incident carve-out at Government Code section 7923.625 treats certain records

concerning the official performance of a peace officer, namely recordings depicting incidents involving peace officer firearm discharges and certain uses of force, differently from other investigatory records. (*Id*. at subd. (e).) The Critical Incident carve-out includes certain exemptions for active investigations at section 7923.625(a) and the right to privacy at section 7923.625(b), both of which protect the right of privacy. (*Id*. at subds. (a), (b).) Section 3(b)(2) does not apply to any of these provisions.

Article I, section 3(b)(4), on due process, states: "*Nothing* in this subdivision *supersedes or modifies* any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without *due process* of law, or denied equal protection of the laws, as provided in Section 7." (Cal. Const., art. I, § 3, subd. (b)(4) (emphasis added).) Article I, section 7 elaborates on those rights. (See *id*., § 7.) Article I, section 15 guarantees a defendant in a criminal case the right to a fair trial. (*Id*., § 15.) Section 3(b)(2) does not apply to this constitutional guarantee. A criminal defendant's right to fair trial is interpreted without regard to Section 3(b)(2)'s admonition concerning public disclosure. Provisions in the Public Records Act, including the Investigation Exemption and Critical Incident carve-out, should likewise be interpreted without regard to Section 3(b)(2) to the extent they protect Abril's right to a fair trial.

Coalition Amici's citation to *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 175 is inapposite. That case held only that a county's GIS-formatted real property database did not fall under a Public Records Act exemption for "computer software" under former Government Code section 6254.9. (*Ibid*.) The constitutional protections for law enforcement records, privacy, and the right to a fair trial were not at issue. There is no constitutional mandate to construe any of the Public Records Act provisions at issue in this case broadly in favor of transparency and narrowly against

secrecy.

B. AB 748's legislative history states that it "strike[s] a balance between the competing interests of privacy, public safety, and the people's right to know" and confirms that Roseville's disclosure complied with legislative intent

Coalition Amici argue that AB 748's legislative history shows that it must be interpreted to require disclosure of all recordings "from the time officers first respond to the time the scene is secured." (CAB 16. See also CAB 15 ("from the time officers respond to the time they secure the scene").) The legislative history does not reveal an intent to extend that far in either direction. The legislative committee analyses and reports cited by Coalition Amici confirm that Roseville's disclosure complied with legislative intent to strike a balance between competing interests, and Roseville need not disclose the additional recordings sought by CBS.

Coalition Amici quote portions of an Assembly Committee on Public Safety analysis to the effect that using body-worn cameras can "help agencies demonstrate transparency and address the community's questions about controversial events." (CAB 16, quoting Assem. Com. on Public Safety, Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as introduced Feb. 15, 2017, p. 3.) Coalition Amici contend that this means an agency must disclose the "entire recording depicting all circumstances surrounding a police shooting." (CAB 16-17.) This committee analysis, a copy of which is attached as Attachment 1, does not support Coalition Amici's argument. The committee analysis says nothing about AB 748's disclosure requirements, just that AB 748 would require "agencies to adopt and post a policy on how the public may seek access to the body camera recordings." (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as introduced Feb. 15, 2017, p. 3 (Author's Statement); Attachment 1. See *id*, p. 3 (AB 748 would require agencies "to have a policy as to the procedures for, and limitations on, public access to

recordings taken by body-worn cameras, provided that those procedures and limitations are in accordance with state law that governs public access to records").)

Even assuming this committee analysis shows that an agency must disclose the "entire recording depicting all circumstances surrounding a police shooting" (CAB 16), Roseville complied with this standard. 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. (See Roseville Produced Records, https://f.io/tSfZIVTu.) These are all the circumstances surrounding a police shooting. The additional recordings sought by CBS do not show police officers shooting at anyone.

Coalition Amici's argument based an Assembly Committee on Privacy and Consumer Protection report similarly fails to show that Roseville must disclose recordings after the officers disengaged, when Roseville Police Department ("Roseville PD") pivoted to a hostage situation, and no more shots were fired by law enforcement. (CAB 17-18.) The cited committee report merely highlights the importance of "determining crucial facts related to use of force by police officers" and the usefulness of body worn cameras in that regard. (CAB 17, quoting 1-PA-165.) Coalition Amici argue that Roseville must disclose "all relevant footage" and "the complete recording," and not just the "brief snippet" Roseville selected. (CAB 17.) Roseville's disclosed BWC clips show all the "crucial facts," "relevant" footage, and constitute "the complete recording" of the shots fired by police officers. The length of the footage Roseville disclosed was driven by the facts of the police officer shots fired, not by Roseville's unilateral selection of something less than that.

Coalition Amici argue that the Assembly committee's report's incorporation of AB 748 co-sponsor California News Publishers Association's ("Association") views show that CBS is entitled to the

additional recordings it seeks. (CAB 17-18.) Coalition Amici quote Association statements that the public's interest in public access to information about law enforcement is "'particularly great' when an officer fires a gun" and that regular disclosure of "*this footage* reassures the public that law enforcement is not suppressing facts to support its version of events in critical incidents." (CAB 18, quoting 1-PA-167, emphasis added.) This language again just points to the shooting, not to recordings of other events—here a hostage situation—where no shot was fired by a peace officer.

The Senate Judiciary Committee analysis cited by Coalition Amici supports Roseville's interpretation of AB 748. (CAB 18, citing Sen. Judiciary Com., Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 7.) The committee analysis, a copy of which is attached as Attachment 2, states that disclosing body worn camera recordings would help ensure the public has a "realistic account of police work," which would "build trust between law enforcement and the communities they serve." (*Id.*, p. 5 (Comment, § 2); Attachment 2.) But the analysis acknowledges competing public interests in non-disclosure; not all recordings should be disclosed: "This bill seeks to strike a balance between the competing interests of privacy, public safety, and the people's right to know what is happening in their government." (Sen. Judiciary Com., Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 2 (Background); Attachment 2.) The BWC footage disclosed by Roseville appropriately strikes that balance. It shows the entirety of the incident involving the peace officer firearm discharges, while at the same time protecting the interests of privacy and public safety. The additional recordings sought by CBS are protected from disclosure.

C. Coalition Amici's policy argument for more disclosure is disconnected from AB 748's adopted language and legislative history, which recognizes that "failing to protect the privacy of individuals may have the unintended consequence of chilling the public's willingness to engage with police investigations" and "may also cause undue harm to victims and their survivors"

Coalition Amici argue that disclosure of the "complete recording" is necessary because "the propriety of an officer's use of a firearm depends on the totality of all surrounding facts and circumstances, including 'preshooting conduct' by officers and others." (CAB 18, citing *Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 632.) *Hayes* is inapposite. It is not a Public Records Act case. *Hayes* held that "tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability." (*Id*. at 639.) The decision acknowledged that this information might not be relevant for other purposes. *Hayes* observed that an officer's preshooting conduct might be irrelevant in determining whether the use of deadly force gives rise to liability under the Fourth Amendment's protection against unreasonable seizures. (*Id*. at 638 (the Fourth Amendment "tends to focus more narrowly than state tort law on the moment when deadly force is used, placing less emphasis on preshooting conduct").)

Coalition Amici offer nothing to suggest the Legislature had California negligence law in mind when it enacted AB 748. And even assuming AB 748 required a public agency to disclose recordings showing an officer's tactical conduct and decisions preceding an officer's use of deadly force, Roseville complied with this standard. Coalition Amici contend that recordings that depict "merely the seconds before shots are fired" are not enough to enable the public "meaningfully [to] assess the officers' actions and build trust in law enforcement." (CAB 19. See also

CAB 20 ("A mere snippet of the seconds before shots are fired does not inform the public of all relevant circumstances or reassure the public that law enforcement agencies are not suppressing important facts.").) Each of the four (4) BWC clips shows the context before the shot or shots fired. Each video starts when the shooting officer arrives on scene, and continues through the shot or shots taken. (See Roseville Produced Records, https://f.io/tSfZIVTu; Return of Real Party in Interest City of Roseville to Petition for Writ of Mandate ("Return") 27-30.) Coalition Amici do not, and cannot, cogently explain why recordings that start with officers arriving on scene still start too late to enable the public to assess the officers' use of force.

Coalition Amici argue that Roseville must also disclose more regarding the shootings' "aftermath." (CAB 19.) There is nothing in either AB 748 as adopted or its legislative history that suggest that an agency must disclose recordings showing a shooting's "aftermath." The BWC clips Roseville produced do not end with the shots fired. They show not only the actual firearm discharge, but also the shooting officer disengaging. (See Roseville Produced Records, https://f.io/tSfZIVTu; Return 27-30.) The officers took no shots after that. Roseville PD's response changed from containment to a hostage situation, and it remained that way until officers secured the scene nearly an hour later. (1-PA-82:21.)

Coalition Amici contend that Roseville must disclose recordings from the hostage situation, when officers took no shots, because "the public has a strong interest in learning whether officers promptly rendered first aid, secured the scene, and refrained from contaminating or planting evidence." (CAB 19. See *id.* at 19-21.) This argument proves too much. Presumably the public has an interest in these things whenever an officer responds to a call, not just when the officer has discharged their firearm or used force resulting in death or great bodily injury. But AB 748 as adopted

is addressed solely to "critical incidents." (Gov. Code, § 7923.625, subd. (e).) Coalition Amici point to nothing in the legislative history that suggests that AB 748 was intended to require disclosure of recordings showing whether officers rendered first aid, secured the scene, and refrained from contaminating or planting evidence. Instead the legislative history acknowledges the public's continuing interest in maintaining confidentiality of investigative records, by seeking to "balance" the public's interest in disclosure with the interests of "privacy" and "public safety." (Sen. Judiciary Com., Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 2 (Background); Attachment 2.)

Coalition Amici argue that allowing Roseville to withhold the additional recordings sought by CBS "would increase controversy and decrease public trust in law enforcement." (CAB 20.) The legislative history recognizes that protecting the confidentiality of law enforcement recordings encourages witnesses to cooperate with law enforcement and assist in investigations. Requiring additional disclosure of law enforcement recordings risks increasing controversy and decreasing public trust in law enforcement. The Assembly Committee on Privacy and Consumer Protection report cited by Coalition Amici states:

> **Balancing competing constitutional rights**: On a daily basis, police interact with individuals whose identities are sensitive, such as confidential informants and witnesses, and with people at very low or vulnerable points in their lives, including individuals being arrested and victims giving emotional or graphic statements. . . . Ultimately, the goal of equipping police officers with body cameras is to provide a record of police conduct, which should improve public trust in law enforcement. That being said, *failing to protect the*

> *privacy of individuals may have the unintended consequence of chilling the public's willingness to engage with police investigations, and thus limit the agency's ability to adequately serve the community. It may also cause undue harm to victims and their survivors, civilians and law enforcement alike.*
> (1-PA-166-167 (emphasis added). See CAB 17, quoting this report at 1-PA-165.)

The report expresses these policy concerns before describing AB 748's provisions allowing Critical Incident recordings to be withheld during an active investigation or to protect the right of privacy. (1-PA-167.) But these policy concerns also animate the Investigation Exemption and inform how AB 748's definition of Critical Incident should be read. The additional recordings CBS seeks disclosed are recordings of a hostage situation in which the suspect held one hostage at gunpoint and then shot them, and the other hostage lay on the ground, apparently having already been shot by the suspect. Victims, witnesses, and other civilians would be discouraged from engaging with law enforcement if they believed a body-cam or drone recording of their interaction with a police officer were a public record that could be broadcast on television or circulated on the internet. Public trust in law enforcement would decline. This would not serve to enhance public policy, rather it would weaken it.

D. The trial court's finding that further disclosure would substantially interfere with an active investigation is supported by substantial evidence under a clear and convincing standard

Coalition Amici argue that Roseville bears the burden of proof to

justify withholding public records. (CAB 21-22.) None of Coalition Amici's authorities address the Investigation Exemption. (See *id.*, citing authorities.) The Investigation Exemption specifically applies here. Otherwise there would be no occasion to consider whether the newly-adopted Critical Incident carve-out applies. Whether the additional recordings CBS seeks come within the definition of a "critical incident" is a question of statutory interpretation about which neither CBS nor Roseville bears the burden of proof. (See Return 36-37.)

Even assuming the additional records sought by CBS come within the "critical incident" exception, they may be withheld if they are otherwise exempt from disclosure. The trial court correctly found that they are exempt under Government Code Section 7923.625(a)(2)'s "active investigation" exemption ("Active Investigation Exemption"). Roseville does not dispute that 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. (See Return 47; CAB 22.) The trial court's finding is supported by substantial evidence under this clear and convincing standard.

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

Coalition Amici argue that Roseville's presentation of the Joint Request for a Sealing Order from the Criminal Case was not enough to prove the existence of an active investigation. (CAB 22.) Coalition Amici contend that this shows only a "potential defense investigation," and the statute requires an active investigation conducted by a "law enforcement agency." (CAB 22-23.) Coalition Amici's argument is belied by the law and the evidence.

The Active Investigation Exemption is not restricted to investigations by law enforcement. It applies to criminal and

administrative investigations no matter whether they are being conducted by law enforcement or other individuals or entities. Section 7923.625(a)(1) states: "During an active criminal or administrative investigation, disclosure of a record related to a critical incident may be delayed . . . if . . . disclosure would substantially interfere with the investigation." (Gov. Code, § 7923.625, subd. (a)(1).) This section repeatedly refers to "the investigation," without restriction, no matter how much time has passed since the incident. (*Id*., subds. (a)(1), (a)(2).)

Coalition Amici argue that "investigation" in Section 7923.625 must be narrowly construed because the Investigation Exemption in Section 7923.600 covers, "in relevant part, 'records of … investigations conducted by, …, any state or local police agency, or any investigatory or security files compiled by any other state or local police agency.'" (CAB 22-23, citing Gov. Code, § 7923.600, subd. (a).) Section 7923.600 is not limited to records of "law enforcement" agencies. It also embraces "investigatory or security" files compiled by "any other state or local agency for correctional, law enforcement, or licensing purposes." (Gov. Code, § 7923.600, subd. (a).)

Coalition Amici cite no cases interpreting "investigation" in this context or any other. The two cases they do cite do not help them. (CAB 23, citing *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 873 (hereafter *Ferra*), *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1419 (hereafter *New Albertsons*).) *Ferra* acknowledged the canon of statutory interpretation that where different words and phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning. (*Ferra*, *supra*, 11 Cal.5th at p. 872.) *Ferra* declined to apply that canon based in part on long-standing agency interpretation to the contrary. (*Id*. at 872-73.) Coalition Amici point to nothing similar. *New Albertsons* is inapposite. It addressed

identical terms in two different statutes. (*New Albertsons, supra,* 168 Cal.App.4th at pp. 1418-19.)

There is good reason to interpret the "investigation" subject to the Active Investigation Exemption to include investigations done by or on behalf of a defendant in a criminal matter. Both the prosecution and the criminal defendant have broad mandatory disclosure obligations to each other. (Pen. Code §§ 1054-1054.7; *Brady v. Maryland* (1963) 373 U.S. 83, 87 (Due Process requires prosecutor disclose to accused substantial material evidence favorable to their defense).) These reciprocal disclosure obligations are "intended to protect the public interest in a full and truthful disclosure of critical facts, to promote the People's interest in preventing a last minute defense, and to reduce the risk of judgments based on incomplete testimony." (*People v. Jackson* (1993) 15 Cal.App.4th 1197, 1201.)

The criminal defendant has an interest in ensuring the prosecution's investigation is not interfered with. The prosecution has an interest in ensuring the criminal defendant's investigation is not interfered with as well. The prosecution has this interest not only to ensure that the criminal defendant has a great deal of information to disclose, but also to ensure a conviction is not reversed on appeal because of an unfair trial. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 319-320 (criminal defendant's constitutional right to effective assistance of counsel includes the right to reasonably necessary ancillary defense services, including the services of an investigator); *Hinton v. Alabama* (2014) 571 U.S. 263, 274 (vacating and remanding judgment of conviction where defense counsel failed to request additional funds to replace an inadequate expert, which amounted to constitutionally deficient performance by defense counsel).)

Even assuming that the "investigation" subject to the Active Investigation Exemption includes only investigations by law enforcement,

substantial evidence supports the trial court's finding that there is an active criminal investigation. (Return 48-49.) Roseville cited cases showing that a criminal defendant's constitutional right to investigative services continues through trial. (Return 49.) This right is based on minimum standards for pretrial and trial practices. Defense and prosecution practices are similar. A party's hunt for evidence and witnesses does not end at some artificial time before trial. A party will continue to look for evidence and witnesses through the end of trial. A party will continue that investigation whether the party is a criminal defendant or the prosecution. The Criminal Court recognized as much, stating in the Sealing Order that the "on-going investigation" will be prejudiced, without differentiating between the investigations being conducted by Abril and the People. (1-PA-270:9.)

The Penal Code's reciprocal disclosure obligations confirm that the prosecution and defense investigations continue at least to the start of trial. The prosecution and criminal defendant have a continuing duty to disclose information. Ordinarily they must disclose at least 30 days before trial. (Pen. Code § 1054.7.) But if material or information becomes known to or comes into a party's possession "within 30 days of trial, disclosure shall be made immediately." (*Ibid.*) There would be no such requirement unless it were understood that both criminal defendants and the prosecution will continue their respective investigations at least up to the first day of trial.

Coalition Amici contend that Roseville's evidence is not enough to show an active investigation. (CAB 23-24.) They contend that Roseville must obtain testimony from the defense team or, presumably, the prosecution, that "its investigation is ongoing and disclosure of critical incident recordings would substantially interfere with the investigation." (CAB 24.) The evidence submitted already demonstrates this. Coalition Amici cite no authority that a defense or prosecution declaration uttering these conclusory words is required. In theory a member of the defense or

prosecution team might sign a declaration identifying specifics, such as the names of witnesses the team plans to interview and items of evidence the team plans to pursue. (See CAB 28 ("The City offered no evidence . . . that there were any witnesses who had not been interviewed.").) But Coalition Amici admit it would be impossible to obtain such testimony from the defense team without interfering with trial preparation and potentially compromising the attorney-client privilege. (CAB 24.) The prosecution would be barred from offering such testimony for similar reasons. The impossibility of obtaining such testimony shows that Coalition Amici expect too much evidence to show an "active investigation" under Government Code Section 7923.625(a)(1). Accepting Coalition Amici's standard of proof would read the Active Investigation Exemption out of the statute.

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

Coalition Amici argue that it is not enough for Roseville merely to assert that disclosure would interfere with the investigation. (CAB 25-26, 27.) They contend Roseville must provide evidence of interference that is grounded in "specific facts and circumstances depicted in the recording, not generic concerns that could be said of any case." (CAB 25-26.) Roseville satisfied this standard.

The Joint Request for a Sealing Order stated that the Criminal Case "has generated an extreme level of pretrial publicity." (1-PA-272.) The Joint Request explained this was due to the "sensational nature of the Mahaney Park shooting and the subsequent escape of the defendant." (*Ibid*.) There have been "scores of TV news stories, online news stories, print journalist stories, grand jury reports, and other media coverage." (*Id.* at 272-273.) The prosecution planned on showing images and video and

audio files depicting the crimes charged, the victims, and their injuries. (*Id.* at 273.) The suspect shot both hostages, and killed one of them. (Apr. 6 RPD Press Release; 1-PA-83:9-10.) The additional recordings CBS demands include footage showing the hostage situation, the suspect shooting one victim, and the other victim lying motionless, apparently having already been shot by the suspect. (See 1-PA-205:21-206:7.) The Joint Request expressed concern that releasing the evidence to the public "would create traumatic publicity for the victims" and "would greatly impair the defendant's ability to receive a fair jury trial." (1-PA 273.) These specific facts rise above the level of "generic concerns that could be said of any case." (See CAB 25-26.) Roseville has met the standard even as proposed by Coalition Amici.

Coalition Amici contend that the threatened interference: 1) "must be substantial and material, not minimal or trivial," and 2) "must involve or resemble endangering the safety of a witness or a confidential source." (CAB 26.) The term "resemble" in the second contention is an inaccurate phrasing of the doctrine of *ejusdem generis*. Coalition Amici's cited authority states that where a statute's general term is followed by specific words, the general term is restricted to those things that are "similar" to those that are specifically enumerated. (*International Federation of Professional and Technical Engineers, Local 21 v. Superior Court* (2007) 42 Cal.4th 319, 342, cited at CAB 26.)

Roseville satisfied this standard. A disclosure that would endanger a witness or a confidential source interferes with an investigation because it impedes investigators from gathering evidence. For example, a witness fearing harm from the accused or others might change his/her story, saying he/she saw something different or saw nothing at all, or simply refuse to speak with investigators. A witness-endangering disclosure interferes with an investigation because it discourages witnesses from coming forward to

share what they know and provide leads on other witnesses and evidence. As Coalition Amici's cited AB 748's legislative history observes, "failing to protect the privacy of individuals may have the unintended consequence of chilling the public's willingness to engage with police investigations, and thus limit the agency's ability to adequately serve the community." (1-PA-166-167. See CAB 17, quoting this report at 1-PA-165.) A disclosure that would discourage a witness, victim, or other person with potentially useful information from coming forward and cooperating with investigators is "similar" to disclosures that would "endanger[] the safety of a witness or a confidential source." These "other forms of interference" (CAB 27) are no less substantial than the witness and confidential informant safety-endangering examples in the statute. (See Gov. Code, § 7923, subd. (a)(1).)

The trial court could have reasonably inferred from the evidence that disclosure of the additional recordings sought by CBS would have made it more difficult for the prosecution and defense to win the cooperation of witnesses, the surviving victim, and the victims' family, and gather evidence. A witness might refuse to cooperate because the images made them especially hostile to the accused, unsympathetic to the victims, or angry at Roseville for making the recordings and releasing them. The surviving victim and the victims' family might refuse to cooperate simply to avoid having their grief and trauma become further grist for media attention. The trial court could have reasonably concluded that disclosure would have caused a witness, the surviving victim, or the victims' family to refuse to cooperate with the investigation. This is substantial interference with the investigation.

Coalition Amici argue that the California Constitution and legislative history show that what counts as "substantial interference" must be interpreted narrowly. (CAB 27-28.) As shown in section A above, however, Coalition Amici's cited constitutional provisions preserve statutes

"protecting the confidentiality of law enforcement and prosecution records," and neither apply to the construction of a statute "to the extent that it protects th[e] right to privacy" nor limit a criminal defendant's right to a fair trial. (Cal. Const., art. I, § 3, subds. (b)(2), (b)(3), (b)(5).) Coalition Amici's cited legislative history reflects a desire to "strike a balance between the competing interests of privacy, public safety, and the people's right to know." (Sen. Judiciary Com., Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 2 (Background); Attachment 2; see CAB 18, citing and quoting same. See also *In re Marriage of Mullonkal and Kodiyamplakkil* (2020) 51 Cal.App.5th 604, 616 ("if application of *ejusdem generis* would frustrate the statute's underlying intent, the doctrine must be overridden by our fundamental objective of ascertaining and effectuating the statute's underlying intent"), cited at CAB 27-28.) There is no basis to narrowly interpret "substantial interference."

Coalition Amici contend that Roseville's evidence is not good enough because Roseville did not prove an investigation is "ongoing or that there were any witnesses who had not been interviewed." (CAB 28.) As indicated in section D.1 above, Roseville has shown there is an active investigation. Even if neither party had any more witnesses to interview, substantial evidence supports the trial court's finding that disclosure would substantially interfere with the investigation. A previously-interviewed witness might decline to cooperate further. Coalition Amici demand too much when they insist that Roseville prove exactly what harms disclosure would cause. (CAB 28.) It is not reasonable to require an agency to look into a crystal ball. Case law confirms that courts may rely on common sense and human experience to inform their conclusions about the likely consequences of disclosure. (Return 51, citing authorities.)

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

Coalition Amici argue that Roseville's evidence does not support withholding the documents under the privacy exemption at Government Code section 7923.625(b)(1). (CAB 28-29.) Coalition Amici claim that evidence of "trauma or interference with a fair trial" is insufficient. (*Id*. at 29.) The evidence shows that disclosure would "violate the reasonable expectation of privacy of a subject depicted in the recording" (Gov. Code, § 7923.625, subd. (b)(1)), and the public's interest in withholding the additional recordings sought by CBS clearly outweighs the public's interest in disclosure (*ibid*.).

As described above, the Joint Request for a Sealing Order stated that the Criminal Case "has generated an extreme level of publicity." (1-PA-272.) The prosecution planned on showing images and video and audio files depicting the crimes charged, the victims, and their injuries. (*Id*. at 273.) The suspect shot both hostages and killed one of them. (Apr. 6 RPD Press Release; 1-PA-83:9-10.) The additional recordings CBS demands include footage showing these things. 1-PA-205:21-206:7.) The Joint Request expressed concern that releasing the evidence to the public "would create traumatic publicity for the victims." (1-PA-273.)

The Joint Request does not have to use the magic word, "privacy," in order for the Joint Request to help show the existence of a privacy right. The surviving victim and the victims' family's privacy interest in the recordings is shown by the Joint Request's description of the recordings, which show the hostage situation and the suspect holding one of the victims at gunpoint and shooting that victim, and the other victim lying on the ground motionless, apparently having already been shot by the suspect. This same evidence shows that the public's interest in protecting these recordings from disclosure clearly outweighs the public's interest in

disclosure.

Coalition Amici's citation to *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292 is inapposite. (CAB 29.) That case interpreted a general Public Records Act provision, not the specific privacy exemption at Section 7923.625(b)(1). (*Los Angeles County Board of Supervisors v. Superior Court, supra,* 2 Cal.5th at p. 291 (analyzing an exemption for "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege") (internal quotation marks omitted).)

F. The additional records sought by CBS are alternatively protected from disclosure by the catch-all exemption

Coalition Amici argue that the Public Records Act's "catch-all" exemption at Government Code section 7922.000 does not shield the additional records sought by CBS from disclosure. (CAB 29.) Coalition Amici contend the catch-all exemption cannot apply because the Legislature has created a "specific exemption" for those records. (*Ibid*., citing *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1421.) *City of Hemet* is distinguished. It declined to apply the catch-all exemption to police personnel records and records of internal affairs investigations where a specific exemption, namely Penal Code section 832.5, applied. (*Id*. at pp. 1421-22.)

Becerra v. Superior Court (2020) 44 Cal.App.5th 897 provides a better guide. *Becerra* held that the catch-all exemption applied to police personnel records otherwise deemed non-confidential under Penal Code section 832.7. (*Becerra*, 44 Cal.App.5th at pp. 924-925.) *Becerra* pointed to Section 832.7's language, which stated "[n]otwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code," the Public Records Act's investigatory files exemption, officer related records would

be made available "pursuant to the California Public Records Act." (*Id.* at p. 924.) *Becerra* concluded this language showed that the Public Records Act applied to the extent it was not contrary to Section 832.7. (*Id.* at p. 925.)

This reasoning applies here. Government Code section 7923.625 provides: "Notwithstanding any other provision of this article . . . 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.) Section 7923.625 qualifies "this article" to the extent "this article" is inconsistent, "this article" being "Article 1. Law Enforcement Records Generally," Government Code sections 7923.600 to 7923.630. The remainder of the Public Records Act is left intact and unlimited. Section 7923.625, subdivision (f) confirms: "This section does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subdivision (e)." (Gov. Code, § 7923.625, subd. (f).)

The evidence here shows that the public interest served by not disclosing the additional recordings sought by CBS clearly outweighs the public interest served by disclosure. (See *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1238, 1255 (holding catch-all exception applied to request for prepublication communications and deliberations relating to an academic study at a state entity).) Disclosure would substantially interfere with an active investigation, violate the right of privacy of the surviving victim and the victims' family, and prevent Abril from getting a fair trial, for the reasons set out above.

Disclosure of the additional recordings sought by CBS would also violate the spirit of the Criminal Court's Sealing Order and undermine it. Drone footage was shown at the Criminal Case preliminary hearing and ordered sealed with the other evidence presented. (2-PA-297 no. 56.) A

court order directing Roseville disclose drone footage and BWC footage, to the extent the images presented in the Criminal Court are based on that BWC footage (see 2-PA-296-297, nos. 1-43, 49, 57-60), would constitute an end-run around the Sealing Order and render part of it a nullity. It would compromise Abril's constitutional right to a fair trial.

Coalition Amici argue that, even assuming the catch-all exemption applies here, it does not protect the recordings at issue from disclosure. (CAB 30-31.) Coalition Amici repeat their argument that, if these recordings are protected from disclosure, then the catch-all exemption could be invoked to prevent disclosure "whenever a related criminal cases is pending." (CAB 30.) This is an extraordinary case. As indicated by the Joint Request there has been a great deal of media coverage, and the recordings show the suspect holding a victim hostage and then shooting them, while the other victim lays on the ground motionless having apparently already been shot by the suspect. AB 748 was adopted to balance a number of interests, not only the public's right to know, but also the public's interest in facilitating investigations and protecting the right to privacy. Protecting the additional recordings sought by CBS will not eviscerate the Critical Incident exception.

Coalition Amici contend: "If the recordings are disclosed and published, those who do not wish to see them need not watch them." (CAB 30.) This is cold comfort to the surviving victim and the victims' family. The media's attention shows their privacy rights would be violated again and again if the recordings were disclosed. "Don't look!" also does little to protect Abril's right to a fair trial. It is not reasonable to believe many prospective jurors will avert their eyes, given the intense public interest in the case.

Coalition Amici argue that the mere existence of pretrial publicity does not automatically prevent a fair trial, and the court has other tools to

preserve Abril's fair trial, such as voir dire, cautionary instructions, continuances, change of venue, and sequestration of the jury, and that pre-trial publicity tainting a witness' recollection is not a legitimate concern. (CAB 30-31.) The Criminal Court already determined a Sealing Order was necessary to protect drone footage and still images that might have been taken from Roseville's withheld BWC footage. The Criminal Court is in the best position to make sure that Abril receives a fair trial, and here it entered the Sealing Order, notwithstanding the availability of these other judicial tools. This shows these tools are inadequate here, and the Criminal Court's decision should not be second-guessed.

The unique facts here confirm that view, and distinguish this case from those cited by Coalition Amici. (See CAB 30-31, citing authorities.) There are multiple types of harm threatened by disclosure of the additional recordings sought by CBS: investigation interference, invading the privacy rights of the surviving victim and the victim's family, and interfering with Abril's right to fair trial. These things demonstrate that the availability of these other tools does not justify ordering disclosure. These tools do not adequately protect Abril's right to a fair trial. These tools are useless if disclosure causes witnesses, the surviving victim, and the victims' family to refuse to cooperate with the investigation. These tools do nothing to protect the surviving victim and the victims' family's right of privacy.

Conclusion

The Public Records Act generally exempts law enforcement investigatory records from disclosure. AB 748 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)(1).) Roseville disclosed BWC footage starting with the shooting officers arriving on scene, continuing through the officers discharging their firearms, and

ending after the shooting officers disengage.

Coalition Amici argue this is not enough, that Roseville should also disclose recordings that do not show any shots fired by a police officer, but rather show only a hostage situation, the suspect shooting a victim, and the other victim lying still, apparently already shot by the suspect. Neither AB 748 as adopted nor its legislative history support such a dramatic limitation of the Investigation Exemption. For Coalition Amici the public's "right to know" is paramount. The legislative history shows that AB 748 also recognizes the public's interest in privacy and public safety, and that it "seeks to strike a balance" among these competing interests. Roseville's disclosure is true to the letter and spirit of AB 748. CBS's writ petition for more disclosure should be denied.

Dated: February 6, 2025

BEST BEST & KRIEGER LLP

By: */s/ Gregg W. Kettles*
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CERTIFICATE OF WORD COUNT

The text of this brief consists of 7,538 words according to the word count feature of the computer program used to prepare this brief.

Dated: February 6, 2025

By: */s/ Gregg W. Kettles*
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ATTACHMENT 1

CA B. An., A.B. 748 Assem., 4/4/2017

California Bill Analysis, Assembly Committee, 2017-2018 Regular Session, Assembly Bill 748

April 4, 2017
California Assembly
2017-2018 Regular Session

Date of Hearing: April 4, 2017

Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 748 (Ting) - As Introduced February 15, 2017

SUMMARY: Requires each department or agency that employs peace officers and elects to deploy body-worn cameras to develop a policy and make the policy publicly accessible, as specified. Specifically, **this bill**:

1) Provides that no later than July 1, 2018, each department or agency that employs peace officers and that elects to require those peace officers to wear body cameras shall develop a policy setting forth the procedures for, and limitations on, public access to recordings taken by body-worn cameras.

2) Requires the body-worn camera policy to allow public access to the fullest extent required by the California Public Records Act (CPRA).

3) Provides that the department or agencies that elect to require officers to wear body-worn cameras shall conspicuously post the policy on its Internet Website.

EXISTING LAW:

1) Specifies that no public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family. (Gov. Code, § 3307.5, subd. (a).)

2) States that based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. (Gov. Code, § 3307.5, subd. (b).)

3) States that after the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. (Gov. Code, § 3307.5, subd. (b).)

4) Provides that the court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day commencing two working days after the date of receipt of the notification to cease and desist. (Gov. Code, § 3307.5, subd. (b).)

5) Establishes the CPRA and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)

6) Defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." "Writing" means "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code, § 6252.)

7) Makes public records open to inspection at all times during the office hours of the state or local agency. Every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a).)

8) Provides that, except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Gov. Code, § 6253, subd. (b).)

9) Requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:

a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b) Describe the information technology and physical location in which the records exist; and,

c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subd. (a).)

10) States that the above provision does not apply when the public agency determines that the request should be denied and bases that determination solely on an exemption listed in section 6254, as specified. (Gov. Code, § 6253.1, subd. (d).)

11) States that, except as in other sections of the CPRA, this chapter does not require the disclosure of specified records, which includes among other things: records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254.)

12) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

a) The full name and booking information of all persons arrested;

b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,

c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator. (Gov. Code, § 6254, subd. (f).)

13) Requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255.)

14) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Transparency between law enforcement and the communities they protect is critical to establishing and maintaining good relationships. For those law enforcement agencies that have chosen to deploy body cameras on their officers, this bill simply requires these agencies to adopt and post a policy on how the public may seek access to the body camera recordings. Too often, confusion about public access to these recordings exacerbates sensitive or controversial situations."

2) **Background**: A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)

The report recommends that each agency develop its own comprehensive written policy to govern body-worn camera usage, that includes the following:

a) Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;

b) The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;

c) Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;

d) The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;

e) The method for documenting chain of custody;

f) The length of time recorded data will be retained by the agency in various circumstances;

g) The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed;

h) Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests; and,

i) Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy.

(*Id*. at pp. 37-38.)

This bill implements the recommendation that law enforcement agencies that use body-worn cameras to have a policy as to the procedures for, and limitations on, public access to recordings taken by body-worn cameras, provided that those procedures and limitations are in accordance with state law that governs public access to records.

3) **Prior Legislation:**

a) AB 2533 (Santiago), of the 2015-2016 Legislative Session, required a public safety officer to be provided a minimum of three business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer. AB 2353 failed passage in the Senate Public Safety Committee.

b) AB 1957 (Quirk), of the 2015-2016 Legislative Session, would have required a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage. AB 1957 failed passage on the Assembly Floor.

c) AB 1940 (Cooper), of the 2015-2016 Legislative Session, would exempt body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure pursuant to the act unless a judicial determination is made, after the adjudication of any civil or criminal proceeding related to the use of force incident, that the interest in public disclosure outweighs the need to protect the individual right to privacy. AB 1940 failed passage in the Senate Public Safety Committee

d) AB 66 (Weber), of the 2015-2016 Legislative Session, established statewide policies and guidelines for law enforcement agencies that require its officers to wear body-worn cameras. AB 66 was not taken up in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association

California Attorneys for Criminal Justice

California Public Defenders Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. /

CA B. An., A.B. 748 Assem., 4/4/2017

ATTACHMENT 2

CA B. An., A.B. 748 Sen., 6/26/2018

California Bill Analysis, Senate Committee, 2017-2018 Regular Session, Assembly Bill 748

June 26, 2018
California Senate
2017-2018 Regular Session

SENATE JUDICIARY COMMITTEE

Senator Hannah-Beth Jackson, Chair

2017-2018 Regular Session

AB 748 (Ting)

Version: June 14, 2018

Hearing Date: June 26, 2018

Fiscal: Yes

Urgency: No

MEC

SUBJECT

Peace officers: video and audio recordings: disclosure

DESCRIPTION

This bill would expand the public's access to video and audio recordings where those records relate to a "critical incident," as specified. This bill would define a video or audio recording as relating to a "critical incident" if it depicts an incident involving a peace officer's use of force or a violation of law or agency policy by a peace officer. This bill would define "use of force" as a peace officer's application of force that is likely to or does cause death or serious bodily injury, and includes, without limitation, the discharge of a firearm or a strike to a person's head with an impact weapon. This bill would allow for the temporary denial of the release of recordings, as specified. The bill contains provisions to protect the privacy of people depicted in recordings.

BACKGROUND

The California Constitution provides that the "people have the right of access to information concerning the conduct of the people's business, and therefore…the writings of public officials and agencies shall be open to public scrutiny…" (Cal. Const., art. I, Sec. 3.) The California Public Records Act (CPRA), enacted in 1968, requires public disclosure of public agency documents. The CPRA gives every person the right to inspect and obtain copies of all state and local government documents not exempt from disclosure. (Gov. Code Sec. 6253.) Generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code Sec. 6254.) There are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information. However, a public agency can justify withholding any record by demonstrating that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code Sec. 6255(a).)

The CPRA requires each public agency, upon a request for a copy of records and within 10 days from receipt of the request, to determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and requires the agency to promptly notify the person making the request of the determination and the reasons therefor. The CPRA provides that when it appears to a superior court that certain public records are being improperly withheld from a member of the public, the CPRA requires the court to order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The CPRA requires the court to award court costs and reasonable attorney fees to the plaintiff if the plaintiff prevails in litigation filed pursuant to these provisions, and requires the court to award court costs and reasonable attorney fees to the public agency if the court finds that the plaintiff's case is clearly frivolous.

Law enforcement records are subject to disclosure under the CPRA. However, there are limitations in statute to the disclosure of law enforcement records. Specifically, a law enforcement entity is entitled to deny disclosure to the public of records of investigations if disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation. Proponents of this bill argue that there should be more liberal release of recordings that depict incidents involving a peace officer's use of force or a peace officer's violation of law or a peace officer's violation of agency policies.

Video recordings, whether those from police dash cameras, police body cameras, or cell phones, are increasingly capturing footage of law enforcement interactions with people. In the wake of deaths of black and brown men from guns used by law enforcement, there has been increased pressure on law enforcement to video record what goes on in the field. Various law enforcement entities throughout the state have body cameras on their officers and/or dash cameras on their cars. Presently there is no uniformity regarding whether, when, and how to release recordings. Recordings are often withheld from the public through a justification that they qualify for the investigation exemption to mandatory disclosure under the CPRA. There are some who argue for complete sunshine of police recordings, regardless of who is on the recording. There are others who highlight the importance of protecting the privacy of those in recordings. This bill seeks to strike a balance between the competing interests of privacy, public safety, and the people's right to know what is happening in their government.

This bill passed the Senate Committee on Public Safety on July 11, 2017 with a vote of 5 to 2 vote.

CHANGES TO EXISTING LAW

Existing law, the California Constitution, declares the people's right to transparency in government. (“The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....”) (Cal. Const., art. I, Sec. 3.)

Existing law, the California Public Records Act (CPRA), governs the disclosure of information collected and maintained by public agencies. (Gov. Code Sec. 6250 et seq.) Generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code Sec. 6254.) There are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information.

Existing law, for purposes of the CPRA, defines: “public agency” as any state or local agency; “state agency” to include every state office, officer, department, division, bureau, board, and commission or other state body or agency, except for the Legislature and the Judiciary; and “person” to include any natural person, corporation, partnership, limited liability company, firm, or, association. (Gov. Code Sec. 6252(c),(d)&(f).)

Existing law provides that except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, is required to make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. (Gov. Code Sec. 6253(b).)

Existing law requires each agency, upon a request for a copy of records and within 10 days from receipt of the request, to determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency

and requires the agency to promptly notify the person making the request of the determination and the reasons therefor. (Gov. Code Sec. 6253(c).)

Existing law provides that in unusual circumstances, as defined, the 10-day time limit may be extended by written notice from the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension of more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. (Gov. Code Sec. 6253(c).)

Existing law prohibits construing the CPRA to permit an agency to delay or obstruct the inspection or copying of public records. (Gov. Code Sec. 6253(d).)

Existing law provides that the agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code Sec. 6255(a).)

Existing law provides that any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code Sec. 6253(a).)

Existing law provides that a response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing. (Gov. Code Sec. 6255(b).)

Existing law provides that any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under the CPRA. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time. (Gov. Code Sec. 6258.)

Existing law provides that whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties, and any oral argument and additional evidence as the court may allow. (Gov. Code Sec. 6259(a).)

Existing law provides that if the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. (Gov. Code Sec. 6259(b).)

Existing law provides that the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency. (Gov. Code Sec. 6259(d).)

Existing law requires specified information regarding the investigation of crimes to be disclosed to the public unless disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation, as specified. (Gov. Code Sec. 6254(f).)

This bill would provide that notwithstanding any other provision of the subdivision (dealing with public safety records), a video or audio recording that relates to a critical incident, as defined may be withheld as provided.

This bill would provide that a video or audio recording relates to a "critical incident" if it depicts an incident involving a peace officer's use of force or a violation of law or agency policy by a peace officer.

This bill would provide that "use of force" means a peace officer's application of force that is likely to or does cause death or serious bodily injury, and includes, without limitation, the discharge of a firearm or a strike to a person's head with an impact weapon.

This bill would provide that a video or audio recording that relates to a critical incident may be withheld only as follows:

- During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days from the date of the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to the above paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.
- After 45 days from the date of the incident, the agency may continue to delay disclosure of a recording if the agency demonstrates by clear and convincing evidence that the interest in preventing interference with an active investigation outweighs the public interest in disclosure. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 15 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

This bill would provide that if the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

This bill would specify that except as provided in the subsequent paragraph regarding an active investigation, if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described above and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following:

- the subject of the recording whose privacy is to be protected, or his or her authorized representative;
- if the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected; or
- if the subject whose privacy is to be protected is deceased, a member of his or her immediate family, as defined in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

This bill would provide that disclosure pursuant to the above paragraph would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to the 15 day extensions detailed above.

This bill would provide that an agency may provide greater public access to video or audio recordings than the minimum standards set forth above.

This bill would provide that the above provisions do not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a "critical incident."

COMMENT

1. Stated need for the bill

According to the author:

> Transparency between law enforcement and the communities they protect is critical to establishing and maintaining good relationships. Current law does not require law enforcement agencies to maintain a policy on how it does or does not release recordings made by body cameras. As a result, the public may not know how or if such recordings may be requested, which adds confusion and controversy to already sensitive situations, like the days following an incident of violence involving law enforcement. AB 748 seeks to remedy this issue by setting a floor for law enforcement agencies to comply with so that both the public and the agencies have transparency on when the recordings should be released.

According to the California News Publishers Association, sponsors of the bill:

> The public's interest in public access to information about law enforcement activity is "particularly great" when there is a violation of law or agency policy, and when an officer uses force that may lead to serious bodily injury or death. [citation omitted]
>
> Video footage which depicts an officer's serious use of force, or a violation of law or policy, often provides the best evidence of the "facts and circumstances" of an incident of high public concern between a member of the public and a police officer. [citation omitted] Regular disclosure of this footage reassures the public that law enforcement is not suppressing facts to support its version of events in critical incidents.
>
> AB 748 would establish a minimum, enforceable, statewide standard that affords the public access to audio and video footage of critical incidents. This follows a trend among local police agencies that have established their own policies for disclosure. The bill is modeled in part on the policy recently implemented by the Los Angeles Police Department, which established a rule to generally require disclosure of records of a critical incident within 45 days.
>
> Like the LAPD policy, AB 748 gives agencies the flexibility to withhold records of critical incidents for longer than 45 days if necessary to protect the due process interests of an individual or an active investigation. AB 748 also adds to the privacy protections related to the disclosure of body camera footage as established in AB 459 (Chau), which was signed into law last year.
>
> AB 748 is a balanced approach that takes into account the various interests in nondisclosure while ultimately mandating the release of body camera footage and other similar files when there is a paramount interest in public disclosure.

2. Efforts to pass legislation regarding disclosure of police video recordings

In an effort to build trust between law enforcement and the communities they serve, many communities and departments have employed officer-worn body cameras so that the public may have a realistic account of police work. Yet, despite this climate, under the CPRA the police maintain largely unfettered discretion to withhold records that are relevant to the public interest. Most recordings will arguably fall under the investigatory exemption, and records that do not fall within an exemption can be withheld under a "catchall" provision which requires only a balancing test (*see* Comment 3 below).

In 2015, AB 66 (Weber) sought to tackle the issue of access to body-camera recordings by requiring that law enforcement agencies comply with set guidelines, including a mandate that policies be posted conspicuously on the agency's website, and a prohibition on the copying of camera files for personal use. The bill also provided a list of suggested guidelines that law enforcement agencies must consider in adopting their own policies. That bill failed passage in the Assembly Committee on Appropriations. Another bill from 2015, AB 1246 (Quirk), aimed to prohibit the disclosure of a recording made by a body-worn camera, except to the person whose image is recorded by the camera. That bill failed passage in the Assembly Committee on Public Safety. SB 175 (Huff and Gaines, 2015), sought to require each police department using body-worn cameras to adopt a policy relating to the use of those cameras. It also required that the policies were developed in accordance with specified acts

governing employee organizations, with designated representatives of nonsupervisory officers. That bill failed on the Assembly Floor.

In 2016, AB 1940 (Cooper) again attempted to require police departments which use body-worn cameras to adopt a policy pertaining to the use of the cameras. Among its objectives was to require law enforcement agencies to have a policy to prohibit a peace officer from making a video or audio recording in a health facility or medical office when a patient may be in the view of the body-worn camera, or when a health care practitioner is providing care to an individual. However, that bill required that officers be permitted to view body camera footage prior to the drafting of police reports. That bill, like its predecessors, did not become law. It failed passage in the Senate Committee on Public Safety. AB 2533 (Santiago, 2016) would have provided that a public safety officer shall be entitled to a minimum of three business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer. The bill failed passage in the Senate Committee on Public Safety. Finally, AB 2611 (Low, 2016) sought to amend the CPRA to prohibit disclosure of any audio or video recording depicting the death of a peace officer unless authorized by the officer's immediate family. That bill failed in the Assembly Judiciary Committee.

AB 748 is the latest legislative attempt to strike the right balance between protecting the integrity of investigations and ensuring transparency of video and audio recordings that relate to a "critical incident," defined as depicting an incident involving a peace officer's use of force or a violation of law or agency policy by a peace officer. This bill would define "use of force" as a peace officer's application of force that is likely to or does cause death or serious bodily injury, and includes, without limitation, the discharge of a firearm or a strike to a person's head with an impact weapon. This bill contains provisions to protect the privacy of those depicted in the recordings and that allow for the protection of the recordings during investigations, as specified.

These provisions could benefit from technical amendments to ensure that the provisions are not misinterpreted.

Amendment 1

On page 7, line 37, after: force
Insert: ,

Amendment 2

On page 7, line 37, after: law
Insert: by a peace officer

Amendment 3

On page 7, line 37, before: agency policy
Insert: a violation of

3. Bill affects records that fall under the investigatory exemption

The California Public Records Act (CPRA) provides that public records are open to inspection at all times during the office hours of a state or local agency, and that every person has a right to inspect any public record, unless otherwise exempted from disclosure. Existing law further provides, that in the event that a record contains non-disclosable information, "any reasonably segregable portion of the record shall be available" to the requestor. (Gov. Code Sec. 6253.)

Notably, records of complaints and investigations conducted by the police, or any investigatory or security files compiled by the police are exempted from disclosure under the CPRA. (Gov. Code Sec. 6254(f).) With regard to records that are not covered by an exemption, police agencies may withhold any record if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by the disclosure of the record." (Gov. Code Sec. 6255.) Furthermore, while public records laws may have been passed to promote good governance and public accountability, the CPRA does not "allow limitations on access to a public record based upon the purpose for which the record is being requested, if the

record is otherwise subject to disclosure." (Gov. Code Sec. 6257.5.) Thus, public records may be used for any purpose, including for commercial purposes, and custodians of public records are advised to not inquire into the motives behind the request.

This bill would require the disclosure of certain audio or visual records that a law enforcement agency would otherwise be able to withhold under the investigatory exemption. However, the expansion of records that would now be available is a very small universe. The expansion only applies to video or audio recordings that relate to an incident involving a peace officer's use of force or a violation of law or agency policy by a peace officer. A law enforcement agency could withhold a recording for a period of 45 days from the incident, and subsequent 15 day periods of time, under specified circumstances. To ensure that there is a legitimate justification for the withholding, the law enforcement entity would have to provide the reasons for the withholding in writing to the requester.

In opposition, the California Police Chiefs Association writes:

> Under AB 748, law enforcement agencies would have only 45 days to withhold investigative footage from the time a critical incident takes place, which is broadly defined by the measure as ANY violation of law or internal department policy, use of force LIKELY to cause death or serious bodily injury or discharge of a firearm or strike to person's head with an impact weapon. Under this definition, minor policy violations and minor use of force incidents would result in the same disclosure requirements as a deadly office-involved shooting - clearly those are vastly different scenarios that do not necessarily merit the same level of public scrutiny.
>
> After 45 days, this measure would require the agency to request a 15-day extension upon proof, by clear and convincing evidence (which is our highest civil standard), that disclosure would interfere with an active investigation. The agency must then reassess withholding the investigative footage every 15 days AND provide notifications to each requester.

The California State Sheriffs' Association, in opposition, writes:

> Local agencies should maintain the authority to determine when and how such recordings should be released including whether they will be released at all. Even if an investigation is ongoing, the language specifies that a recording may be withheld, but only for 45 days unless the agency notifies the requester of the recording every 15 days after the first 45 days as to the reason for non-disclosure. Ultimately, however, AB 748 provides that the recording must be disclosed thereby mandating the public release of information that could be crucial evidence in a pending criminal case.

4. Offers privacy protections for those depicted in the recordings

On a daily basis, police interact with individuals whose identities are sensitive, such as confidential informants and witnesses, and with people at very low or vulnerable points in their lives, including individuals being arrested and victims giving emotional or graphic statements. Public disclosure of many of these interactions could violate a person's privacy without serving any legitimate public interest. If constantly recording, body camera footage may also compromise the privacy of the officers wearing a camera.

Thus, depending on the circumstances, police camera footage may be intrusive for both police officers and members of the public. However, such devices have been shown to reduce violence, improve evidence gathering, and increase police legitimacy. The use of cameras ensures that both the police and the public they interact with are "on their best behavior." Ultimately, the goal of equipping police officers with body cameras is to provide a record of police conduct, which should improve public trust in the police. That being said, failing to protect the privacy of individuals may have the unintended consequence of chilling the public's willingness to engage with the police investigations, and thus limit the agency's ability to adequately serve the community.

Existing law, recognizing the need for a balance between transparency and privacy, requires that even when a record contains information or material that is non-disclosable, "any reasonably segregable portion of a record shall be made available." Similarly, this bill would provide that if the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting

images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered. The bill would also specify that, except in the context of active investigations, if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following:

- the subject of the recording whose privacy is to be protected, or his or her authorized representative;
- if the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected; or
- if the subject whose privacy is to be protected is deceased, a member of his or her immediate family, as defined in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

This provision ensures that the agency does not invoke a requester's own reasonable expectation of privacy in order to deny that person a recording of the critical incident.

This bill is intended to prevent law enforcement from delaying the release of video and audio of law enforcement use of force, law enforcement breaking the law and law enforcement violating agency policy. Simply put, the goal of this bill is to prevent law enforcement from hiding behind the investigation exception and privacy exception in order to justify not releasing video and audio recordings.

The provisions of this bill arguably strike the right balance between withholding recordings to protect the integrity of investigations, shining light on police misconduct, and protecting the privacy of those who are depicted in recordings.

Support: American Civil Liberties Union; California Attorneys for Criminal Justice; California Broadcasters Association; California Civil Liberties Advocacy; California Newspaper Publishers Association; California Public Defenders Association; Motion Picture Association of America, Inc.; Oakland Privacy;

Opposition: Association of Orange County Deputy Sheriffs; California Association of Highway Patrolmen; California District Attorneys Association; California Law Enforcement Association of Records Supervisors; California Police Chiefs Association; California Police Protective League; California State Association of Counties; California State Sheriffs' Association; City of Palmdale; Fraternal Order of Police; League of California Cities; Long Beach Police Officers Association; Peace Officers Research Association of California; Police Officers Research; Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs; San Joaquin County Hispanic Chamber of Commerce

HISTORY

Source: American Civil Liberties Union of California; California News Publishers Association

Related Pending Legislation: SB 1421 (Skinner, 2018)

Prior Legislation:

AB 459 (Chau, Ch. 291, Stats. 2017) provides that public agencies are not required to disclose video or audio created during the commission or investigation of the crimes of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. This bill requires the agency to justify withholding such a video or audio recording by demonstrating that the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording. This bill provides factors for the agency to consider in making such a determination. This bill requires public agencies to permit a victim of a crime depicted in such videos to inspect the recording and obtain a copy.

AB 2533 (Santiago, 2016), *See* Comment 2.

AB 1957 (Quirk,2016), *See* Comment 2.

AB 1940 (Cooper, 2016), 2016, *See* Comment 2.

SB 175 (Huff, Gaines, 2015) *See* Comment 2.

AB 66 (Weber), 2015, *See* Comment 2.

Prior Vote:

Senate Public Safety Committee (Ayes 5, Noes 2)

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Public Safety Committee (Ayes 7, Noes 0)

CA B. An., A.B. 748 Sen., 6/26/2018

End of Document

PROOF OF SERVICE

I, Tatiana Hoefer, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 25th Floor, Los Angeles, California 90071. On February 6, 2025, I served a copy of the within document(s):

ANSWER TO AMICUS CURIAE BRIEF OF FIRST AMENDMENT COALITION, ET AL.

☒ TRUEFILING by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Jean-Paul Jassy Jassy Vick Carolan LLP 355 South Grand Avenue, Suite 2450 Los Angeles, CA 90071 Email: jpjassy@jassyvick.com	Sacramento Television Stations Inc. : Petitioner
Jordyn Elise Ostroff Jassy Vick Carolan LLP 355 South Grand Avenue, Suite 2450 Los Angeles, CA 90071 Email: jostroff@jassyvick.com	
Joseph Timothy Speaker City of Roseville 311 Vernon St Roseville, CA 95678 Email: jspeaker@roseville.ca.us	City of Roseville : Real Party in Interest

☒ U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.

Stephen Pegg, Appeals
The Superior Court of Placer County
10820 Justice Center Drive
Roseville, CA 95678

The Superior Court of Placer County : Respondent

Honorable Glenn MacNeur Holley
Judge of the Placer County Superior Court - Main
P.O. Box 619072
Roseville, CA 95661

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

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 6, 2025, at Los Angeles, California.

Tatiana Hoefer
Tatiana Hoefer