3d Civ. No. C102316
Placer County Superior Court No. S-CV-0052277
(The Honorable Glenn Holley)

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

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

Petitioner,

vs.

SUPERIOR COURT FOR THE COUNTY OF PLACER,

Respondent,

CITY OF ROSEVILLE,

Real Party in Interest

APPELLANT'S PETITION FOR REHEARING OR, IN THE ALTERNATIVE, MOTION TO PARTIALLY DEPUBLISH OPINION

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INTRODUCTION

Pursuant to the California Rules of Court, Rule 8.268, Petitioner Sacramento Television Stations Inc. d/b/a CBS News Sacramento ("CBS") petitions for rehearing because portions of the Court's June 6, 2025 opinion (the "Opinion") relating to *in camera* review: were not fairly encompassed in the briefing; are contrary to or unsupported by applicable laws; contain misunderstandings of facts; and because the Court's instructions to the trial court are unclear and impractical. The Court should grant rehearing, and order disclosure as prayed for by CBS.

In the alternative, CBS requests that the Court decertify for publication the portions of the Opinion ordering *in camera* review.

ARGUMENT

I. REHEARING IS WARRANTED

"On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing." Cal. R. Ct., Rule 8.268(a).

A. The Propriety of *In Camera* Review was Not Fairly Encompassed in the Briefing

Rehearing must be granted where the decision is based on an issue that was not proposed or fairly encompassed by the briefing, and no opportunity was given for supplemental briefing. Gov't C. § 68081; *People v. Alice*, 41 Cal.4th 668, 674-79 (2007); *Dieckmeyer v. Redevelopment Agency of Huntington Beach*, 127 Cal.App.4th 248, 250 n.1 (2005).

The Petition did not request or brief the propriety of *in*

camera review. *See generally* Pet.; *see also* Opinion 25 n. 20 (noting that Petition did not pray for *in camera* review). Likewise, the Return filed by Real Party in Interest the City of Roseville (the "City") did not request or brief the propriety of *in camera* review. *See generally* Return.[1] CBS's Reply addressed the issue briefly, Reply 34-35, but CBS did not fully brief the issue because it was not requested or briefed by the parties in their respective opening briefs. The issue, therefore, was not fairly encompassed in the briefing. Rehearing, with supplemental briefing, should be permitted to give CBS a fulsome opportunity to explain its positions against ordering *in camera* review.

B. The Ordered *In Camera* Review is Contrary to Law

Rehearing is warranted to correct a mistake of law, to prevent confusion, or where correction would likely produce a different result. *Alameda County Management Employees Assn. v. Super. Ct.*, 195 Cal.App.4th 325, 338 n.10 (2011).

Nothing in Government Code section 7923.625 ("Section 7923.625")—or any other part of the California Public Records Act ("CPRA")—mandates or even statutorily contemplates *in camera* review under the facts of this case, but the Opinion effectively mandates *in camera* review in *all* cases where the scope of required disclosure is disputed under Section 7923.625. *See* Opinion § II.C.

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[1] The parties briefly recited positions taken on the issue in the court below, Pet. 21, Return 19, 33-34, but neither party requested *in camera* review or briefed its propriety in the Petition or Return.

The Legislature knows how to make *in camera* review mandatory. *See, e.g., Riverside County Sheriff's Dep't v. Stiglitz*, 60 Cal.4th 624, 642-43 (2014) (holding that "Evidence Code section 1045 expressly provides that in camera review is *mandatory* before disclosure [of peace officer personnel records] in every case") (emphasis in original). But the Legislature did not do that for the records at issue here. Gov't C. § 7923.625.[2] The Opinion points to Government Code section 7923.105 ("Section 7923.105") as the statutory basis for ordering *in camera* review of the recordings in the City's possession. *See* Opinion 3, 6 n.5. But Section 7923.105 only provides for *in camera* review "*if permitted*" by Evidence Code section 915(b) (emphasis added), and that provision only permits reviews for *specified* privileges that are not at issue here. No other part of Section 7923.105—or the CPRA as a whole—requires *in camera* review. In this way, the Opinion impermissibly overrides the Legislature's policy choices embodied in the CPRA by creating a new requirement before records may be disclosed in disputed Section 7923.625 cases.

By functionally requiring *in camera* review in every disputed Section 7923.625 case, the Opinion also creates an irreconcilable conflict with the First Appellate District's decision in *ACLU v. Super. Ct.*, 202 Cal.App.4th 55 (2011), which

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[2] The Legislature also knows how to make *in camera* review permissive, but it did not do that here either. *See, e.g., Kleitman v. Super. Ct.*, 74 Cal.App.4th 324, 333 (1999) (recognizing that, under the text of Gov't C. § 54960(c), a trial court "*may* review in camera" recordings of closed sessions of public bodies in alleged violation of the Brown Act) (emphasis added)).

emphasized that *in camera ex parte* review in CPRA cases is "generally disfavored" and used as a last resort when "the issue at hand could not be otherwise resolved," and where, as here, "the requestor of information is not provided anything to support the asserted nonresponsiveness of the information, and therefore cannot effectively contest the claim, an in camera examination by the court is least reliable and cannot be dispositive." *Id.* at 87 (cleaned up). It was the City's burden to show that the records sought were nonresponsive, *id.* at 67; a burden that it did not satisfy here. Both the trial court and this Court found the City's disclosure insufficient. Opinion 7, 19, 21.

Rewriting Section 7923.625 to require *in camera* review in disputed cases also jeopardizes requesters' due process rights and therefore frustrates CPRA's bias in favor of disclosure. Unlike the City, on remand, CBS will have no direct knowledge of the contents of the recordings the trial court reviews, and what, if anything, it determines is outside the scope of mandatory disclosure pursuant to this Court's Opinion and Section 7923.625. *See Dep't of Corrections v. Superior Court*, 199 Cal.App.3d 1087, 1092 (1988) ("To assure due process, open proceedings involving the participation of both parties are the general rule in both criminal and civil cases."); *cf. People v. Hobbs*, 7 Cal.4th 948, 963–64 (1994) (describing tension between *in camera* review and due process rights in context of defendant's right to challenge legality of search warrant based on confidential information). "In camera inspection in the trial court also creates problems for appellate review," as "trial court opinions 'are generally stated in

conclusory terms, and the disappointed requestor is not in a position to challenge those conclusions or even to assist the appellate court in focusing its inquiry.'" *ACLU*, 202 Cal.App.4th at 87.

Requiring *in camera* review also undermines the right to timely access and prompt disclosure—yet another requirement of the CPRA. Access to public records is a "'fundamental and necessary right.'" Opinion 8; *see* Cal. Const. Art. I, sec. 3(b). And, "a necessary corollary of the right to access is a right to timely access." *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594-96 (9th Cir. 2020) (collecting cases and discussing First Amendment right of access); *see* Petitioner's Reply 34-35. The CPRA accordingly provides that records shall be made available "promptly." Gov't C. § 7922.530(a). Although CBS has confidence that the trial court in this case would act promptly, requiring *in camera* review, rather than ordering disclosure as prayed for by CBS, runs contrary to the constitutional and statutory rights of timely and prompt access to records of an incident that occurred over two years ago. *Courthouse News Serv.*, 947 F.3d at 594 ("the public interest in obtaining news is an interest in obtaining contemporaneous news").

Moreover, the Opinion's judicially–created *in camera* requirement for records of officer-involved shootings is especially troubling because it undercuts the Legislature's intent in adopting Section 7923.625 in the first place. Law enforcement agencies already have incentives to conceal and delay the disclosure of embarrassing, problematic, tortious, or even illegal

behavior. The Court's Opinion encourages this behavior. Under the Opinion, agencies can adopt the narrowest read of the statutory text, however indefensible, thereby ensuring that disclosure will come, if at all, only after a protracted and expensive lawsuit by only the most well-heeled requesters. Indeed, avoiding concealment and mistrust, while promoting transparency around officer-involved shootings is precisely why Section 7923.625 was enacted. Opinion 13, 18. The Court's Opinion cuts the opposite way.

For the foregoing reasons, the Opinion's *in camera* requirement runs contrary to the law on many levels.

C. The Opinion Contains Misunderstandings of Fact

Rehearing is warranted to correct "misunderstandings of facts." *In re Jessup*, 81 Cal. 408, 471 (1889).

The Opinion states that CBS wants to construct a "legal rule" based on "temporal bright lines" to define the scope of disclosure under Section 7923.625. Opinion 19. That is not CBS's position. CBS does not advocate for any "legal rule" or "bright-line" definition of "incident involving" under Section 7923.625. Rather, CBS's position is that, *in this case, based on these publicly known facts of an incident that played out in a public park*, the required disclosure consists of all the footage in the City's possession from the time Roseville PD officers arrived on the scene at Mahany Park to when the scene was secured. *See, e.g.*, Pet. 41; Reply 21. Circumstances may well warrant less or more disclosure in a different case with different facts. But those

boundaries are appropriate in this case based on publicly known and undisputed facts, *see* Opinion 3, as well as the City's own description of that entire passage of time as an "incident" in its press releases. *See, e.g.*, April 14, 2023 Press Release (manually filed with the Court on March 6, 2025).

D. The Opinion Provides Imperfect and Impractical Directions to Trial Courts

Rehearing is appropriate to clarify or alter imperfect or impractical directions to the trial court, and to address material inaccuracies or omissions in the disposition. *Ducoing Mgmt. Inc. v. Superior Court*, 234 Cal.App.4th 306, 314 (2015).

The Opinion provides that an *in camera* review should result in the disclosure of, at a minimum, "uninterrupted copies of all Roseville PD recordings of the April 6 occurrence that were captured during the ***three-minute window*** of time when, the City alleges, the entire incident involving firearm discharge by ***Roseville PD*** took place . . . ." Opinion 21 (emphases added and omitted). There are two material problems with this instruction.

First, the suggestion that the required disclosure from the City is limited to incidents involving firearm discharges by *Roseville PD* is inconsistent with the language of the statute, which defines the required disclosure by reference to firearm discharges by "***a*** peace officer or custodial officer" more generally—not just officers of the agency to whom the CPRA request is made. Gov't C. § 7923.625(e)(1) (emphasis added); *see also* Opinion 9 (the CPRA must be interpreted broadly). In other words, if the City's recordings possibly involve firearm discharges

by officers from *other agencies*—such as Sheriff's Deputies or the California Highway Patrol (which the City asserts "'fired approximately 15-20 rounds at the suspect'"), 1 Petitioner's Appendix ("PA") 53—those recordings must also be disclosed consistent with Section 7923.625 and the Opinion. *Cf. Becerra v. Super. Ct.*, 44 Cal.App.5th 897, 919-23 (2020) (rejecting agency's argument that the CPRA only requires disclosure of records pertaining to the responding agency's own employees in the context of Senate Bill 1421 and creating yet another conflict in the law).

Second, the Opinion's reference to "the three-minute window" as a baseline for disclosure is certainly better than the status quo, but it is too restrictive and does not align with evidence in the record (or even the facts as recited in the Opinion) because the City *admitted* that gunfire was exchanged between Roseville PD and the suspect for *at least 19 minutes* (between "12:38pm and 12:57pm"—*i.e.*, not just "three minutes"). 1 PA 9 (¶ 35), 23, 53 (¶ 35); Opinion 3. And that does not necessarily include gunfire exchanged between other agencies and the suspect. There is no *evidence* in the record that gunfire was only exchanged for three minutes; there is only attorney argument on that point, *see* Opinion 3 n.3. In the City's Return filed with this Court, it *only* cites "1-PA-23" for the proposition that the exchange of gunfire between Roseville PD and the suspect "took place within a three (3) minute window," but the cited *evidence* contradicts that assertion, stating: "Roseville officers exchanged

gunfire with suspect Eric J Abril between approximately 12:38pm and 12:57pm." Return 24 (citing 1-PA-23).[3]

But even if the foregoing portions of the Opinion are corrected, the Opinion still lacks direction to the trial court because it does not explain what additional context will be sufficient to satisfy the Legislature's—or even this Court's—mandate to allow a viewer to, *inter alia*, "fully, completely, and accurately comprehend the events captured" in a recording that "relates to a critical incident." Opinion 20 (quoting Section 7923.625(b)(1)). The lack of clear direction compounds the burdens imposed on trial courts by mandating *in camera* review. *See ACLU*, 202 Cal.App.4th at 87 (expressing concern for the "very burdensome demands" "in camera inspection of disputed documents" places on trial courts) (cleaned up).

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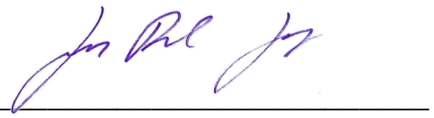
[3] The City later claimed there was a "docking station issue" that resulted in one of the cameras being "closer to the other" clips that were produced. Return 43. But there is *no evidence* of any "docking station issue" (whatever that means), and the Return cites to none. Instead, the City only cites back to its own counsel's arguments and assertions at hearings. *Id.*

II. IN THE ALTERNATIVE, THE OPINION SHOULD BE PARTIALLY DEPUBLISHED

In the alternative, if the Court is not inclined to grant rehearing and modify its Opinion to eliminate the requirement for *in camera* review, CBS requests that the Court reconsider its certification of all portions of the Opinion that direct *in camera* review. *See* Cal. R. Ct., Rules 8.1110(a), 8.1125(a).

DATED: June 20, 2025

JASSY VICK CAROLAN LLP

By: 

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d/b/a CBS News Sacramento

CERTIFICATE OF COMPLIANCE

I, Jean-Paul Jassy, certify pursuant to California Rule of Court 8.204(c), the text of the foregoing Petition for Rehearing or, in the Alternative, Motion to Partially Depublish Opinion consists of 2,267 words in 13-point Century Schoolbook type as counted by the word-processing program used to prepare the brief.

DATED: June 20, 2025

JASSY VICK CAROLAN LLP

By:_____
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-captioned action. My business address is 355 South Grand Avenue, Suite 2450, Los Angeles, California, 90071.

On, June 20, 2025, I served a true copy of the following document described as:

APPELLANT'S PETITION FOR REHEARING OR, IN THE ALTERNATIVE, MOTION TO PARTIALLY DEPUBLISH OPINION

on the interested parties in this action as follows:

☑ **Served by U.S. Mail**

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

Dated: June 20, 2025

Marlene Rios