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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO

11 FIRST AMENDMENT COALITION,
12
13 Petitioner,
14 v.
15 CITY OF SAN DIEGO,
16 Respondent.

Case No. 25CU033245C

**PETITIONER’S REPLY IN SUPPORT OF
MOTION FOR JUDGMENT GRANTING
VERIFIED PETITION FOR
DECLARATORY RELIEF AND WRIT OF
MANDATE**

Date: June 12, 2026
Time: 10:30 a.m.
Dept.: C-68
Judge: Hon. Terrie E. Roberts

Petition Filed: June 25, 2025

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1 **I. INTRODUCTION**

2 When it adopted landmark police transparency laws in A.B. 748 and S.B. 1421, the
3 Legislature meant what it said. To rebuild public trust undermined by decades of secrecy, agencies
4 must promptly disclose records relating to the most significant force used by peace officers—
5 discharge of a firearm at a person and force causing death or great bodily injury—regardless of
6 whether the force was appropriate. As the Legislature declared, “The public has a strong,
7 compelling interest in law enforcement transparency because it is essential to having a just and
8 democratic society.” (Stats. 2018, ch. 988 § 4.) Because California was historically “one of the
9 most secretive states in the nation in terms of openness when it comes to ... uses of force,” the
10 Legislature emphasized “the importance of transparency with respect to officers’ ‘use of force’ to
11 help ‘build public trust’ in law enforcement.” (*City of Vallejo v. Superior Court* (2025) 112
12 Cal.App.5th 565, 593, 595.) The City may not disobey that mandate.

13 The City initially denied FAC’s request solely on the ground that the records at issue are
14 permanently exempt from disclosure, without any reference to delayed disclosure. Now, however,
15 the City has abandoned that argument. It does not dispute that the records are covered by A.B. 748
16 and S.B. 1421 because they depict or relate to discharge of a firearm or use of force resulting in
17 great bodily injury. (Gov. Code § 7923.625; Pen. Code § 832.7, subd. (b)(1)(A)(i)–(ii).) The City
18 forfeited any objection on that point. (*Golden Door Properties, LLC v. Superior Court* (2020) 53
19 Cal.App.5th 733, 786.) The City now says it “merely seeks to delay disclosure.” City’s Opposition
20 (“Opp.”) at 1:8. The City’s new position is procedurally barred and substantively meritless.

21 Procedurally, the City forfeited any right to delay disclosure under A.B. 748 or S.B. 1421
22 because it failed to comply with the statutory conditions necessary for doing so. Substantively,
23 even if the Court may consider the City’s arguments, the City cannot carry its burden to delay
24 disclosure under A.B. 748 or S.B. 1421. The City admits there is no active administrative
25 investigation. Epperson Decl. ¶ 14. It says the District Attorney’s office “is reviewing the matter,”
26 *id.* ¶ 6, but a “review” is not an active criminal investigation. The City therefore failed to establish
27 the statutory predicate that there is an active investigation underway.

28 Even assuming otherwise, the City cannot justify withholding body-worn camera

1 recordings under A.B. 748, because it cannot meet the statutory burden to prove by clear and
2 convincing evidence that disclosure would substantially interfere with any active investigation
3 such as by endangering a witness or confidential source. Nor can it justify withholding other
4 records at issue under S.B. 1421, because the outer time limit for doing so will have expired by the
5 time this case is heard. In any event, the City cannot meet its burden to prove any reasonable
6 likelihood that disclosure would interfere with a hypothetical criminal prosecution. The City
7 merely offers generic and speculative assertions that could apply to any case, which if adopted
8 would nullify the Legislature’s rigorous standards for delayed disclosure. Public disclosure will
9 not prevent the District Attorney’s office from reviewing the matter fairly and impartially.

10 The plain language of A.B. 748 and S.B. 1421 establishes detailed and stringent standards
11 for when disclosure may be delayed. In adopting those standards, the Legislature rejected the
12 City’s position that disclosure of the records at issue here can be delayed merely because an
13 administrative investigation is tolled under POBRA, given that the records must be disclosed
14 regardless of whether the officers committed any misconduct. Contrary to the City’s
15 misstatements, POBRA creates no authority to withhold public records, permanently or
16 temporarily. The City may not rewrite A.B. 748 and S.B. 1421 to add new excuses for delayed
17 disclosure that the Legislature chose not to include. Public disclosure will not prevent the City
18 from completing its internal investigation fairly and impartially. The records at issue must be
19 disclosed immediately, subject only to limited redactions allowed by A.B. 748 and S.B. 1421,
20 which FAC reserves the right to challenge later if necessary. (*Los Angeles County Bd. of*
21 *Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292 [agencies must “use the equivalent of a
22 surgical scalpel” to make any allowable redactions].)

23 **II. ARGUMENT**

24 **A. The City Is Procedurally Barred from Invoking the Right to Delay Disclosure**
25 **of the Records at Issue Because It Failed to Comply with the Statutory**
 Conditions for Doing So.

26 The City admits the “records at issue” include “body-worn camera recordings,” Epperson
27 Decl. ¶ 4, disclosure of which is controlled by A.B. 748, as well as other records, disclosure of
28 which is controlled by S.B. 1421. The City is barred from invoking any right to delay disclosure

1 under either statute because it failed to comply with the conditions necessary to do so.

2 A.B. 748 specifically governs disclosure of video and audio recordings that depict a
3 “critical incident” involving discharge of a firearm or use of force resulting in great bodily injury.
4 (Gov. Code § 7923.625, subd. (e).) In contrast, S.B. 1421 generally covers many types of records
5 about various types of incidents. (Pen. Code § 832.7, subd. (b)(1), (b)(3).) As the “more specific
6 provision” on point to critical incident recordings, A.B. 748 “takes precedence over” S.B. 1421
7 and controls disclosure of such recordings. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 857; see also
8 *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 961 [holding “Long-Term
9 Care Act is the more specific statute” controlling disclosure of citations issued by Department of
10 Public Health because of “detailed nature” of that statute’s “discussion of DPH citations,” while
11 Lanterman Act “addresses the confidentiality of records” about “mentally ill and developmentally
12 disabled individuals at a high level of generality”].)

13 The City does not dispute that officers discharged a firearm at Mr. Evans or used force that
14 caused great bodily injury.¹ Accordingly, the body-worn camera recordings and any other video or
15 audio recordings that depict this “critical incident” must be disclosed under A.B. 748. (Gov. Code
16 § 7923.625.) That statute establishes detailed conditions for delaying disclosure. In relevant part,
17 “[i]f an agency delays disclosure” more than 45 days after the incident, “the agency shall promptly
18 provide in writing to the requester the specific basis for the agency’s determination that the
19 interest in preventing interference with an active investigation outweighs the public interest in
20 disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding
21 and notify the requester every 30 days.” (Gov. Code § 7923.625, subd. (a)(2).)

22 S.B. 1421 requires disclosure of other records about the incident at issue, such as written
23 reports. (Pen. Code § 832.7(b)(1)(A)(i)-(ii).) It states, in relevant part, “After 60 days from the ...
24 use of force,” if “an agency delays disclosure” on the ground that “disclosure could reasonably be
25 expected to interfere with a criminal enforcement proceeding against an officer who engaged in ...
26

27
28 ¹ The Court of Appeal recently confirmed “great bodily injury” means “significant or substantial
physical injury,” as argued in FAC’s opening brief. (*City of Fresno v. Superior Court* (Fifth
District Court of Appeal, March 12, 2026) No. F089987, 2026 Cal. App. LEXIS 179, *15–17.)

1 use of force,” the “agency shall, at 180-day intervals as necessary, provide, in writing, the specific
2 basis for the agency’s determination that disclosure could reasonably be expected to interfere with
3 a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure
4 of the withheld information.” (Pen. Code § 832.7, subd. (b)(8)(A)(ii).)

5 The City complied with none of the above requirements in responding to FAC’s request.
6 It gave no indication that it was seeking to delay disclosure. Instead, it contended that the records
7 were permanently exempt from disclosure as “investigatory files” or “peace officer personnel
8 records,” or under the CPRA’s catchall exemption. Plotkin-Wolff Decl. Ex. 1. As explained in
9 FAC’s opening brief, those assertions are meritless and precluded by A.B. 748 and S.B. 1421.

10 Both statutes require written notice to the requester, with regular updates, stating the
11 specific basis for delay and an estimated date of disclosure when the agency first responds to the
12 request, not months or years later in litigation as an attempted post hoc justification for delay.
13 The purpose of such notice is to inform the requester of the agency’s position so the requester may
14 make an informed decision on how best to proceed and the agency may seek to avoid potentially
15 needless litigation. Accordingly, an agency’s compliance with the statutory notice requirements is
16 a condition precedent to invoking the right to delay disclosure. (See *Center for Self-Improvement*
17 *& Community Development v. Lennar Corp.* (2009) 173 Cal.App.4th 1543, 1551 [holding
18 “[s]tatutory notice is a mandatory condition precedent” for bringing action under Proposition 65
19 because it “provides the public prosecutors with appropriate information to assess whether to
20 intervene on the public’s behalf, and affords the accused the opportunity to avert litigation by
21 settling with the plaintiff or curing any violation”].) Having failed to comply with the statutory
22 conditions to delay disclosure, the City cannot contend that delayed disclosure is justified.²

23 **B. Even if the City Could Argue that Delayed Disclosure is Justified, Its**
24 **Contentions Are Meritless, Because It Cannot Prove the Facts Necessary to**
Delay Disclosure under A.B. 748 or S.B. 1421.

25 Even if the City is not barred from seeking to delay disclosure, its contentions are
26 meritless. Because this action seeks equitable relief, the Court decides the merits based on the

27 _____

28 ² Even if the City could now attempt to justify delayed disclosure, it has still not satisfied the
statutory conditions, not least because it has not stated an estimated date of disclosure.

1 facts at the time of its ruling. (*Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian*
2 *Church* (1952) 39 Cal.2d 121, 135; *Mercer Casualty Co. v. Lewis* (1940) 41 Cal.App.2d 918, 922–
3 923.) On the facts as of the hearing, the City cannot justify withholding the records at issue, and in
4 camera review cannot substitute for the City’s failure to carry its burden of proof. (*American Civil*
5 *Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 87; cf.
6 *Torres v. Superior Court* (2000) 80 Cal.App.4th 867, 873 [party “is not entitled to an in camera
7 hearing just for the asking”].) Nor is the City entitled to present live testimony, because its
8 evidence is insufficient on its face.

9 **1. The City Cannot Prove Delay Is Justified under A.B. 748.**

10 Now that more than one year from the incident has elapsed, the City cannot delay
11 disclosure of the body-worn camera recordings unless it can prove by “clear and convincing
12 evidence” that there is “an active criminal or administrative investigation” and “based on the facts
13 and circumstances depicted in the recording, disclosure would substantially interfere with the
14 investigation, such as by endangering the safety of a witness or a confidential source.” (Gov. Code
15 § 7923.625, subd. (a)(1)–(2).) Clear and convincing evidence requires proof making it “highly
16 probable” that the alleged fact is true, which must be “so clear as to leave no substantial doubt”
17 and “sufficiently strong to command the unhesitating assent of every reasonable mind.”
18 (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 998 & fn. 2.) A “mere assertion of possible
19 endangerment” cannot carry the City’s demanding burden. (*Long Beach Police Officers Ass’n v.*
20 *City of Long Beach* (2014) 59 Cal.4th 59, 74 [“*Long Beach*”].)

21 The City fails the threshold element of proving an active investigation. It admits there is no
22 active administrative investigation. Epperson Decl. ¶ 14. To say the “District Attorney’s Office is
23 reviewing the matter to decide whether to file criminal charges against the officers involved in the
24 incident,” *id.* ¶ 6, does not prove there is an active criminal investigation. A “review” of evidence
25 already gathered is not an active investigation to collect evidence. Indeed, by saying the “records
26 at issue” in the City’s possession “include investigative reports, witness statements, body-worn
27 camera recordings, dispatch/audio recordings, photographs ... and investigative timelines,”
28 Epperson Decl. ¶ 4, the City effectively concedes its criminal investigation is complete. If that

1 were not the case, it is unlikely the District Attorney’s office would be reviewing the matter.

2 Even assuming there is an active investigation, the City’s arguments fail. First, any
3 evidence of substantial interference with an active investigation must be grounded in the facts and
4 circumstances depicted in the recordings at issue, not in generic concerns that could be said of any
5 case. Second, the alleged interference must be substantial. (See *State Farm Gen. Ins. Co. v. Lara*
6 (2021) 71 Cal.App.5th 197, 214 [noting definition of “substantial” as “[i]mportant, essential, and
7 material; of real worth and importance”].) Third, the alleged interference must involve or resemble
8 endangering the safety of a witness or a confidential source. (Gov. Code § 7923.625, subd. (a)(1)).
9 The City has failed to carry its burden, and certainly not by clear and convincing evidence.

10 Because A.B. 748 “includes a general term” such as substantial interference “followed by a
11 nonexhaustive list of specific examples” such as endangering a witness or a confidential source,
12 “the principle of *ejusdem generis* provides guidance in discerning the Legislature’s intent” about
13 the kind of interference that can justify withholding critical incident recordings. (*Int’l Fed’n of*
14 *Pro. & Tech. Eng’rs, Local 21 v. Superior Court* (2007) 42 Cal.4th 319, 342.) When “specific
15 words follow general words in a statute,” the “general term or category is restricted to those things
16 that are similar to those which are enumerated specifically.” (*Ibid.*) Thus, “if the Legislature
17 intends a general word to be used in its unrestricted sense, it does not also offer as examples
18 peculiar things or classes of things since those descriptions then would be surplusage.” (*Ibid.*)
19 Accordingly, in providing specific examples of substantial interference, such as endangering a
20 witness or a confidential source, the Legislature intended that evidence sufficient to justify
21 withholding critical incident recordings must involve or resemble those examples.

22 The City offers nothing which proves by clear and convincing evidence that based on the
23 facts and circumstances depicted in the recordings at issue, disclosure would substantially interfere
24 with any active investigation such as by endangering a witness or a confidential source. Indeed,
25 there is nothing confidential about the incident at issue, given that it occurred in public, was
26 witnessed by numerous officers and other persons, and has been heavily publicized.

27 The City does not refer to any “confidential source” or prove by clear and convincing
28 evidence that disclosure of the recordings would result in “endangering the safety of a witness.”

1 (Gov. Code § 7923.625, subd. (a)(1)). The City speculates that “disclosure of witness identities ...
2 *could* subject witnesses to intimidation, harassment, retaliation, or undue influence,” Epperson
3 Decl. ¶ 9 (italics added), but that is not clear and convincing evidence. Indeed, the City does not
4 claim that the body-worn camera recordings depict *any* civilian witnesses. Even if they do, their
5 identities could be redacted. (Gov. Code § 7923.625, subd. (b)(1).) The City has already disclosed
6 the names of the officers involved, who are identified in public court records. Loy Decl. Ex. A, E.

7 The remainder of the City’s evidence is not cognizable under A.B. 748, because it does not
8 pertain to substantial interference with an active investigation such as by endangering a witness or
9 confidential source. The City offers mere generic assertions that could be said of disclosing any
10 critical incident recording. By requiring proof of actual and substantial interference with an active
11 investigation such as by endangering a witness or confidential source, the Legislature rejected
12 such generic concerns as grounds to delay disclosure, and to hold otherwise would effectively
13 repeal the Legislature’s mandate for prompt disclosure of such recordings.

14 Even if the Court could consider the City’s assertions, they cannot justify continued
15 withholding of the body-worn camera recordings, The recordings are factual evidence of what
16 happened. They do not disclose “investigative steps, investigative focus, and the status and
17 direction of the investigation.” Epperson Decl. ¶ 7. As mere factual evidence, the recordings do
18 not contain “law enforcement techniques, procedures, and operational information.” *Id.* ¶ 11.
19 Therefore, their disclosure cannot substantially interfere with any active investigation.

20 The City speculates that disclosure “would refocus the public’s attention” on the use of
21 force against Mr. Evans and “lead to public sentiment that will undoubtedly lead to pressure to
22 bring charges.” *Id.* ¶ 7. Apart from being unfounded speculation, that assertion goes to the District
23 Attorney’s decision to bring charges, not any substantial interference with an active investigation.
24 Therefore, it is not a ground for delay recognized in A.B. 748. Indeed, the City’s assertion betrays
25 its misunderstanding of A.B. 748’s mandate, if not its disregard for democracy.

26 The Legislature adopted A.B. 748 to guarantee transparency about the most significant
27 uses of force by police, in which the public has a compelling interest in full disclosure. (*Long*
28 *Beach, supra*, 59 Cal.4th at p. 74.) Such transparency builds trust in law enforcement and is

1 essential to democratic accountability. If some people did advocate for or against bringing
2 charges, that would be their First Amendment right, but the potential exercise of that right cannot
3 be grounds to delay disclosure. The City does not contend that “during the charging process” the
4 District Attorney’s office is incapable of performing its “functions with the highest degree of
5 integrity and impartiality, and with the appearance thereof,” regardless of public sentiment.
6 (*People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 267 & fn. 8.)

7 The City cannot rely on speculative assertions about the hypothetical impact of disclosure
8 on the hypothetical prosecution of criminal charges. A.B. 748 allows delay only due to substantial
9 interference with an active investigation, not conclusory assertions about a potential prosecution.
10 In any event, the recordings merely show what happened and do not contain or describe “order of
11 witnesses, anticipated evidentiary themes, and areas of impeachment.” Epperson Decl. ¶ 13.

12 The City fares no better with generic assertions about “affecting witness recollection,
13 contaminating witness testimony, and influencing potential jurors through pretrial publicity.”
14 *Id.* ¶ 12. First, the City admits it has already collected “witness statements.” *Id.* ¶ 4. Second, the
15 City’s assertions do not show any substantial interference with an active investigation that
16 involves or resembles endangering a witness or confidential source, and speculation about witness
17 testimony in a hypothetical trial cannot justify withholding the recordings at issue. (Cf. *South*
18 *Coast Newspapers v. Superior Court* (2000) 85 Cal.App.4th 866, 873 [overturning order against
19 publishing defendants’ photographs where record showed no “substantial probability that, absent
20 the prior restraint, the witnesses’ in-court identifications of the defendants would be based on
21 photographs seen in the newspapers rather than their observations of the perpetrators at the crime
22 scene”].) Third, generic “concerns” about the “right to a fair trial” do not “demonstrate how
23 disclosure of certain recordings will substantially interfere with an active investigation.”³
24 (*Sacramento Television Stations Inc. v. Superior Court* (2025) 111 Cal.App.5th 984, 1002.)

25 In any event, the City merely speculates about the impact of publicity on a hypothetical
26 trial for which it cannot prove the existence, frequency, contents, or readership of any relevant
27 _____

28 ³ Also, the City does not explain why disclosure of the recordings at issue would influence a
hypothetical trial more than the YouTube recording of the incident that is already well publicized.

1 news coverage; the size of the jury pool; or the extent to which potential jurors would be exposed
2 to or remember any coverage. Even if there is a trial someday, the mere exposure of jurors to
3 pretrial publicity does not infringe the right to a fair trial, especially when voir dire can weed out
4 anyone incapable of being impartial. (*People v. Scully* (2021) 11 Cal.5th 542, 572–573; *People v.*
5 *Peterson* (2020) 10 Cal.5th 409, 441; *People v. Famalaro* (2011) 52 Cal.4th 1, 31; *People v. Riggs*
6 (2008) 44 Cal.4th 248, 281; *People v. Cooper* (1991) 53 Cal.3d 771, 807.)

7 If charges are ever filed against the officers who used force on Mr. Evans, it will be the
8 responsibility of the “judge presiding over that criminal matter” to ensure a fair trial. (*Sacramento*
9 *Television Stations, supra*, 111 Cal.App.5th at p. 1001.) In this case, the Court’s function is to
10 apply A.B. 748, which does not allow delayed disclosure based on speculative concerns about a
11 hypothetical future trial. Therefore, the City cannot carry its burden to justify continued delay in
12 disclosing the body-worn camera recordings or any other recordings that depict the incident.

13 **2. The City Cannot Prove Delay is Justified under S.B. 1421.**

14 Nor can the City justify continued delay in disclosing other types of records related to the
15 incident under S.B. 1421, because it cannot meet any of the statutory conditions for doing so.

16 First, this case is long past the time when “disclosure may be delayed for up to 60 days”
17 after the “use of force occurred or until the district attorney determines whether to file criminal
18 charges ... whichever occurs sooner,” (Pen. Code § 832.7, subd. (b)(8)(A)(i).)

19 Second, the City cannot contend that “disclosure could reasonably be expected to interfere
20 with a criminal enforcement proceeding against an officer who engaged in ... use of force,”
21 because that ground expires “18 months after the date of the incident,” which will have elapsed by
22 the time of hearing. (Pen. Code § 832.7, subd. (b)(8)(A)(ii).) In any event, the prospect of criminal
23 proceedings is purely hypothetical. Given that the incident occurred in October 2024 and the
24 federal government’s review stopped in December 2024, Epperson Decl. ¶ 5, the District
25 Attorney’s office has had abundant time to review the case, and the likelihood of prosecution
26 grows remoter by the day. Even assuming otherwise, for the reasons stated above the City has not
27 proven that there is any reasonable expectation that public disclosure would actually interfere with
28 any potential prosecution. The City offers only generic and speculative concerns that could apply

1 to any case and cannot override the Legislature’s mandate for prompt disclosure. Even if the City
2 could carry its burden to redact limited portions of records, the remainder must be disclosed.⁴

3 Third, the City does not contend there is any potential “criminal enforcement proceeding
4 against someone other than the officer who engaged in the ... use of force.” (Pen. Code § 832.7,
5 subd. (b)(8)(A)(iii). As the City admitted, Mr. Evans was not prosecuted.

6 Fourth, there are no pending “criminal charges ... related to the incident in which ... force
7 was used” on Mr. Evans. (Pen. Code § 832.7, subd. (b)(8)(B).)

8 Fifth, even if one existed, an active “administrative investigation” cannot justify a delay of
9 more than “180 days after the date of the [City’s] discovery of the ... use of force ... by a person
10 authorized to initiate an investigation.” (Pen. Code § 832.7(b)(8)(C).) That time has passed, and
11 the records at issue must be disclosed regardless of whether the force was appropriate or the
12 officers involved violated any law or policy. (*City of Vallejo, supra*, 112 Cal.App.5th at p. 596.)

13 **C. No Delays Are Allowed Except Those Specified in A.B. 748 and S.B. 1421.**

14 In A.B. 748 and S.B. 1421, the Legislature carefully crafted a detailed framework for
15 disclosing records related to discharge of a firearm or use of force resulting in death or great
16 bodily injury, balancing the public’s compelling interest in transparency with specific grounds for
17 delayed disclosure in limited circumstances. By contending that disclosure can be delayed due to
18 POBRA until the end of a hypothetical criminal prosecution or decision not to prosecute and the
19 subsequent completion of an administrative investigation, which is not allowed by the plain
20 language of A.B. 748 or S.B. 1421, the City improperly attempts to rewrite those statutes.

21 The Legislature meant what it said, and the City may not “rewrite a statute to posit an
22 unexpressed intent” or “speculate that the Legislature meant something other than what it said.”
23 (*California State University, Fresno Assn., Inc. v. County of Fresno* (2017) 9 Cal.App.5th 250,
24 266.). The Legislature did not authorize delayed disclosure of the records at issue for any reason or
25 time beyond those specified in A.B. 748 or S.B. 1421. In particular, it did not authorize such delay
26 merely because POBRA tolls the time limit for an administrative investigation until any criminal

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28 ⁴ If identifying witnesses is a concern, S.B. 1421 allows redaction to “preserve the anonymity of
whistleblowers, complainants, victims, and witnesses.” (Pen. Code § 832.7, subd. (b)(6)(B).)

1 prosecution is concluded or a final decision not to prosecute is made.⁵ (Gov. Code § 3304, subd.
2 (d)(2)(A); *Bacilio v. City of Los Angeles* (2018) 28 Cal.App.5th 717, 725.)

3 POBRA establishes certain procedural protections for officers. (Gov. Code §§ 3303, 3304.)
4 It is “a labor relations statute,” (*Bettencourt v. City and County of San Francisco* (2007) 146
5 Cal.App.4th 1090, 1098), not a statute that authorizes withholding public records permanently or
6 temporarily. The City cannot add terms to A.B. 748 or S.B. 1421 that the Legislature did not
7 include. “A court may not rewrite a statute, either by inserting or omitting language, to make it
8 conform to a presumed intent that is not expressed.” (*Cornette v. Dept. of Transportation* (2001)
9 26 Cal.4th 63, 73–74; see also Code Civ. Proc., § 1858 [in “construction of a statute,” court may
10 not “insert what has been omitted” or “omit what has been inserted”].) The only grounds for
11 withholding the records at issue are those stated in A.B. 748 and S.B. 1421 themselves.

12 In A.B. 748, the Legislature specified that critical incident recordings “may be withheld
13 *only*” for reasons specified in the statute. (Gov. Code § 7923.625 [italics added].) The term “only”
14 means what it says. No other grounds for withholding are permitted. (See *Mustaqeem v. City of*
15 *San Diego* (2026) 118 Cal.App.5th 22, 40 [holding that where statute is “unambiguous” that
16 violation “‘is punishable *only*’ by the enumerated monetary fines or the rescission of the vendor’s
17 permit,” statute “does not authorize impoundment of a vendor’s equipment and/or goods,” because
18 “Legislature was quite clear” that specified violations “are punishable *only*” as stated in statute].)
19 The City may not manufacture grounds for withholding not stated in A.B. 748.⁶

20 In S.B. 1421, the Legislature mandated that other types of records must be disclosed
21 “[n]otwithstanding ... any other law.” (Pen. Code § 832.7, subd. (b)(1).) The “‘notwithstanding’
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24 ⁵ POBRA’s tolling for civil litigation (Gov. Code § 3304, subd. (d)(2)(F)), is not at issue because
Mr. Evans’s civil lawsuit has been resolved. Epperson Decl. ¶ 5.

25 ⁶ Even if a prosecution were pending, disclosure of critical incident recordings may not be delayed
solely on that ground. (*Sacramento Television Stations, supra*, 111 Cal.App.5th at p. 1000
26 [holding “pending criminal prosecution, by itself” is not an “active investigation” under A.B.
748].) While S.B. 1421 allows such delay for other types of records (Pen. Code § 832.7, subd.
27 (b)(8)(B)), A.B. 748 contains no such language, and the City may not import into A.B. 748 an
exception the Legislature did not adopt. Any contentions about the “opposition” to A.B. 748 or its
28 legislative history, Opp. at 6:12, cannot contradict the plain language of the statute. (*Huff v.*
Securitas Security Services USA, Inc. (2018) 23 Cal.App.5th 745, 755.)

1 clause declares the Legislature’s intent to override all contrary law,” and covered records must “be
2 made publicly available despite state law exemptions that would directly prevent or obstruct their
3 disclosure.” (*First Amendment Coalition v. Superior Court* (2023) 98 Cal.App.5th 593, 605, 609.)
4 Therefore, even if POBRA somehow authorized withholding public records in other cases, S.B.
5 1421 would require disclosure of records it covers according to its terms and only its terms.

6 By enumerating the reasons for which disclosure can be delayed in A.B. 748 and S.B.
7 1421, the Legislature necessarily excluded other reasons. As the California Supreme Court has
8 explained, “*Expressio unius est exclusio alterius*. The expression of some things in a statute
9 necessarily means the exclusion of other things not expressed.” (*Gikas v. Zolin* (1993) 6 Cal.4th
10 841, 852.) Under this canon, “if exemptions are specified in a statute, we may not imply additional
11 exemptions unless there is a clear legislative intent to the contrary.” (*Sierra Club v. State Bd. of*
12 *Forestry* (1994) 7 Cal.4th 1215, 1230.) No such intent is present. (See *Rojas v. Superior Court*
13 (2004) 33 Cal.4th 407, 423–424 [rejecting attempt to import “good cause” exception from work
14 product rule into mediation privilege because “the Legislature clearly knows how to establish a
15 ‘good cause’ exception” and it “did not enact such an exception” in mediation privilege although it
16 “did expressly enact other exceptions,” and “good cause” would be “inconsistent” with “‘narrowly
17 drawn exception[s]’ the Legislature expressly established”].)

18 Similarly, the Legislature knew how to adopt reasons for delayed disclosure in A.B. 748
19 and S.B. 1421, and it did so in detail. If it had wished to allow additional reasons, it could have
20 done so, but it did not. (Cf. *Commission on Peace Officer Standards & Training v. Superior Court*
21 (2007) 42 Cal.4th 278, 298 [“Had the Legislature intended to prevent the disclosure of officers’
22 identities as such, an obvious solution would have been to list ‘name’” in relevant statute].)
23 The City’s attempt to manufacture new reasons to withhold the records at issue is inconsistent
24 with the narrow reasons adopted by the Legislature.⁷

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27 ⁷ This case does not present the issue of disclosing records about shootings at or use of force
28 against a juvenile (see Opp. at 11:8–11), but if such a case arises, any potential conflict with other
statutes cited by the City could if necessary be resolved by narrow redactions to protect the
juvenile’s identity while honoring the Legislature’s mandate for transparency about significant
uses of force by officers. (Gov. Code § 7923.625, subd. (b)(1); Pen. Code § 832.7, subd. (b)(6).)

1 To be sure, the Legislature struck a balance by effectively accommodating the City’s
2 concerns with respect to records not at issue here. The records at issue, which relate to discharge
3 of a firearm or use of force resulting in great bodily injury, must be disclosed regardless of
4 whether the force used was appropriate or any officer violated law or policy. (Gov. Code
5 § 7923.625; Pen. Code § 832.7, subd. (b)(1)(A)(i)–(ii); *City of Vallejo, supra*, 112 Cal.App.5th at
6 p. 596.) However, records about other types of incidents are subject to disclosure only after a
7 “sustained finding” that an officer committed misconduct such as unreasonable or excessive force,
8 sexual assault on a member of the public, dishonesty in the line of duty, bias or discrimination, or
9 unlawful arrest or search. (Pen. Code § 832.7, subd. (b)(1)(A)(iii)–(iv), (B)–(E).) The term
10 “sustained” means “a final determination by an investigating agency, commission, board, hearing
11 officer, or arbitrator, as applicable, following an investigation and opportunity for an
12 administrative appeal” under POBRA, “that the actions of the peace officer or custodial officer
13 were found to violate law or department policy.” (Pen. Code § 832.8, subd. (b).) If a “sustained”
14 finding of misconduct is a condition of disclosure and the administrative investigation or appeal is
15 incomplete due to tolling required by POBRA, such records would not be subject to disclosure
16 because there is not yet a “sustained” finding of misconduct.

17 In contrast, because a sustained finding of misconduct is *not* a condition of disclosure in
18 this case, the Legislature mandated that the records at issue must be disclosed immediately. Public
19 disclosure of those records will not prevent the City from conducting its internal administrative
20 investigation with “integrity” or deprive officers of “fair treatment” by the City.⁸ Opp. at 11:3–4.

21 In case of any doubt that the plain language of A.B. 748 and S.B. 1421 precludes delayed
22 disclosure on any ground not specified in those statutes, the Court must follow the “constitutional
23 imperative” that a “statute, court rule, or other authority, including those in effect on the effective
24 date of this subdivision, shall be *broadly* construed if it furthers the people's right of access, and
25 *narrowly* construed if it limits the right of access.” (*City of San Jose v. Superior Court* (2017) 2

26 _____
27 ⁸ If the City eventually makes a “sustained finding” of “unreasonable or excessive force” or failure
28 to intervene against the use of such force (Pen. Code § 832.7(b)(1)(A)(iii)–(iv)), the finding would
be subject to disclosure at that time, but for now, the City must disclose all records at issue in its
possession regardless of whether the officers violated any law or policy.

1 Cal.5th 608, 617 [quoting Cal. Const., art. I, § 3, subd. (b)(2), with italics added].) Because they
2 limit access to public records, the delay provisions of A.B. 748 and S.B. 1421 must be construed
3 narrowly to reject the City’s contentions.

4 Because the statutes are clear under standard principles of interpretation, the Court need
5 not look to legislative history. (*In re Greg F.* (2012) 55 Cal.4th 393, 408.) But in any event, the
6 legislative history submitted by the City undermines its position by recognizing “the paramount
7 interest in public disclosure” and affirming the importance of disclosing “[v]ideo recordings” that
8 depict the most significant uses of force, especially in light of “deaths of black and brown men
9 from guns used by law enforcement.” (Sen. Judiciary Comm., Rep. on Assem. Bill 748 (2017–
10 2018 Reg. Sess.) pp. 2, 7 [City’s Request for Judicial Notice Ex. 1].) “Transparency between law
11 enforcement and the communities they protect is critical to establishing and maintaining good
12 relationships,” especially in “the days following an incident of violence involving law
13 enforcement.” (*Id.* at p. 6.) “Video footage” is often “the best evidence” of what happened in “an
14 incident of high public concern.” (*Id.* at p. 7.) “Regular disclosure of this footage reassures the
15 public that law enforcement is not suppressing facts to support its version of events in critical
16 incidents.” (*Ibid.*) The “bill is intended to prevent law enforcement from delaying the release of
17 video and audio of law enforcement use of force” for unjustified reasons. (*Id.* at p. 11.)
18 The legislative history thus confirms the records at issue may not be withheld for reasons not
19 specified in the statutes. Any “arguments as to what [the City] believes the Legislature should
20 have enacted” cannot “change the plain language of the statute the Legislature did enact, or rewrite
21 the legislative history evincing what the Legislature intended.” (*State of California ex rel. Hindin*
22 *v. Hewlett-Packard Co.* (2007) 153 Cal.App.4th 307, 320.)

23 **D. The City May Not Override the Plain Language of A.B. 748 and S.B. 1421.**

24 The City cannot remotely justify the extreme step of disregarding the plain language of
25 A.B. 748 and S.B. 1421. A court “may disregard literal interpretation of a statute to avoid absurd
26 results” only in “extreme cases,” those “in which, as a matter of law, the Legislature did not intend
27 the statute to have its literal effect.” (*Gorham Co., Inc. v. First Financial Ins. Co.* (2006) 139
28 Cal.App.4th 1532, 1543–1544.) “To justify departing from a literal reading of a clearly worded

1 statute, the results produced must be so unreasonable the Legislature could not have intended
2 them.” (*In re D.B.* (2014) 58 Cal.4th 941, 948.) “This exception should be used most sparingly by
3 the judiciary and only in extreme cases else we violate the separation of powers principle of
4 government.” (*Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1698.)

5 The frameworks adopted in A.B. 748 and S.B. 1421 are neither absurd nor inconsistent
6 with the Legislature’s intent to promote “transparency with respect to officers’ ‘use of force’ to
7 help ‘build public trust’ in law enforcement.” (*City of Vallejo, supra*, 112 Cal.App.5th at p. 595.)
8 To promote transparency and build public trust, the Legislature mandated prompt disclosure of
9 records relating to discharge of a firearm or force resulting in death or great bodily injury, and it
10 established rigorous standards to ensure that any delays in disclosure are no longer than absolutely
11 necessary, especially when disclosure requires no finding that the officers committed any
12 misconduct. Because of the compelling need to promote public trust, the Legislature chose to
13 favor transparency for the records at issue over the delays advocated by the City. That is not an
14 “absurd result.” Opp. at 10:11. It is exactly what the Legislature intended to remedy the harm to
15 public trust created by decades of unnecessary secrecy. The City’s position contradicts both the
16 plain language of the statutes and the Legislature’s declared intent to promote transparency about
17 the most significant uses of force by police officers.

18 **III. CONCLUSION**

19 For the foregoing reasons, the Court is respectfully requested to issue a writ of mandate
20 compelling the City to disclose all records requested by FAC immediately and declaring that the
21 City is in violation of the Public Records Act and California’s police transparency laws.

22 Dated: April 6, 2026

23 FIRST AMENDMENT COALITION

24 By



25 DAVID LOY

26 Attorney for Petitioner

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On April 6, 2026, I served true copies of the following document(s) described as **PETITIONER’S REPLY IN SUPPORT OF MOTION FOR JUDGMENT GRANTING VERIFIED PETITION FOR DECLARATORY RELIEF AND WRIT OF MANDATE** on the interested parties in this action as follows:

Stacy J. Plotkin-Wolff
Senior Chief Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Email: SJPWolff@sandiego.gov; marissag@sandiego.gov; maevans@sandiego.gov

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on April 6, 2026, at East Palo Alto, California.



Robin P. Regnier