

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 06/26/2026

TIME: 10:30 AM

DEPT: C-68

JUDICIAL OFFICER: TERRIE E. ROBERTS

CLERK: Richard Cersosimo

REPORTER/ERM: Debbie Wood - CSR# 6515

BAILIFF/COURT ATTENDANT:

CASE NO: **25CU033245C** CASE INIT.DATE: 06/25/2025

CASE TITLE: **First Amendment Coalition vs City of San Diego**

CASE CATEGORY: Civil CASE TYPE: (U)Writ of Mandate: Writ of Mandamus - Prohibit

HEARING TYPE: Motion Hearing

APPEARANCES

David Blair-Loy, Attorney for Petitioner First Amendment Coalition, present in person.

Jana Mickova Will, Attorney for Respondent City of San Diego, present in person.

The Court hears argument of counsel on Petitioner First Amendment Coalition's Motion for Judgment Granting Verified Petition for Declaratory Relief and Writ of Mandate.

Attorney Will's request to continue this matter to allow time to submit further briefing on the issue of whether the incident was a "critical incident" is denied as the City admittedly "glossed over" this issue, while the Petitioner addressed it in detail. The Court denies the City's request to now brief this issue after having received the Court's tentative.

The Court confirms and modifies the tentative ruling as follows:

Petitioner First Amended Coalition ("Petitioner" or "FAC")'s Motion for Judgment Granting Verified Petition for Declaratory Relief and Writ of Mandate **is granted**.

The Parties' respective Requests for Judicial Notice **are granted**.

Background

Petitioner commenced this action on June 25, 2025 by filing its Verified Petition for Declaratory Relief and Writ of Mandate in order to compel Respondent the City of San Diego (the "City" or "Respondent") to disclose records relating to use of force incident (the "Incident") by the San Diego Police Department ("SDPD"), where officers repeatedly used a K-9 unit and the discharge of multiple "beanbag" shotgun rounds against Marcus Evans. (See Petition (ROA # 2), ¶ 1.)

On October 24, 2024, SDPD officers responded to a 911 call that led them to a residence near the 6400 block of Duluth Avenue in San Diego. (*Id.*, ¶ 12.) After officers instructed occupants to exit the residence, Mr. Evans emerged with hands up, but was subsequently shot three times with “beanbag” shotgun rounds and the officers deployed a K-9 unit against Mr. Evans twice, with the dog biting Mr. Evans’ arm. (*Id.*, ¶¶ 15-16.) Mr. Evan’s subsequently filed a civil complaint against the City and various officers arising from the Incident. (*Id.*, ¶ 17, Ex. A.) The complaint alleges that Mr. Evans suffered severe injuries from the Incident, including breaking his right tibia. (*Id.*, ¶ 25.) The beanbag shotguns utilized by the SDPD are standard Remington Model 870, 12-gauge shotguns that have been modified with an orange stock and fore-end. (*Id.*, ¶ 28, Ex. C.)

Based on the fact that Mr. Evans was shot three times with “beanbag” shotgun rounds and a K-9 unit was deployed on him twice, causing him to suffer sever injuries, the Court agrees with the Petitioner, that this incident met the definition of a “critical incident” pursuant to Gov. Code, § 7923.625(e).

On March 12, 2025, Petitioner requested from the City (the “Request”) copies of the following records:

1. All video or audio recordings relating to or depicting the Incident.
2. All records relating to any report, investigation, or findings concerning the Incident, including but not limited to any incident reports; investigative reports; photographs; transcripts or recordings of interviews; materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(*Id.*, ¶ 32, Ex. D.)

On March 21, 2025, the City responded to the Request by partially disclosing a single redacted call log document, but otherwise withheld all other records responsive to the Request. (*Id.*, ¶ 33, Ex. E.) In support of the City’s withholding of the remainder of the records, the City stated that: (1) body camera records were withheld pursuant to Government Code section 7923.600; (2) “911/Audio files/Talk Radio” records were withheld pursuant to Government Code sections 7922.000, 7923.600, 7923.615 and *Haynie v. Superior Court*, 26 Cal. 4th 1061 (2001); (3) the CAD report was redacted pursuant to Government Code sections 7923.600 and 7922.000; and (4) “[a]ll records relating to any report, investigation, or findings concerning the Incident” were withheld pursuant to Government Code sections 7923.600 and 7927.705. (*Id.*, ¶ 34.)

The Petition contends that the City’s withholding of the documents violates the Public Records Act and Article 1, section 3(b) of the California Constitution, as well as Penal Code § 832.7(b), and the City is obligated to disclose the records. (*Id.*, ¶ 36.) The Court agrees.

The purpose of the California Public Records Act (“PRA”) is to give the public access to “public records” so that governmental entities may be held accountable for their actions. (*Caldecott v. Sup. Ct.* (2015) 243 Cal.App.4th 212, 218.) Under the PRA, “public records” include “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.” (Gov. Code, § 7920.530(a).) The CPRA “is intended to cover every conceivable kind of record that is involved in the governmental process . . .” (*San Gabriel Tribune v. Sup. Ct.* (1983) 143 Cal.App.3d 762, 744.) This broad definition is designed to protect the public’s need to be informed regarding the actions of government. Secrecy is “antithetical to a democratic system of ‘government of the people, by the people [and] for the people.’” (*Poway Unified Sch. Dist. v. Superior Court (“Copley Press”)* (1998) 62 Cal. App. 4th 1496, 1501.) The PRA explicitly provides that “[n]othing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.” (Gov. Code, § 7922.500.)

While public entities are entitled to exempt certain records from disclosure, they bear the burden of justifying such exemptions. (See Gov. Code, §§ 7922.000 [“An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, 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.”]; *Essick v. County of Sonoma* (2022) 81 Cal.App.5th 941, 950 [“the party opposing disclosure under any CPRA exemption always bears the burden of proving the exemption applies” and “on the facts, doubtful cases must always be resolved in favor of disclosure”].)

California Government Code (“GC”) § 7923.600 exempts from disclosure “records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and 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, § 7923.600(a).)

GC § 7923.625, however, provides in relevant part:

Notwithstanding any other provision of this article, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subdivision (e), may be withheld only as follows:

(a)(1) 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 after the date the agency knew or reasonably should have known about 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 this section, 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.***

(2) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially

interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. ***If an agency delays disclosure pursuant to this paragraph, 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 30 days.*** A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(b)(1) 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.

(Gov. Code, § 7923.625(a)-(b)(1) [emphasis added].)

A video or audio recording relates to a “critical incident” if it depicts: “(1) [a]n incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (2) [a]n incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.” (Gov. Code, § 7923.625(e).)

Penal Code § 832.7(b)(1) provides:

(b)(1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(Pen. Code, § 832.7.)

Penal Code § 832.7(b)(3) specifies the records that are subject to release:

[A]ll investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

Penal Code 832.7(b)(8) allows an agency to withhold records of an incident that is the subject of an active criminal investigation, subject to certain requirements:

(A)(i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, ***the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.***

(Pen. Code, § 832.7(b)(8)(A)(i) [emphasis added].)

The agency can continue to delay disclosure past the 60 days if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer who engaged in misconduct or someone other than the officer. (See Pen. Code, § 832.7(b)(8)(A)(ii)-(iii).) Such a delay, however, requires that the agency, "at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner." (*Id.*)

GC § 7923.000 provides: “Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person’s right under this [PRA] to inspect or receive a copy of any public record or class of public records.”

As a preliminary matter, the Court notes that the City’s Opposition does not substantively contest that the shooting of the “beanbag” shotgun falls within the type of “incident” subject to Penal Code § 832.7 or “critical incident” under GC § 7923.625. (See Pen. Code § 832.7(b)(1)(A); Gov. Code § 7923.625.) Rather, the City argues that Penal Code § 832.7 and GC § 7923.625 must be read in conjunction with the Public Safety Officers Procedural Bill of Rights Act (“POBRA”) and that when interpreted together, the City may withhold the requested records. As discussed below, the Court respectfully disagrees.

As outlined in *Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090:

Section 3304 is part of the Public Safety Officers Procedural Bill of Rights Act. The act is primarily a labor relations statute cataloging the **basic rights and protections that must be afforded to all peace officers by the public entities that employ them**. One such protection—codified in section 3304—is the speedy adjudication of conduct that could result in discipline. The one-year statute of limitations set out in section 3304(d) seeks to balance competing interests—the public interest in maintaining the integrity and efficiency of the police force and the individual officer's interest in receiving fair treatment.

(*Bettencourt*, 146 Cal.App.4th at 1098–1099 [internal citations omitted] [emphasis added].)

Accordingly, GC § 3304(d)(1) prevents a law enforcement agency from taking punitive action against a peace officer unless it completes its investigation into the purported misconduct and notifies the officer within one year of the agency’s discovery of the misconduct. This one-year statute of limitations is tolled if the misconduct is also the subject of a criminal investigation or criminal prosecution. (Gov. Code § 3304(d)(2)(A).) **“In enacting section 3304, subdivision (d), ‘the Legislature was focused upon preventing a perceived lack of fairness caused by a drawn-out investigatory process--and not with requiring that officers receive notice of specific intended discipline at that early stage of the process.’”** (*Department of Corrections & Rehabilitation v. State Personnel Bd.* (2016) 247 Cal.App.4th 700, 709 [quoting *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 324] [emphasis added].)

First, the Court must respectfully disagree with the City’s contention that GC 7923.625 and Penal Code § 832.7 must be construed together with POBRA. As outlined by the California Supreme Court:

[S]tatutes should be construed together only if they stand in pari materia. “Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of person or things, or have the same purpose or object. Characterization of the object or purpose is more important than characterization of subject matter in determining whether different statutes are closely enough related to justify interpreting one in light of the other. It has been held that where the same subject is treated in several acts having different objects the statutes are not in pari materia. ‘The adventitious occurrence of ... similar subject matter, in laws enacted for wholly different ends will normally not justify applying the rule.’ ” (2A Sutherland, Statutory Construction (4th rev. ed. 1984) § 51.03, p. 467, citations and fns. omitted.)

(*Walker v. Superior Court* (1988) 47 Cal.3d 112, 122, fn. 4.)

In this case, while each of the statutes relate to investigations into peace officers, Penal Code § 832.7 and GC § 7923.65 (“Disclosure Statutes”) serve entirely different purposes than POBRA. While POBRA’s purpose is to provide basic rights and protections afforded to peace officers by the public entities that employ them, the purpose of the Disclosure Statutes is to expand the public’s access to certain records relating to specific incidents involving law enforcement. (See City’s RJN, Ex. 1.) While the Disclosure Statutes include provisions recognizing the impact public disclosure may have on active investigations into peace officer misconduct and therefore allow records to be temporarily withheld if certain requirements are met, this only tangentially relates to the protections afforded to peace officers under POBRA, which is focused on ensuring that any punitive actions against a peace officer by their employer are timely investigated and acted upon.

Importantly, there is nothing in the language of GC § 3304, or the legislature’s intent that supports Respondent’s assertion that the Court should interpret this section, along with the PRA, Penal Code § 832.7, and GC § 7923.625, as allowing Respondent to withhold disclosure until completion of any criminal investigation, criminal prosecution, and internal investigation—without complying with the specific withholding provisions of the statutes. This proposed interpretation ignores the clear language of Penal Code § 832.7 and GC § 7923.625, which provides avenues for withholding and delaying the release of such records during the pendency of investigations and prosecutions but imposes explicit requirements on the agency that is withholding them. Respondent has not presented any evidence that it complied with these requirements and instead is requesting that the Court disregard them and essentially rewrite the Disclosure Statutes and undermine their central purpose—promoting public access and police transparency. The Court declines to do so.

Furthermore, even if the Court were to disregard the City’s failure to comply with the notice requirements in relation to withholding the records, the City has not demonstrated that further delay is warranted. Under GC 7923.625(a)(2), “[a]fter one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation.” “Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt, sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594 [internal modifications omitted].)

Penal Code § 832.7(b)(8) similarly requires disclosure “no later than 18 months after the date of the incident.”

In this case the Incident occurred in October 2024. The Respondent not only failed to utilize avenues available to it to withhold or delay the release of the records during the pendency of the investigation and/or prosecution, as provided in Penal Code § 832.7 and GC § 7923.625, but now, it is over twenty months since the incident and accordingly, under Penal Code § 832.7(b)(8), the records are subject to disclosure.

Furthermore, the Court finds that the City has not demonstrated by clear and convincing evidence that disclosure would substantially interfere with any investigation. In particular, the City relies upon a declaration by Captain Epperson asserting that: (1) the San Diego County District Attorney’s Office “is reviewing the matter to decide whether to file criminal charges against the officers;” (2) disclosure “would risk compromising the integrity of the investigation” and “refocus the public’s attention on the [Incident]”; (3) the records include information that “could identify, locate or exposes witnesses...or other involved

persons”; (4) disclosure could result in witness intimidation; (5) the records contain non-public details that “could enable involved persons to tailor statements...or interfere with fact-finding”; (6) “if criminal charges are filed disclosure could reveal prosecution or investigative strategy”; and (7) completing the internal investigation before the criminal matter could interfere with the criminal matter. (See Epperson Decl. (ROA # 26), ¶¶ 4-18.) This declaration, however, is largely based on speculation regarding possible impacts of disclosure. The declaration is nearly entirely devoid of any facts demonstrating that disclosure in this particular case would substantially interfere with any investigation, such as endangering a witness or confidential source, especially since the Incident occurred over 20 months ago and the City has admitted that it has already taken witness statements and conducted internal affairs interview recordings. (See Epperson Decl., ¶ 4.)

If the Court were to deem the City’s current evidence sufficient, then the City would be able to assert these same speculative claims to support withholding records, which are otherwise discoverable under GC 7923.625(a)(2), in nearly every conceivable case, therefore undermining the legislative intent in enacting the PRA statutes.

For all of these reasons, Petitioner’s Motion is granted.

Conclusion

Accordingly, the Motion is granted. The City of San Diego is ordered to disclose all records covered by Petitioner’s Request no later than July 17, 2026. The Court will sign a proposed order consistent with this ruling.

Terrie E. Roberts

Judge Terrie E. Roberts