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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 FIRST AMENDMENT COALITION,
12 Petitioner,
13 v.
14 CITY OF SAN DIEGO,
15 Respondent.

Case No. 25CU033245C

**DECLARATION OF AARON R. FIELD
PURSUANT TO CAL. RULE OF COURT
3.1312(B) RE: (1) [PROPOSED] ORDER
GRANTING PETITIONER FIRST
AMENDMENT COALITION'S MOTION
FOR JUDGMENT; (2) [PROPOSED]
JUDGMENT; AND (3)
[PROPOSED] PEREMPTORY WRIT OF
MANDATE**

16
17 I, AARON R. FIELD, declare:

18 1. I am a member in good standing of the State Bar of California, a Senior Staff
19 Attorney for petitioner First Amendment Coalition ("petitioner" or "FAC"), and counsel of record
20 for FAC in this action. I make this declaration based on my own personal knowledge, and, if
21 called upon to testify, I could testify to the facts set forth in this declaration.

22 2. FAC submits this declaration in compliance with California Rule of Court 3.1312,
23 which generally requires that the prevailing party on any motion prepare the proposed order
24 granting the motion, transmit the proposed order to the opposing party for approval as to form, and
25 then transmit the proposed order to the Court "together with a summary of any responses of the
26 other parties or a statement that no responses were received." (Cal. R. Ct. 3.1312(b).)

27 3. The Court issued a tentative ruling on June 25, 2026 granting FAC's motion. The
28 City contested the tentative ruling, but on June 26, 2026, after oral argument, the Court

1 “confirmed and modified” the tentative ruling and directed the City to disclose “all records
2 covered by Petitioner’s request” by July 17, 2026, rather than within 10 days of the hearing as
3 initially stated in the tentative ruling. (June 26, 2026 Minute Order, at pp. 1, 8.) Further, the
4 Court denied the City’s request at the hearing for a continuance “to allow time to submit further
5 briefing on the issue of whether the incident was a ‘critical incident’ “ because “the City
6 admittedly ‘glossed over’ this issue, while the Petitioner addressed it in detail.” (*Id.*, at p. 1.) The
7 Court elaborated: “The Court denies the City’s request to now brief this issue after having
8 received the Court’s tentative.” (*Ibid.*) The Court’s tentative ruling stated, and its June 26, 2026
9 Minute Order confirmed: “The City of San Diego is ordered to disclose all records covered by
10 Petitioner’s Request. . . . The Court will sign a proposed order consistent with this ruling.”

11 4. Having prevailed on its motion for judgment, FAC prepared a proposed order
12 granting the motion, as well as an accompanying proposed writ of mandate and proposed
13 judgment to be issued pursuant to the order. FAC transmitted the proposed order, writ, and
14 judgment to City, through counsel, for approval as to form on June 29, 2026 under Rule 3.1312(a).

15 5. On June 30, 2026, the City objected and asked, subject to the possibility of raising
16 additional objections later, that FAC revise the proposed order, writ, and judgment “to reflect the
17 actual language” of the Court’s ruling and state that the City must “disclose all records covered by
18 Petitioner’s Request,” and to include FAC’s Public Records Act request in this case as an exhibit
19 to all three documents. FAC agreed. FAC revised the proposed order, writ, and judgment to
20 conform more precisely to the language of the Court’s ruling and added its request in this case to
21 the proposed order, writ, and judgment as an exhibit. FAC then transmitted new versions of all
22 three of these documents to the City again, revised as the City had requested, with a second
23 request for approval as to form. True and correct copies (taken out of redline and placed into PDF
24 format with all attachments included) of FAC’s proposed order, writ, and judgment, revised as
25 initially requested by the City, are attached hereto as **Exhibit 1**.

26 6. On July 7, 2026, the City objected a second time. Without explanation, counsel for
27 the City sent the proposed order, writ, and judgment back to FAC with additional “proposed
28 changes” presented in redline: In each document, the City redlined in new language that purported

1 to limit the City's disclosure obligations in this case to records "from the date of the subject
2 Incident on October 25, 2024, to the date of the subject Request on March 12, 2025." True and
3 correct copies of the versions of the proposed order, writ, and judgment sent back to FAC by the
4 City on July 7, 2026, with the City's redlines preserved so that the City's requested revisions are
5 available to the Court, are attached hereto as **Exhibit 2**.

6 7. FAC respectfully submits that the Court should issue the proposed order, writ, and
7 judgment in **Exhibit 1**, because FAC's proposed order, writ, and judgment, revised as initially
8 requested by the City, better conform to the language of the Court's June 26, 2026 ruling on
9 FAC's motion. FAC agrees that the Court's ruling is limited to, and thus that any order, writ, and
10 judgment in this case are also limited to, records responsive to FAC's Public Records Act request
11 in this case. But FAC's proposed order, writ, and judgment already reflect that, using the Court's
12 own language.

13 8. The City's request to add a date range limitation is procedurally improper. The City
14 did not request a date range limitation in its opposition papers, let alone support such a request
15 with sufficient evidence, as the party with the burden of proof should. Nor has it explained why its
16 requested date range limitation is appropriate or how it believes FAC's proposed order, writ, and
17 judgment are inadequate or inconsistent with the Court's ruling. Because the City never briefed
18 the date range issue, neither FAC nor the Court have had occasion to address it. The Court's order
19 on FAC's motion for judgment should conform to the language of the Court's ruling on the
20 motion, not address and rule on an issue that was not properly raised and litigated prior to the
21 Court's ruling on FAC's motion. At this post-merits ruling stage of the proceedings, any dispute
22 about what records are or are not responsive to FAC's request should be resolved in a meet and
23 confer process, if possible, and presented to the Court thereafter in a procedurally proper manner,
24 to the extent that is necessary.

25 9. The City's proposed date range limitation also risks excluding important responsive
26 records from the Court's ruling. For example, the City's proposed start date could be construed to
27 allow the City to withhold records that were created before FAC's request but nevertheless are
28 "record[s] relating to the report, investigation, or findings of" the "incident involving the discharge

1 of a firearm at” or “the use of force against” Mr. Evans resulting in “great bodily injury.” (Pen.
2 Code § 832.7(a)(1)(A)(i)-(ii).) Further, the City described certain records as “at issue” in the case
3 in the Declaration of Julie Epperson that it filed in opposition to FAC’s motion for judgment.
4 (March 16, 2026 Epperson Decl. ¶ 4 [“The records at issue include investigative reports, witness
5 statements, body-worn camera recordings, dispatch/audio recordings, photographs, internal affairs
6 interview recordings, disciplinary recommendations, and investigative timelines relating to the
7 arrest and uses of force in apprehending Marcus Evans...”].) The City’s proposed date range
8 limitation, if adopted, could be invoked to attempt to withdraw some of these records (depending
9 on their creation dates) from the scope of the Court’s ruling, contrary to Ms. Epperson’s
10 declaration.

11 10. FAC respectfully requests that the Court sign the proposed order, writ, and
12 judgment attached hereto as **Exhibit 1**, which are consistent with the Court’s ruling on FAC’s
13 motion for judgment..

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed this 8th day of July, 2026 at San Francisco, California.

16
17 
18 AARON R. FIELDING

Exhibit 1

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

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

Case No. 25CU033245C

**[PROPOSED] ORDER GRANTING
PETITIONER FIRST AMENDMENT
COALITION'S MOTION FOR
JUDGMENT**

16
17 Petitioner First Amendment Coalition's Motion for Judgment Granting Verified Petition
18 for Declaratory Relief and Writ of Mandate came on for hearing before this Court, the Honorable
19 Terrie R. Roberts presiding, on June 26, 2026. Having read and considered all materials filed by
20 Petitioner First Amendment Coalition ("FAC") and Respondent City of San Diego ("City") in
21 support of and opposition to the Motion, the Court issued a tentative ruling granting the Motion on
22 June 25, 2026, a copy of which is attached hereto as Exhibit A. After hearing argument of counsel,
23 the Court adopted the tentative ruling as the final ruling on the Motion, except for ordering that the
24 City shall disclose all records requested by FAC by 5:00 p.m. on July 17, 2026. Accordingly, for
25 the reasons set forth in Exhibit A, the Court hereby ORDERS as follows:

26 FAC's Motion for Judgment Granting Verified Petition for Declaratory Relief and Writ of
27 Mandate is GRANTED.

1 The Court FINDS AND DECLARES that the City's withholding of the records requested
2 by FAC violates the Public Records Act and Article 1, section 3(b) of the California Constitution,
3 as well as Penal Code section 832.7(b), and that the City is obligated to disclose the requested
4 records to FAC.

5 The City is ORDERED to disclose all records covered by Petitioner's Request, a copy of
6 which is attached hereto as Exhibit B, by no later than 5:00 p.m. on July 17, 2026.

7 The Court will enter Judgment granting FAC's Verified Petition for Declaratory Relief and
8 Writ of Mandate Under the California Public Records Act and issue a Writ of Mandate consistent
9 with this Order.

10 IT IS SO ORDERED.

11
12 Dated: _____, 2026

13 _____
14 THE HONORABLE TERRIE R. ROBERTS

15 **Approved as to form:**

16 HEATHER FERBERT, City Attorney

17 By

18 _____
19 Jana Will
20 Senior Deputy City Attorney
21 Attorneys for CITY OF SAN DIEGO
22
23
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Exhibit A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE
TENTATIVE RULING**

HEARING DATE: 6/26/2026

JUDICIAL OFFICER: TERRIE E. ROBERTS

CASE NO.: 25CU033245C

CASE TITLE: First Amendment Coalition vs City of San Diego

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.)

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 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 within ten days (10) of this hearing. The Court will sign a proposed order consistent with this ruling.

This is the tentative ruling for the hearing at 10:30 a.m. on Friday, June 26, 2026. If no party appears at the hearing, this tentative ruling will become the order of the Court as of June 26, 2026. If the parties are satisfied with the Court's tentative ruling or do not otherwise wish to argue the motion, they are encouraged to give notice to the Court and each other of their intention not to appear, though this notice is not required.

Exhibit B

City of San Diego



Request Visibility: Published

Request 25-1937 ☒ Closed



Dates

Received

March 12, 2025 via web

Requester



David Loy



dloy@firstamendmentcoalition.org

534 Fourth Street, Suite B, San Rafael,
CA, 94901

619.701.3993



First Amendment Coalition

Staff assigned

Departments

Police

Point of contact

Angela Laurita

Request

On behalf of the First Amendment Coalition, I request copies of the following records related to the San Diego Police Department's arrest of or use of force on Marcus Evans on or about October 25, 2024 (the "Incident"):

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.

[Show less](#)

Timeline

Documents



Request published

Anyone with access to this request

March 24, 2025, 9:35pm



Request closed

Anyone with access to this request

02c. Released – Redacted and/or Withheld

All responsive documents have been released except those that have been redacted and/or withheld pursuant to:

[Law enforcement investigation]

Government Code section 7923.600

[records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of,any state or local police agency... are exempt from disclosure]

Government Code section 7922.000

The public interest in the nondisclosure of personal identifying information clearly outweighs the public interest in disclosure.

Government Code section 7923.615

This information is protected from disclosure pursuant to Government Code section 7923.615.

Government Code section 7922.000

The public interest in disclosure is outweighed by other factors.

Government Code section 7927.705
[other state or federal law]

Information you have requested is protected from disclosure pursuant to Government Code section 7927.705:

Evidence Code section 1043

March 21, 2025, 9:50am by Angela Laurita, Public Records Administration Manager (Staff)



Document(s) released

Anyone with access to this request

E24100036129_Redacted.pdf

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



Message to requester

Requester + Staff

Good morning,

In response to your request, all responsive records have been uploaded. Some of the records you requested are redacted/withheld pursuant to the following Government Code exemption(s):

BWC - withheld pursuant to the following Government Code exemption(s):

Government Code section 7923.600 [investigatory files]

The person making the decision to withhold the records is Capt. Charles Lara.

911/Audio files/Talk Radio-group - withheld pursuant to Government Code sections 7923.600 & 7923.615; Haynie v. Superior Court, 26 Cal 4th 1061 (2001); and Government Code section 7922.000 [public interest in non-disclosure outweighs public interest in disclosure]

The person making the decision to withhold the records is Roxanne Cahill, Police Dispatch Administrator.

SDPD does not transcribe calls.

CAD report - redacted pursuant to Government Code section 7923.600 [investigatory files] and Government Code section 7922.000 [personal identifying information]

The person making the decision to redact the records is Capt. Charles Lara.

The records you requested for item #2 are withheld pursuant Government Code section 7923.600 [investigatory files] and Government Code section 7927.705 [Evidence Code section 1043] [peace officer personnel records]

The people making the decision to withhold the records are Capt. Charles Lara and Lt. Tristan Schmottlach.

Kind regards.

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



Message to requester Requester + Staff

Please be advised that City staff have received your CPRA request. Within the next 10 days, we will determine whether your request seeks copies of disclosable

records in the City's possession or whether the City will require an extension. If your request is submitted on a Saturday, Sunday, or City holiday, the City considers the request received on the following business day.

March 12, 2025, 2:26pm



Department assignment

Anyone with access to this request

Police

March 12, 2025, 2:26pm by the requester



Request opened

Anyone with access to this request

Request received via web

March 12, 2025, 2:26pm by the requester

1 DAVID LOY, Cal. Bar No. 229235
AARON R. FIELD, Cal. Bar No. 310648
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email: dloy@firstamendmentcoalition.org
afield@firstamendmentcoalition.org

5 Attorneys for Petitioner
6 FIRST AMENDMENT COALITION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 FIRST AMENDMENT COALITION,
12 Petitioner,
13 v.
14 CITY OF SAN DIEGO,
15 Respondent.

Case No. 25CU033245C

**[PROPOSED] PEREMPTORY WRIT OF
MANDATE**

1 TO RESPONDENT CITY OF SAN DIEGO:

2 Judgment has been entered in this proceeding granting Petitioner First Amendment
3 Coalition's Verified Petition for Declaratory Relief and Writ of Mandate Under the California
4 Public Records Act.

5 Therefore, YOU ARE HEREBY COMMANDED pursuant to this Court's Judgment to
6 disclose to Petitioner all records covered by Petitioner's Request, a copy of which is attached
7 hereto as Exhibit A, by no later than 5:00 p.m. on July 17, 2026.

8 YOU ARE FURTHER COMMANDED to file and serve a written return to this writ on or
9 before the 60th day following notice of entry of the writ setting forth the steps you have taken to
10 comply.

11 Dated: _____, 2026

12 _____
13 CLERK OF THE SUPERIOR COURT

14 **Approved as to form:**

15 HEATHER FERBERT, City Attorney

16 By

17 _____
18 Jana Will
19 Senior Deputy City Attorney
20 Attorneys for CITY OF SAN DIEGO
21
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27
28

Exhibit A

City of San Diego



Request Visibility: Published

Request 25-1937 ☒ Closed



Dates

Received

March 12, 2025 via web

Requester



David Loy



dloy@firstamendmentcoalition.org

534 Fourth Street, Suite B, San Rafael,
CA, 94901

619.701.3993



First Amendment Coalition

Staff assigned

Departments

Police

Point of contact

Angela Laurita

Request

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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.

[Show less](#)

Timeline

Documents



Request published

Anyone with access to this request

March 24, 2025, 9:35pm



Request closed

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All responsive documents have been released except those that have been redacted and/or withheld pursuant to:

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[records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of,any state or local police agency... are exempt from disclosure]

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Government Code section 7927.705
[other state or federal law]

Information you have requested is protected from disclosure pursuant to Government Code section 7927.705:

Evidence Code section 1043

March 21, 2025, 9:50am by Angela Laurita, Public Records Administration Manager (Staff)



Document(s) released

Anyone with access to this request

E24100036129_Redacted.pdf

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



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Requester + Staff

Good morning,

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BWC - withheld pursuant to the following Government Code exemption(s):

Government Code section 7923.600 [investigatory files]

The person making the decision to withhold the records is Capt. Charles Lara.

911/Audio files/Talk Radio-group - withheld pursuant to Government Code sections 7923.600 & 7923.615; Haynie v. Superior Court, 26 Cal 4th 1061 (2001); and Government Code section 7922.000 [public interest in non-disclosure outweighs public interest in disclosure]

The person making the decision to withhold the records is Roxanne Cahill, Police Dispatch Administrator.

SDPD does not transcribe calls.

CAD report - redacted pursuant to Government Code section 7923.600 [investigatory files] and Government Code section 7922.000 [personal identifying information]

The person making the decision to redact the records is Capt. Charles Lara.

The records you requested for item #2 are withheld pursuant Government Code section 7923.600 [investigatory files] and Government Code section 7927.705 [Evidence Code section 1043] [peace officer personnel records]

The people making the decision to withhold the records are Capt. Charles Lara and Lt. Tristan Schmottlach.

Kind regards.

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



Message to requester Requester + Staff

Please be advised that City staff have received your CPRA request. Within the next 10 days, we will determine whether your request seeks copies of disclosable

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March 12, 2025, 2:26pm



Department assignment

Anyone with access to this request

Police

March 12, 2025, 2:26pm by the requester



Request opened

Anyone with access to this request

Request received via web

March 12, 2025, 2:26pm by the requester

1 DAVID LOY, Cal. Bar No. 229235
AARON R. FIELD, Cal. Bar No. 310648
2 FIRST AMENDMENT COALITION
534 4th Street, Suite B
3 San Rafael, CA 94901-3334
Telephone: 415.460.5060
4 Email: dloy@firstamendmentcoalition.org
afield@firstamendmentcoalition.org

5 Attorneys for Petitioner
6 FIRST AMENDMENT COALITION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 FIRST AMENDMENT COALITION,
12 Petitioner,
13 v.
14 CITY OF SAN DIEGO,
15 Respondent.

Case No. 25CU033245C

[PROPOSED] JUDGMENT

16
17 Petitioner First Amendment Coalition’s Motion for Judgment Granting Verified Petition
18 for Declaratory Relief and Writ of Mandate came on for hearing before this Court, the Honorable
19 Terrie R. Roberts presiding, on June 26, 2026. Having read and considered all materials filed by
20 Petitioner First Amendment Coalition (“FAC”) and Respondent City of San Diego (“City”) in
21 support of and opposition to the Motion, the Court issued a tentative ruling granting the Motion on
22 June 25, 2026, a copy of which is attached hereto as Exhibit A. After hearing argument of counsel,
23 the Court adopted the tentative ruling as the final ruling on the Motion, except for ordering that the
24 City shall disclose all records requested by FAC by 5:00 p.m. on July 17, 2026.

25 For the reasons stated in Exhibit A, IT IS HEREBY ORDERED, ADJUDGED, AND
26 DECREED that FAC’s Verified Petition for Declaratory Relief and Writ of Mandate Under the
27 California Public Records Act is GRANTED.

1 The Court FINDS AND DECLARES that the City's withholding of the records requested
2 by FAC violates the Public Records Act and Article 1, section 3(b) of the California Constitution,
3 as well as Penal Code section 832.7(b), and that the City is obligated to disclose the requested
4 records to FAC.

5 The City shall disclose all records covered by Petitioner's Request, a copy of which is
6 attached hereto as Exhibit B, by no later than 5:00 p.m. on July 17, 2026.

7 No later than sixty (60) days after notice of entry of the Writ of Mandate accompanying
8 this Judgment, the City shall file a return stating the steps that it has taken to comply with the
9 Writ.

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11
12 Dated: _____, 2026

13 _____
14 THE HONORABLE TERRIE R. ROBERTS

15 **Approved as to form:**

16 HEATHER FERBERT, City Attorney

17 By

18 _____
19 Jana Will
20 Senior Deputy City Attorney
21 Attorneys for CITY OF SAN DIEGO
22
23
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Exhibit A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE
TENTATIVE RULING**

HEARING DATE: 6/26/2026

JUDICIAL OFFICER: TERRIE E. ROBERTS

CASE NO.: 25CU033245C

CASE TITLE: First Amendment Coalition vs City of San Diego

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.)

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 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 within ten days (10) of this hearing. The Court will sign a proposed order consistent with this ruling.

This is the tentative ruling for the hearing at 10:30 a.m. on Friday, June 26, 2026. If no party appears at the hearing, this tentative ruling will become the order of the Court as of June 26, 2026. If the parties are satisfied with the Court's tentative ruling or do not otherwise wish to argue the motion, they are encouraged to give notice to the Court and each other of their intention not to appear, though this notice is not required.

Exhibit B

City of San Diego



Request Visibility: Published

Request 25-1937 ☒ Closed



Dates

Received

March 12, 2025 via web

Requester



David Loy



dloy@firstamendmentcoalition.org

534 Fourth Street, Suite B, San Rafael,
CA, 94901

619.701.3993



First Amendment Coalition

Staff assigned

Departments

Police

Point of contact

Angela Laurita

Request

On behalf of the First Amendment Coalition, I request copies of the following records related to the San Diego Police Department's arrest of or use of force on Marcus Evans on or about October 25, 2024 (the "Incident"):

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.

[Show less](#)

Timeline

Documents



Request published

Anyone with access to this request

March 24, 2025, 9:35pm



Request closed

Anyone with access to this request

02c. Released – Redacted and/or Withheld

All responsive documents have been released except those that have been redacted and/or withheld pursuant to:

[Law enforcement investigation]

Government Code section 7923.600

[records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of,any state or local police agency... are exempt from disclosure]

Government Code section 7922.000

The public interest in the nondisclosure of personal identifying information clearly outweighs the public interest in disclosure.

Government Code section 7923.615

This information is protected from disclosure pursuant to Government Code section 7923.615.

Government Code section 7922.000

The public interest in disclosure is outweighed by other factors.

Government Code section 7927.705
[other state or federal law]

Information you have requested is protected from disclosure pursuant to Government Code section 7927.705:

Evidence Code section 1043

March 21, 2025, 9:50am by Angela Laurita, Public Records Administration Manager (Staff)



Document(s) released

Anyone with access to this request

E24100036129_Redacted.pdf

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



Message to requester

Requester + Staff

Good morning,

In response to your request, all responsive records have been uploaded. Some of the records you requested are redacted/withheld pursuant to the following Government Code exemption(s):

BWC - withheld pursuant to the following Government Code exemption(s):

Government Code section 7923.600 [investigatory files]

The person making the decision to withhold the records is Capt. Charles Lara.

911/Audio files/Talk Radio-group - withheld pursuant to Government Code sections 7923.600 & 7923.615; Haynie v. Superior Court, 26 Cal 4th 1061 (2001); and Government Code section 7922.000 [public interest in non-disclosure outweighs public interest in disclosure]

The person making the decision to withhold the records is Roxanne Cahill, Police Dispatch Administrator.

SDPD does not transcribe calls.

CAD report - redacted pursuant to Government Code section 7923.600 [investigatory files] and Government Code section 7922.000 [personal identifying information]

The person making the decision to redact the records is Capt. Charles Lara.

The records you requested for item #2 are withheld pursuant Government Code section 7923.600 [investigatory files] and Government Code section 7927.705 [Evidence Code section 1043] [peace officer personnel records]

The people making the decision to withhold the records are Capt. Charles Lara and Lt. Tristan Schmottlach.

Kind regards.

March 21, 2025, 9:49am by Angela Laurita, Public Records Administration Manager (Staff)



Message to requester Requester + Staff

Please be advised that City staff have received your CPRA request. Within the next 10 days, we will determine whether your request seeks copies of disclosable

records in the City's possession or whether the City will require an extension. If your request is submitted on a Saturday, Sunday, or City holiday, the City considers the request received on the following business day.

March 12, 2025, 2:26pm



Department assignment

Anyone with access to this request

Police

March 12, 2025, 2:26pm by the requester



Request opened

Anyone with access to this request

Request received via web

March 12, 2025, 2:26pm by the requester

Exhibit 2

1 ~~DAVID LOY, Cal. Bar No. 229235~~
2 ~~AARON R. FIELD, Cal. Bar No. 310648~~
3 ~~FIRST AMENDMENT COALITION~~
4 ~~534 4th Street, Suite B~~
5 ~~San Rafael, CA 94901-3334~~
6 ~~Telephone: 415.460.5060~~
7 ~~Email: dloy@firstamendmentcoalition.org~~
8 ~~afeld@firstamendmentcoalition.org~~

9 ~~Attorneys for Petitioner~~
10 ~~FIRST AMENDMENT COALITION~~

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12
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO
16

17 FIRST AMENDMENT COALITION,
18 Petitioner,
19 v.
20 CITY OF SAN DIEGO,
21 Respondent.

Case No. 25CU033245C

**[PROPOSED] ORDER GRANTING
PETITIONER FIRST AMENDMENT
COALITION'S MOTION FOR
JUDGMENT**

22
23 Petitioner First Amendment Coalition's Motion for Judgment Granting Verified Petition
24 for Declaratory Relief and Writ of Mandate came on for hearing before this Court, the Honorable
25 Terrie R. Roberts presiding, on June 26, 2026. Having read and considered all materials filed by
26 Petitioner First Amendment Coalition ("FAC") and Respondent City of San Diego ("City") in
27 support of and opposition to the Motion, the Court issued a tentative ruling granting the Motion on
28 June 25, 2026, a copy of which is attached hereto as Exhibit A. After hearing argument of counsel,

1 the Court adopted the tentative ruling as the final ruling on the Motion, except for ordering that the
2 City shall disclose all records covered by the subject request attached hereto as Exhibit B
3 ("Request"), from the date of the subject Incident on October 25, 2024, to the date of the subject
4 Request on March 12, 2025, requested by to FAC by 5:00 p.m. on July 17, 2026. Accordingly, for
5 the reasons set forth in Exhibit A, the Court hereby ORDERS as follows:

6 FAC's Motion for Judgment Granting Verified Petition for Declaratory Relief and Writ of
7 Mandate is GRANTED.

8 The Court FINDS AND DECLARES that the City's withholding of the records requested
9 by FAC violates the Public Records Act and Article 1, section 3(b) of the California Constitution,
10 as well as Penal Code section 832.7(b), and that the City is obligated to disclose the requested
11 records to FAC.

12 The City is ORDERED to disclose all records covered by Petitioner's Request, from the
13 date of the subject Incident on October 25, 2024, to the date of the subject Request on March 12,
14 2025, a copy of which is attached hereto as Exhibit B, to disclose all records requested by FAC by
15 no later than 5:00 p.m. on July 17, 2026.

16 The Court will enter Judgment granting FAC's Verified Petition for Declaratory Relief and
17 Writ of Mandate Under the California Public Records Act and issue a Writ of Mandate consistent
18 with this Order.

19 IT IS SO ORDERED.

20
21 Dated: _____, 2026

22 _____
23 THE HONORABLE TERRIE R. ROBERTS

24 Approved as to form:

25 HEATHER FERBERT, City Attorney

26
27 By _____

28 Jana Will
Senior Deputy City Attorney
Attorneys for CITY OF SAN DIEGO

1 ~~DAVID LOY, Cal. Bar No. 229235~~
2 ~~AARON R. FIELD, Cal. Bar No. 310648~~
3 ~~FIRST AMENDMENT COALITION~~
4 ~~534 4th Street, Suite B~~
5 ~~San Rafael, CA 94901-3334~~
6 ~~Telephone: 415.460.5060~~
7 ~~Email: dloy@firstamendmentcoalition.org~~
8 ~~afield@firstamendmentcoalition.org~~

9 ~~Attorneys for Petitioner~~
10 ~~FIRST AMENDMENT COALITION~~

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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO
16

17 FIRST AMENDMENT COALITION,

18 Petitioner,

19 v.

20 CITY OF SAN DIEGO,

21 Respondent.

Case No. 25CU033245C

**[PROPOSED] PEREMPTORY WRIT OF
MANDATE**

22
23 TO RESPONDENT CITY OF SAN DIEGO:

24 Judgment has been entered in this proceeding granting Petitioner First Amendment
25 Coalition's Verified Petition for Declaratory Relief and Writ of Mandate Under the California
26 Public Records Act.

27 Therefore, YOU ARE HEREBY COMMANDED pursuant to this Court's Judgment to
28 disclose to Petitioner all records covered by Petitioner's Request, a copy of which is attached

1 hereto as Exhibit A, from the date of the subject Incident on October 25, 2024, to the date of the
2 subject Request on March 12, 2025, by no later than 5:00 p.m. on July 17, 2026.

3 ///

4 ///

5 ///

6 YOU ARE FURTHER COMMANDED to file and serve a written return to this writ on or
7 before the 60th day following notice of entry of the writ setting forth the steps you have taken to
8 comply.

9 Dated: _____, 2026

10 _____
11 CLERK OF THE SUPERIOR COURT

12 Approved as to form:

13 HEATHER FERBERT, City Attorney

14 By

15 _____
16 Jana Will
Senior Deputy City Attorney
Attorneys for CITY OF SAN DIEGO

Formatted: Indent: First line: 0"

1 ~~DAVID LOY, Cal. Bar No. 229235~~

2
3
4
5
6
7 ~~AARON R. FIELD, Cal. Bar No. 310648~~
8 ~~FIRST AMENDMENT COALITION~~
9 ~~534 4th Street, Suite B~~
10 ~~San Rafael, CA 94901-3334~~
11 ~~Telephone: 415.460.5060~~
12 ~~Email: dloy@firstamendmentcoalition.org~~
13 ~~afield@firstamendmentcoalition.org~~

14 ~~Attorneys for Petitioner~~
15 ~~FIRST AMENDMENT COALITION~~

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FIRST AMENDMENT COALITION,

Petitioner,

v.

CITY OF SAN DIEGO,

Respondent.

Case No. 25CU033245C

[PROPOSED] JUDGMENT

Petitioner First Amendment Coalition's Motion for Judgment Granting Verified Petition for Declaratory Relief and Writ of Mandate came on for hearing before this Court, the Honorable Terrie R. Roberts presiding, on June 26, 2026. Having read and considered all materials filed by Petitioner First Amendment Coalition ("FAC") and Respondent City of San Diego ("City") in support of and opposition to the Motion, the Court issued a tentative ruling granting the Motion on June 25, 2026, a copy of which is attached hereto as Exhibit A. After hearing argument of counsel,

1 the Court adopted the tentative ruling as the final ruling on the Motion, except for ordering that the
2 City shall disclose all records covered by the subject request attached hereto as Exhibit B
3 ("Request"), from the date of the subject Incident on October 25, 2024, to the date of the subject
4 Request on March 12, 2025, requested by FAC by 5:00 p.m. on July 17, 2026.

5 For the reasons stated in Exhibit A, IT IS HEREBY ORDERED, ADJUDGED, AND
6 DECREED that FAC's Verified Petition for Declaratory Relief and Writ of Mandate Under the
7 California Public Records Act is GRANTED.

8 The Court FINDS AND DECLARES that the City's withholding of the records covered by
9 the Request requested by FAC violates the Public Records Act and Article 1, section 3(b) of the
10 California Constitution, as well as Penal Code section 832.7(b), and that the City is obligated to
11 disclose the requested-subject records to FAC.

12 The City shall disclose all records covered by Petitioner's Request, from the date of the
13 subject Incident on October 25, 2024, to the date of the subject Request on March 12, 2025, a
14 copy of which is attached hereto as Exhibit B, by no later than 5:00 p.m. on July 17, 2026.

15 No later than sixty (60) days after notice of entry of the Writ of Mandate accompanying
16 this Judgment, the City shall file a return stating the steps that it has taken to comply with the
17 Writ.

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19
20 Dated: _____, 2026

21 _____
22 THE HONORABLE TERRIE R. ROBERTS
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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.

Jana Mickova Will
Office of the City Attorney
1200 Third Ave., Suite 1100
San Diego, California 92101
Email: jmickovawill@sandiego.gov; jnacar@sandiego.gov

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


Robin P. Regnier