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6 Attorneys for Respondent
CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

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

10 FIRST AMENDMENT COALITION,

11 Petitioner,

12 v.

13 CITY OF SAN DIEGO,

14 Respondent.

Case No. 25CU033245C

***CORRECTED CITY OF SAN DIEGO'S
OBJECTION TO [PROPOSED] ORDER
GRANTING PETITIONER FIRST
AMENDMENT COALITION'S MOTION
FOR JUDGMENT, (2) [PROPOSED]
JUDGMENT, AND (3) [PROPOSED]
PEREMPTORY WRIT OF
MANDATE***

I/C Judge: Hon. Terrie E. Roberts
Dept.: 68
Complaint filed: June 25, 2025
Trial: Post trial

Ex Parte Date: July 16, 2026
Time: 8:45 a.m.

21 Pursuant to California Rules of Court, rules 3.1312 and 3.1590, respondent City of San
22 Diego (City) objects to petitioner First Amendment Coalition's (Petitioner) [Proposed] Order,
23 [Proposed] Judgment and [Proposed] Peremptory Writ of Mandate (collectively "Proposed
24 Orders"). This objection is based on the accompanying Declaration of Jana Mickova Will, the
25 court's file in this case, and as set forth below. If the court signs the Proposed Orders as
26 submitted by Petitioner, the City respectfully requests an immediate stay of all orders for
27 purposes of City's immediate appeal. The court has no jurisdiction to extend the Proposed
28 Orders beyond the date of the subject Public Records Act (Act) request (Request) dated

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1 March 12, 2025 (PRA Date). Any order that extends beyond the existing PRA Date would be a
2 plain violation of the Act on the face of the Request¹ and subject to reversal by the court of
3 appeal.

4 Petitioner recognizes that the undersigned counsel was substituted in after all briefing
5 was completed, and attempts to argue that the City is now somehow barred from raising the issue
6 of “date range” in the Proposed Orders. Contrary to these improper and unfair attempts to exceed
7 the court’s jurisdiction, this is exactly when the issue of the City’s compliance with the Proposed
8 Orders must be raised. This is not a novel issue, but black letter law apparent from the face of the
9 Request.

10 As Petitioner’s counsel is well aware, under the Act, an agency’s obligation is to search
11 for and produce disclosable public records that are in the possession of the agency at the time the
12 request is received. (*Voice of San Diego v. San Diego Unified School District* (2026) 120
13 Cal.App.5th 923, 930.) Pursuant to Government Code section 7922.535(a):

14 Each agency, upon a request for a copy of records, shall, within 10
15 days from receipt of the request, determine whether the request, in
16 whole or in part, seeks copies of disclosable public records **in the**
17 **possession of the agency** and shall promptly notify the person
18 making the request of the determination and the reasons therefor. If
the agency determines that the request seeks disclosable public
records, the agency shall also state the estimated date and time when
the records will be made available. (Bold emphasis added.)

19 There is no provision in the Act that requires an agency to provide records generated after the
20 date of the request, nor does the statute require agencies to create new records to satisfy a
21 request. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651.). Because the statutory inquiry is
22 strictly focused on records currently in possession of the agency, a request does not apply
23 prospectively to records created after the date of the request. Petitioner invites this court to
24 commit reversible error by attempting to widen the date range beyond the undisputed
25 March 12, 2025 request date.

26 ///

27 ///

28 ¹ The Request is attached for the court’s convenience hereto.

1 Furthermore, Petitioner filed the proposed Orders without any effort “to come to
2 agreement” with respect to the City’s revisions as set forth in the parties’ emails and did not
3 disclose the City’s express reservation to file further objections under California Rules of Court,
4 rule 3.1590(j) directly with the court within the statutory 10-day service date. (See Decl. J. Will.)
5 The City requests Petitioner’s argument be rejected in their entirety or that the parties be ordered
6 to complete their meet and confer efforts on the Proposed Orders. Should the court not decide
7 this issue beforehand, the City has set an ex parte for July 16, 2026, to discuss its concerns
8 directly with the court.

9 In conclusion, a request is limited to existing public records in the possession of the
10 agency at the time the request is made. The Act does not apply prospectively, nor does it require
11 public entities to produce records generated after the request date or to create new records to
12 satisfy a request. The City is not attempting to evade the court’s order as suggested by Petitioner
13 but simply trying to ensure the Proposed Orders comply with the law. The date range of the
14 Request is clear on its face. The Incident occurred on October 24, 2024 and the Request was
15 submitted on March 12, 2025. The court must provide this clarity in its orders and Petitioner’s
16 arguments should properly be rejected.

17
18 Dated: July 10, 2026

HEATHER FERBERT, City Attorney

19
20 By 
21 Jana Mickova Will
22 Senior Deputy City Attorney

23 Attorneys for Respondent
24 CITY OF SAN DIEGO
25
26
27
28

ATTACHMENT

Request #25-1937

Closed

As of June 30, 2026, 9:16am

Request Visibility: Published

Details

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.

Received

March 12, 2025 via web

HEATHER FERBERT, City Attorney
JEAN JORDAN, Assistant City Attorney
JANA MICKOVA WILL, Senior Deputy City Attorney
California State Bar No. 211064

Office of the City Attorney, Civil Division
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San Diego, California 92101
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Attorneys for CITY OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DECLARATION OF
SERVICE

Case Name: *First Amendment Coalition v City of San Diego*
Case No. 25CU033245C
Judge: Hon. Terri E. Roberts /Dept. 68
[EFILED]

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On July 10, 2026, I served the following document(s):

***CORRECTED CITY OF SAN DIEGO'S OBJECTION TO [PROPOSED]
ORDER GRANTING PETITIONER FIRST AMENDMENT
COALITION'S MOTION FOR JUDGMENT, (2) [PROPOSED]
JUDGMENT, AND (3) [PROPOSED] PEREMPTORY WRIT OF
MANDATE; and***

on the following parties in this action:

David Loy, Esq. Cal. Bar No. 229235 Aaron R. Field, Esq. Cal. Bar No. 310648 FIRST AMENDMENT COALITION 534 4th Street, Suite B San Rafael, CA 94901-3334 Ph: (415) 460-5060 dloy@firstamendmentcoalition.org afield@firstamendmentcoalition.org Assistant: Robin Regnier regnier@firstamendmentcoalition.org	<i>Attorney for Petitioner</i>
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[] (BY U.S. MAIL) I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the

PROOF OF SERVICE

United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

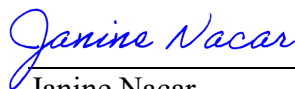
☐ **(BY FAX)** On July 10, 2026, I transmitted the above-described document(s) by facsimile machine to the fax number(s) set forth above or as stated on the attached service list. The transmission originated from facsimile phone number (619) 533-5856 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC Rule 2008]

☒ **(BY ELECTRONIC SERVICE)** Based upon a court order, local rule, an agreement of the parties to accept service by email or electronic transmission, and/or pursuant to California Rule of Court 2.251, I caused the documents to be sent to the persons at the e-mail address(es) listed and/or by submitting an electronic version of the document(s) to One Legal, LLC through the user interface at www.onelegal.com. [CCP § 1010.6; CRC Rule 2.251(c)]

☐ **(BY OVERNIGHT DELIVERY)** I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s) listed above, or as stated on the attached service list: [CCP § 1013]

☐ **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal service on this date, _____, as to the law office of _____ at the address indicated above. A certificate of service signed by Nationwide Legal will be filed with the Court upon request. [CCP § 1011]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 10, 2026, at San Diego, California.



Janine Nacar

Legal Administrative Assistant

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