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VIA ELECTRONIC MAIL

Heather Ferbert, Esq.
San Diego City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: hferbert@sandiego.gov

Re: Public Records Request 26-4263

Dear Ms. Ferbert:

On behalf of the First Amendment Coalition ("FAC"), which submitted the above-referenced request for records related to the shooting of Konoa Wilson ("Request"), I write to ask that the City disclose the requested records immediately in the hope of avoiding imminent litigation.

Under California's landmark police transparency laws, the City may not withhold the records on the mere assertion that there is an ongoing "criminal investigation and review process," as it said in responding to the Request. Especially in light of Judge Roberts's recent decision in *First Amendment Coalition v. City of San Diego*, No. 25CU033245C, which ruled in FAC's favor on similar issues and is attached for convenience, FAC would prevail in litigation to enforce the Request, exposing the City to significant liability for attorney's fees and costs.

As to "officer-involved shootings, the public's interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death." *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 74 ["*Long Beach*"].) The public's compelling interest in "transparency regarding instances of an officer's use of significant force" would be best served by immediate disclosure. (*Ventura County Deputy Sheriffs' Ass'n. v. County of Ventura* (2021) 61 Cal.App.5th 585, 593.)

Please ensure that all records covered by the Request are preserved until this matter is resolved.

Background

The Request was made on May 3, 2026, and concerns the fatal shooting of Konoa Wilson by a San Diego police officer on or about January 28, 2025. The Request seeks copies of all records related to the shooting that are covered by Government Code section 7923.625 ("A.B. 748") and Penal Code section 832.7, subdivision (b) ("S.B. 1421").¹

On May 14, 2026, the City responded as follows to the Request:

¹ S.B. 1421 was adopted in 2018 and later updated by Senate Bill 16. For convenience, all of Penal Code section 832.7, subdivision (b) is referred to as "S.B. 1421."

The requested records in this CPRA are related to an Officer Involved Shooting. The Critical Incident Video has already been posted on the City of San Diego website and may be found here [Update: SDPD OIS- 1100 Kettner Blvd, San Diego | News Release | San Diego County Sheriff](#).

In general, records of a law enforcement investigation are exempt from disclosure under California Government Code section 7923.600(a). Additionally, peace officer personnel records are exempt under California Government Code section 7927.700 and 7927.705 [California Evidence Code section 832.7(a)]. However, certain records are releasable pursuant to California Penal Code section 832.7(b). This incident falls within a category for public inspection under California Penal Code section 832.7(b).

The incident is currently under criminal investigation by the San Diego Sheriff's Department. During the criminal investigation process, the remaining records you requested are temporarily withheld under California Penal Code section 832.7(b)(8), California Government Code sections 7923.600(a), 7927.705 [California Evidence Code section 1040] and 7922.000. Upon completion of the criminal investigation and review process, SDPD will disclose those records available for public inspection under California Penal Code section 832.7(b). The disclosable records will be posted on the City of San Diego Mandated Disclosure website, please refer to the year in question.

<https://www.sandiego.gov/police/data-transparency/mandated-disclosures>

Records that do not fall within a category for public inspection under California Penal Code section 832.7(b) are exempt from disclosure under California Government Code sections 7923.600(a), 7927.705 [California Evidence Code section 1040] and 7922.000.

The person making the decision to withhold the records is Lt. Louis Maggi.

NOTE: The City continues to release cases on a rolling basis as they become available, please refer to the website every 90 days. This request is now closed.

The City has not responded further, for example by providing any reassessments or updates since it responded to the Request. As far as I know, the City has not disclosed the complete set of records related to the shooting of Mr. Wilson, although the shooting was extensively discussed in the press and resulted in a civil lawsuit that the City settled for \$30,000,000.²

² The City disclosed certain video footage at <https://www.youtube.com/watch?v=vOrDWJUBx1M&rc=1>. It is not clear if such footage represents all relevant unedited and unredacted video footage in the City's possession or control.

California Public Records Act

Under the Public Records Act, the City must disclose any public record upon request unless it is expressly exempt from disclosure. (Gov. Code, §§ 7920.510, subd. (b), 7920.525, subd. (a), 7922.000, 7922.530, subd. (a); *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 616.)

The City bears the burden of proving that records are exempt from disclosure. (Gov. Code, § 7922.000; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329 [*“Local 21”*].) An agency opposing disclosure must provide evidence “specific enough to give the requester a meaningful opportunity to contest the withholding of the documents and the court to determine whether the exemption applies.... Conclusory or boilerplate assertions that merely recite statutory standards are not sufficient.” (*American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 83.)

Critical Incident Recordings (A.B. 748)

A.B. 748 requires disclosure of any “video or audio recording that relates to a critical incident” regardless of whether an officer violated any law or policy. (Gov. Code, § 7923.625.)

A “video or audio recording relates to a critical incident if it depicts” an “incident involving the discharge of a firearm at a person by a peace officer” or an “incident in which the use of force by a peace officer ... against a person resulted in death.” (Gov. Code, § 7923.625, subd. (e).) Such recordings “may be withheld *only*” for reasons allowed by the statute itself. ((Gov. Code, § 7923.625 [emphasis added].)

There is no dispute that the shooting of Mr. Wilson was a critical incident. If the City has not already disclosed all unedited or unredacted audio or video recordings depicting that critical incident, it cannot legally continue to withhold them over 18 months after the shooting.

A.B. 748 establishes detailed conditions for delaying disclosure of such recordings. In relevant part, “[i]f an agency delays disclosure” more than 45 days after the incident, “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.” (Gov. Code, § 7923.625, subd. (a)(2).)

The City failed to comply with those conditions. The City did not state any specific basis for a determination that any interest in preventing interference with an active investigation outweighed the public interest in disclosure. The City also failed to provide an estimated date of disclosure, much less reassess withholding and notify FAC every 30 days of its position. Therefore, the City may not invoke any right to delay disclosure of the recordings.

Even assuming otherwise, the City cannot meet its demanding burden to delay disclosure of the critical incident recordings. Now that more than one year from the shooting has elapsed, the City cannot continue delaying disclosure unless it can prove by “clear and convincing evidence”

that there is “an active criminal or administrative investigation” and “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.” (Gov. Code, § 7923.625, subd. (a)(1)–(2).)

Clear and convincing evidence requires proof making it “highly probable” that the alleged fact is true, which must be “so clear as to leave no substantial doubt” and “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 998 & fn. 2.) A “mere assertion of possible endangerment” cannot carry the City’s demanding burden. (*Long Beach, supra*, 59 Cal.4th at p. 74.)

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

Because A.B. 748 “includes a general term” such as substantial interference “followed by a nonexhaustive list of specific examples” such as endangering a witness or a confidential source, “the principle of *ejusdem generis* provides guidance in discerning the Legislature’s intent” about the kind of interference that can justify withholding critical incident recordings. (*Local 21, supra*, 42 Cal.4th at p. 342.) When “specific words follow general words in a statute,” the “general term or category is restricted to those things that are similar to those which are enumerated specifically.” (*Ibid.*) Thus, “if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage.” (*Ibid.*) Accordingly, in providing specific examples of substantial interference, such as endangering a witness or a confidential source, the Legislature intended that evidence sufficient to justify withholding critical incident recordings must involve or resemble those examples.

The City has offered nothing which proves by clear and convincing evidence that based on the facts and circumstances depicted in the recordings at issue, disclosure would substantially interfere with any active investigation such as by endangering a witness or a confidential source. Indeed, there is nothing confidential about the shooting, given that it occurred in public and has been heavily publicized.

The City did not refer to any “confidential source” or suggest, much less prove by clear and convincing evidence, that disclosure of the recordings would result in “endangering the safety of a witness.” (Gov. Code, § 7923.625, subd. (a)(1).) As Judge Roberts recently held, the City cannot carry its demanding burden of proof by reciting generic concerns that could hypothetically apply to any case. Accordingly, the City must immediately disclose all unedited and unredacted critical incident recordings at issue if it has not done so already.

Records Relating to Report, Investigation, or Findings (S.B. 1421)

S.B. 1421 mandates, “Notwithstanding subdivision (a), Section 7923.600 of the Government Code,” which contains the investigatory records exemption, “or any other law,” including those otherwise protecting peace officer personnel records, certain police records “shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act.” (Pen. Code, § 832.7, subd. (b)(1).)

In relevant part, a public agency must disclose any “record relating to the report, investigation, or findings of any ... incident involving the discharge of a firearm at a person by a peace officer” or any “incident involving the use of force against a person by a peace officer ... that resulted in death.” (Pen. Code, § 832.7, subd. (b)(1)(A)(i)–(ii).)

S.B. 1421 “supersedes state law disclosure exemptions,” such as those for investigatory records or peace officer personnel records, that “pose a direct conflict with its decree that records within its scope are not confidential and shall be made available to the public.” (*First Amendment Coalition v. Superior Court* (2023) 98 Cal.App.5th 593, 600.)

It requires disclosure of all records about any discharge of a firearm at a person or use of force resulting in death regardless of whether any officer was “found to have used excessive force or acted in violation of department policies pertaining to use of force.” (*City of Vallejo v. Superior Court* (2025) 112 Cal.App.5th 565, 596.)

The City has admitted the Request seeks records covered by S.B. 1421. Unless “temporary withholding for a longer period is permitted” by the statute, these records shall be disclosed “no later than 45 days from the date of a request for their disclosure.” (Pen. Code, § 832.7, subd. (b)(11).) The City cannot prove the existence of any lawful grounds for delaying disclosure under S.B. 1421, and all relevant records must be disclosed immediately.

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

Second, the City cannot contend that “disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in ... use of force,” because that ground for delay expires “18 months after the date of the incident,” which has elapsed. (Pen. Code, § 832.7, subd. (b)(8)(A)(ii).)

Third, the City has not asserted there is any potential “criminal enforcement proceeding against someone other than the officer who engaged in the ... use of force.” (Pen. Code, § 832.7, subd. (b)(8)(A)(iii).)

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

Fifth, any “administrative investigation” cannot justify a delay of more than “180 days after the date of the [City’s] discovery of the ... use of force ... by a person authorized to initiate an investigation,” especially since the requested records must be disclosed regardless of whether any officer violated any law or policy and a sustained finding of misconduct is not a condition of disclosure in this case. (Pen. Code, § 832.7(b)(8)(C).) That time has long since elapsed.

As Judge Roberts recently confirmed, the City may not withhold records covered by A.B. 748 or S.B. 1421 for any reason not specified in those statutes, such as any contention that records may be withheld during any tolling of an administrative investigation that is authorized by the Public Safety Officers Procedural Bill of Rights Act.

For the foregoing reasons, please ensure that the records requested by FAC are disclosed immediately to avoid potential litigation against the City. This letter may not make all applicable arguments in favor of disclosure; all rights are reserved.

Thank you very much for your attention to this matter, and please let me know if you or your staff have any questions. I am available to talk at any mutually convenient time.

Sincerely,

FIRST AMENDMENT COALITION



David Loy
Legal Director

cc: Senior Deputy City Attorney M. Travis Phelps