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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, a non-profit corporation,

Petitioner,

v.

CITY OF FRESNO,

Respondent.

CASE NO. 24CECG01635

PETITIONER'S SUPPLEMENTAL BRIEF

[Gov. Code §§ 7920.000, et seq.; Code Civ. Proc., §§ 1085, et seq.]

Date: March 21, 2025
Time: 1:30 PM
Judge: Hon. ~~W. Kent Hamlin~~ Houry Sanderson
Department: 53
Action Filed: April 22, 2024

[Filed concurrently with Declaration of Stephanie Padilla]

INTRODUCTION[1]

The American Civil Liberties Union of Southern California ("ACLU") seeks public records about the City of Fresno's ("FRESNO") use of canines for law enforcement. The public has a right to understand how police use canines, but FRESNO has withheld entire categories of public records (Declaration of Stephanie Padilla in Support of Motion for Judgment ("Padilla First Decl.") ¶ 14; Ex. I),[2] applied blanket redactions to hide disclosable information in canine use of force and accidental bite reports, (Padilla First Decl. ¶ 8; Ex. E) and failed to produce any such reports from 2021. (Padilla First Decl. ¶ 7; Stephanie Padilla Declaration in Support of Supplemental Brief ("Padilla Second Decl.") ¶ 2; Ex. L (Transcript of January 8, 2025 Hearing ("Tr.")) at 8:4–12.)) FRESNO's failure to produce these public records violates the California Public Records Act ("PRA") and the California Constitution.

FRESNO claims that (1) the requested use of force and accidental bite reports are exempt as investigatory records and (2) Penal Code § 832.7(b)'s disclosure requirement does not apply because police canines are categorically incapable of causing "great bodily injury" ("GBI").[3] It is wrong on both counts. The requested reports are administrative records, not exempt investigatory records. And even if some of the requested records were properly considered investigatory, they are nevertheless subject to public disclosure under § 832.7(b) if they relate to an incident involving GBI—a level of injury that police canines are eminently capable of inflicting. In asserting otherwise, FRESNO ignores the established definition of GBI and attempts to replace it with its own preferred and narrower term "serious bodily injury" ("SBI"), which does not appear in the statute.

Even for those records that do not involve GBI, FRESNO's blanket redactions are improper. FRESNO must separate out nonexempt material and disclose "[a]ny reasonably segregable portion of a record," (Gov. Code. § 7922.525, subd. (b)), including factual narrative surrounding arrests. ACLU seeks an order compelling FRESNO to comply with the law by producing improperly withheld records and reproducing PRA-compliant versions of improperly redacted records.

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[1] At the January 8, 2025 hearing, this Court invited supplemental briefing to address questions raised by the Court or to otherwise clarify the parties' respective positions or prior briefing.

[2] FRESNO refused to produce records responsive to Requests 7 (training files), 8 (number of trained supervisors), and 9 (civilian complaints). (Ex. I.) FRESNO also failed to produce civil liability records, body camera footage, and other records referenced in produced reports responsive to ACLU requests 10–13.

[3] FRESNO initially claimed several other exemptions. (Padilla First Decl. ¶ 16; Ex. K.) At the hearing, FRESNO conceded "the nature of those redactions was not attorney/client privilege or attorney work product" but insisted that "some of the exempt records that the city chose to produce were redacted to protect the third-party privacy of witnesses." (Tr. at 36: 9–17.) ACLU does not seek third-party witness information.

BACKGROUND

The full factual background can be found in previous filings.[4] Here, ACLU provides context regarding use of force and accidental bite reports. Generally, whenever police officers use force, they are required to document the incident, including by providing a written description and the type of force used. This requirement applies for every use of force as standard practice even when unrelated to a criminal investigation. These reports ensure accountability and assess the need for changes in training, policies, procedures, equipment, or other areas. The Fresno Police Department Policy Manual applies these general rules to FRESNO police officers, who must report any use of force that results in injury, regardless of whether it is part of a criminal investigation.[5] The Policy Manual specifically addresses canine use of force—both deliberate and accidental—requiring that injuries caused by a police canine be "documented in a canine use report," and that "[u]nintended bites or injures caused by a canine should be documented in an *administrative* report, not a canine use report."[6] The Policy Manual does not refer to use of force or accidental bite reports as "investigatory," limit reporting requirements to force related to criminal investigations, require such reports be part of investigatory files, or state that their purpose is to assist with investigations. Rather, it specifies that the purpose of use of force documentation is "to determine effectiveness of force, reliability of equipment, training needs, policy modifications, etc.," and that accidental bite reports are administrative reports.[7]

ARGUMENT

The PRA "embodies a strong policy in favor of disclosure of public records." (*Cal. State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810, 831.) FRESNO does not dispute that the requested reports are public records, so it may only withhold these records if it can demonstrate that an exemption applies. The California Constitution requires any "statute, court rule, or other authority"—including Penal Code § 832.7(b) and the PRA itself—"be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." (Cal. Const., art. I, § 3, subd. (b), par. (2); see also

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[4] Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Compl.") ⁋⁋ 24–38; Memorandum of Points and Authorities in Support of Motion for Judgment ("Motion") at 8–11.

[5] See Padilla Second Decl. ⁋ 4; Ex. M ("Policy 300 – Use of Force") at 300.9 (reportable force includes any time a person is injured by an officer or canine); *id*. at 300.9.2 (use of force must be documented "promptly, completely, and accurately in an appropriate report"). Exs. M and N are collectively referred to as the "Policy Manual."

[6] Ex. N ("Policy 318 – Canine Program") at 318.8 ("Reporting Deployments, Bites, and Injuries") (italics added); see Padilla Second Decl. ⁋ 4; see also Griffin Decl. ⁋ 4 [Ex 2. (K-9 Policies)].

[7] See Policy 300 – Use of Force at 300.10 ("Use of Force Analysis"); see also Policy 318 – Canine Program at 318.8.

ACLU Found. v. Superior Court (2017) 3 Cal.5th 1032, 1042 ["Our Constitution requires that CPRA exemptions be narrowly construed"].) FRESNO bears the burden of proving its asserted exemptions apply, (see *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 70), and "mere assertion[s]" and conjecture will not suffice. (*CBS, Inc. v. Block*, (1986) 42 Cal.3d 646, 652–653.)

FRESNO fails to meet its burden here. First, use of force and accidental bite reports are administrative, not investigatory. And even if some reports could be deemed investigatory, FRESNO has failed to conduct the individualized inquiry necessary to determine whether specific reports are exempt from disclosure. Furthermore, FRESNO's position that canines are incapable of causing GBI is unsupported by law or fact. And finally, FRESNO's practice of applying blanket redactions to factual narrative, rather than disclosing reasonably segregable non-exempt information, cannot be squared with the PRA's requirements. The Court should compel FRESNO to disclose the requested records.

I. THE RESPONSIVE REPORTS ARE ADMINISTRATIVE, NOT INVESTIGATORY

Use of force and accidental bite reports are administrative records not covered by the investigatory records exemption, which exists to "protect[] witnesses, victims, and investigators, secure[] evidence and investigative techniques, encourage[] candor, recognize[] the rawness and sensitivity of information in criminal investigations, and in effect make[] such investigations possible." (*Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276.) This exemption applies when there is a "'concrete and definite prospect' of '*criminal* law enforcement' proceedings." (*Id.* at 1277 [citations omitted] [italics added].) The exemption is narrowly and does not "shield everything law enforcement officers do from disclosure." (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1071.) Even records police *might* rely upon in an investigation are not necessarily exempt. "To say that the [investigatory] exemption . . . is applicable to any document which a public agency might, under any circumstances, use in the course of [an investigation] would be to create a virtual *carte blanche* for the denial of public access to public records. The exception would thus swallow the rule." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 355–56 [quoting *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212–213].)

In keeping with established transparency principles, California courts regularly require disclosure of police records. For example, in *Castanares v. Superior Court*, the appellate court found that police drone footage captured during a regular dispatch was not exempt, as opposed to footage

specifically used for the purpose of investigating crimes. ((2023) 98 Cal.App.5th 295, review denied (Apr. 10, 2024).) Police records are only exempt as investigatory when their purpose is to assist with a criminal investigation or where the records are part of an investigatory file.[8]

FRESNO's use of force and accidental bite reports are created as part of officers' administrative duties to help evaluate the effectiveness of force and related policies, training, and methodologies. (See *ante*, Background.) They are not created to assist with criminal investigations nor are they part of investigatory files. (*Id*.) The Policy Manual at Policy 318 – Canine Program even expressly describes accidental bite reports as "administrative." (*Id*.) The investigatory records exemption does not apply to either canine use of force or accidental bite reports, and FRESNO's broad assertion to the contrary threatens to swallow the rule. Indeed, FRESNO claimed the investigatory exemption applies so broadly as to withhold a record describing a police canine attacking an innocent child at a demonstration, which was not connected to any investigation. (Ex. E at 43–47.) ACLU sent similar PRA requests to other police agencies who did not claim the exemption justifies withholding entire sections of reports.[9] FRESNO's use of force and accidental bite reports are administrative records that must be produced.

II. FRESNO CANNOT CLAIM ENTIRE CATEGORIES OF RECORDS ARE EXEMPT WITHOUT INDIVIDUALIZED INQUIRY

Even if some of the requested records could be properly characterized as investigatory (which they cannot be), public agencies cannot withhold entire categories of records, but must instead review each record individually. (See *Castanares, supra*, 98 Cal.App.5th at 312 [City could not treat all video records as a "monolith," but had to review records individually].) FRESNO claimed *all* use of force and accidental bite reports are investigatory[10] and that *no* police canine bite can result in GBI.[11] But FRESNO provided no legal justification for its impermissibly categorical approach and admitted it did not know whether this method was proper. (Tr. at 46:21–47:9.) FRESNO's categorical approach fails to meet its obligations under the PRA and state constitution, and its assertion that accidental bite reports are investigatory contradicts its own Policy Manual. (See *ante*, Background.) If the Court finds that *any* of the requested records could be considered investigatory, it should order FRESNO to review each

[8] See Reply Memorandum In Support of Motion for Judgment ("Reply") at 2–3 (collecting cases).
[9] See Padilla First Decl. ¶ 10; Ex. F (Bakersfield Police Use of Force report [including narrative information]).
[10] Respondent's Opposition to Motion for Judgment ("Opp.") 4–5; Tr. at 28:16–17 ("all uses-of-force records are investigatory records"); Tr. at 46:18–20 ("accidental bites, however, are . . . still investigative records.").
[11] Opp. at 16.

individual record to determine whether it is investigatory and/or describes an incident involving GBI, so as to render it disclosable under Penal Code § 832.7.

III. EVEN IF CERTAIN RESPONSIVE RECORDS WERE CONSIDERED "INVESTIGATORY," FRESNO'S BLANKET REDACTIONS ARE IMPROPER.

Even if FRESNO had made individualized determinations that certain reports are investigatory (which it has not), FRESNO's blanket redactions would still be improper. The investigatory exemption is not "absolute," and the PRA requires disclosure of "specified information." (*Williams, supra,* 5 Cal.4th at 346.) Public agencies must segregate exempt from nonexempt materials and disclose "[a]ny reasonably segregable portion of a record." (Gov. Code, § 7922.525, subd. (b).) "'[T]he fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document.'" (*L.A. County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292) [citing *CBS, Inc., supra*, 42 Cal.3d at 653].) Instead, "public agencies [must] use the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions." (*Id*.)

FRESNO neglected its scalpel in favor of a shotgun, covering entire sections of responsive records with blanket redactions. The Court recognized the problematic nature of this approach. It reminded the parties that "redactions have to be narrowly tailored," expressed doubt that "just big gray squares meets that test," and predicted that "some aspects of some of these reports could be produced." (Tr. 14:7–24.) The Court is correct. In fact, much of the redacted information must be produced.

Pen. Code § 832.7(b) gives the public the right to access records of police use of force resulting in GBI, whether or not those records are investigatory. Public agencies may only redact these records for one of the four discrete purposes in § 832.7(b)(6),[12] or if public interest clearly favors withholding. (Pen. Code § 832.7, subd. (b)(7).) FRESNO has not met its burden of showing public interest favors withholding, so redactions for any purpose beyond those in § 832.7(b)(6) are improper. Even for investigatory records that do not involve GBI, FRESNO must disclose any reasonably segregable non-exempt information from those records, including factual information surrounding arrests.

[12] "An agency shall redact a [GBI] record…only for any of the following purposes," such as to remove confidential information, to preserve whistleblowers anonymity, and to protect from significant danger to physical safety. (Pen. Code § 832.7, subd. (b)(6).) ACLU does not seek information covered by these narrow exceptions, but the remainder of the information contained in the GBI records must be disclosed.

A. FRESNO MUST DISCLOSE USE OF FORCE RECORDS RESULTING IN GBI

In a legislative effort to enhance public transparency, Senate Bill 1421[13] amended Penal Code § 832.7(b) to provide the public with the right to access records of police use of force resulting in GBI. FRESNO attempts to subvert legislative intent and clear statutory language by claiming the law instead only applies to use of force resulting in SBI. Using that flawed justification, FRESNO has categorically redacted all canine use of force and accidental bite reports, claiming that police canines are incapable of causing its narrowed definition of GBI. FRESNO is incorrect in several critical respects: (1) GBI means GBI, not SBI, especially in the context of § 832.7(b) and the PRA, (2) police canines can, and often do, cause GBI, and (3) FRESNO cannot categorically redact records. FRESNO must review each individual redacted or withheld record and produce all use of force or accidental bite reports involving GBI.

1. SB 1421 Clearly and Unambiguously Uses the Term GBI, which is a Well-Defined Term of Art

The Court recognized "you don't resort to [legislative] analysis [] unless there's something unclear." (Tr. at 10:6–7.) Here, the statutory text of SB 1421 is perfectly clear. It amended Pen. Code § 832.7 to require police to disclose records related to use of force resulting in "great bodily injury"—not "serious bodily injury." The California Supreme Court settled that GBI and SBI have "separate and distinct statutory definitions," and thus are neither "equivalent as a matter of law" nor "interchangeable." (*In re Cabrera* (2023) 14 Cal.5th 476, 484–85 [citations omitted].) GBI means any "significant or substantial physical injury," (*Id*. at 488 [quoting Pen. Code § 12022.7, subd. (f)]),[14] while, SBI involves a "serious impairment of physical condition . . ." (*Id*. at 484 [quoting Pen. Code § 243, subd. (f)(4)].) The Court therefore has no need to resort to legislative analysis: GBI means GBI.

Recognizing the clear text of SB 1421 and the distinction between two terms of art, courts have held that GBI is distinct from SBI in the context of the PRA. Two Superior Courts rejected the exact attempt to interchange definitions that FRESNO makes here.[15] The Contra Costa Superior Court found "there simply is no ambiguity at all" that "[t]he Legislature's choice of the phrase 'great bodily injury' [in SB 1421] signals its intent that this term of art be applied, and not the narrower (and equally well-established) term of art 'serious bodily injury.'" (*Richmond Police Officers' Assn. v. City of Richmond*

[13] Sen. Bill No. 1421, (2017-2018 Reg. Sess.).
[14] See also Judicial Council of California Criminal Jury Instructions (2024).
[15] While these decisions do not bind the court, they reflect that other courts have interpreted § 832.7 and SB 1421 to include a broad definition of GBI distinct from SBI.

(Super. Ct. Contra Costa County, 2020, No. MSN19-0169 at 26.)) The Sacramento County Superior Court similarly found "the plain language of [SB 1421], its legislative history, and the text and purpose of the PRA, all show that the Legislature intended agencies to apply a broader definition of 'great bodily injury' [rather] than the overly-restrictive term 'serious bodily injury' when responding to PRA requests." (*The Sacramento Bee v. Sacramento County Sheriff's Dept.* (Super. Ct. Sacramento County, 2019, No. 34-2019-80003062 at 7.)) In short, there is simply no ambiguity. GBI in § 832.7 means GBI, not SBI.[16]

In determining what injuries qualify as GBI, California courts interpret the term broadly,[17] consistent with the PRA's presumption in favor of disclosure. Courts also interpret the term broadly in criminal cases. (*Ante*, Section III(A)(2).) GBI does not require "permanent," "prolonged," or "protracted" disfigurement, impairment, or loss of bodily function, let alone any life-threatening injuries. (*People v. Escobar* (1992) 3 Cal.4th 740, 750.) "Great bodily injuries" include lacerations, bruises, abrasions, deep punctures, muscle and bone damage, disfigurement, and permanent nerve damage.[18] FRESNO must disclose any use of force or accidental bite reports that involve these types of injuries.

2. Police Canines Often Cause GBI

Police canines can, and frequently do, cause GBI.[19] Police officers,[20] state courts,[21] and medical experts[22] all agree. The Court requested additional analysis regarding the definition of GBI and whether police canines can cause such injuries. The following chart compares injuries that California courts have found meet the standard for GBI with injuries caused by police canines:

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[16] Contrary to FRESNO's assertion (Opp. at 6), respecting the legislatures choice does not lead to absurd results, but respects the legislature's desire to increase public access to records. Resolving this matter does not implicate officers' use of deadly force, which is governed by a separate statute that uses the term SBI. (Pen. Code § 835a.)

[17] Reply at 7–9.

[18] Motion at 18 fn.9.

[19] Reply at 9.

[20] A Modesto police officer testified "he was aware that a police dog is capable of inflicting great bodily injury and even death." (*Olvera v. City of Modesto* (E.D. Cal. 2014) 38 F.Supp.3d 1162, 1175.) A San Jose police officer was trained that "his dog's bite can cause lacerations, bruises, tear muscles and fracture bones . . ." (*Tovar v. City of San Jose* (N.D. Cal., Sept. 24, 2024, No. 5:21-CV-02497-EJD) 2024 WL 4280950, at *4.)

[21] The Fourth District Court of Appeal found "[a] dog may be the instrumentality of an attack causing great bodily injury . . ." (*People v. Frazier* (2009) 173 Cal.App.4th 613, 618.)

[22] Medical experts found California police dog bites cause "severe pain from deep wounds requiring extensive stitches or multiple surgical repairs given the depth and severity of the wounds, skin grafting, infectious complications, and traumatic brain injuries," and long-term harms "included disfigurement, scarring, nerve injury, loss of function of arms and legs, cognitive impairment, chronic pain, sequelae from traumatic brain injuries, post-traumatic stress disorder, and other mental health disorders." (Altaf Saadi, et al., Physicians for Human Rights, *Unleashed Brutality: An Expert Medical Opinion on the Health Harms from California Police Attack Dogs* (January 2024) page 3 <https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-January-2024.pdf> [as of February 27, 2025].)

Injury Considered GBI	Injury Caused by Police Canine
"some physical pain or damage, such as lacerations, bruises, or abrasions." (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047, review denied (Feb. 13, 2013); see also *People v. Quinonez* (2020) 46 Cal.App.5th 457, 464.) "multiple superficial abrasions and lacerations" (*People v. Sanchez* (1982) 131 Cal.App.3d 718, 727.)	"a large laceration to his lower left leg and backside as a result of the dog bite, as well as dog bites on his hands." (*Thompson v. County of L.A.* (2006) 142 Cal.App.4th 154, 159, review denied (Nov. 15, 2006).) "'multiple lacerations and punctures' . . . 'a jagged tearing of the skin'" (*Watkins v. City of Oakland* (9th Cir. 1998) 145 F.3d 1087, 1090.) "severe lacerations to his left side and left forearm. . . Officer Bunch acknowledged . . . that '[t]here was some serious lacerations.'" (*Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432, 1436, 1441.)
"penetrating wounds. . ." (*People v. Wolcott* (1983) 34 Cal.3d 92, 108)	"multiple puncture wounds and lacerations" (*Rosenbaum v. City of San Jose* (9th Cir. 2024) 107 F.4th 919, 923) "multiple serious puncture wounds . . ." (*Gabriel v. County of Sonoma* (N.D. Cal. 2024) 725 F.Supp.3d 1062, 1072.) [describing the force as "somewhere between . . . moderate [and] . . . severe"].)
"tearing the muscle tissue" (*Wolcott, supra,* 34 Cal.3d 92 at 107)	"skin . . . torn in four places above the elbow, and . . . muscles underneath were shredded . . . His brachialis muscle—the muscle closest to the bone and alongside the brachialis artery—was torn." (*Miller v. Clark County* (9th Cir. 2003) 340 F.3d 959, 961.)
"soft tissue injury and muscular injury" (*People v. Le* (2006) 137 Cal.App.4th 54, 58)	"macerated superficial tendons; macerated soft tissue . . ." (*Watkins, supra*, 145 F.3d at 1090.)
"Examples of injuries sufficient to constitute 'great bodily injury' include a broken jaw." (*Sanchez*, *supra*, 131 Cal.App.3d at 733 [citing *People v. Johnson* (1980) 104 Cal.App.3d 598].)	"broken jaw . . . and injury to her skull" after "the canine with his teeth, dragged [her] by her mouth from the bedroom into the living room . . ." (*Koistra v. County of San Diego* (S.D. Cal. 2018) 310 F.Supp.3d 1066, 1077.)
"an inch-long laceration on his head that exposed his skull" (*In re Cabrera*, *supra,* 14 Cal.5th at 488.)	"Significant portions of Bates's scalp were torn off, exposing her skull." (*Bates v. Rezentes* (N.D. Cal. 2024) 731 F.Supp.3d 1119, 1126, appeal dismissed (9th Cir., Oct. 24, 2024, No. 24-3282) 2024 WL 4866467.) "The dog's bites tore off large portions of Hooper's scalp." (*Hooper v. County of San Diego* (9th Cir. 2011) 629 F.3d 1127, 1129.)

"cuts on . . . nose, cheek and lip. Following the attack [victim] was taken to a hospital, where three or four sutures were applied to each cut" (*People v. Salas* (1978) 77 Cal.App.3d 600, 606.) "a quarter-to half-inch-long cut along his jaw requiring three stitches to close" and "a quarter-inch-long cut on his lip requiring seven stitches to close" that "resulted from a punch" (*People v. Medellin* (2020) 45 Cal.App.5th 519, 523.)	"[Police dog] bit Lowry's upper lip, causing it to bleed. Officer Fish took Lowry to the hospital, where she received three stitches." (*Lowry v. City of San Diego* (9th Cir. 2017) 858 F.3d 1248, 1254.) "bites to her arms, hands and face . . . facial lacerations and stitches on her face . . ." (*Koistra, supra,* 310 F.Supp.3d at 1077.)

These results show that police canines often cause GBI. Indeed, other police agencies that received similar PRA requests produced use of force reports involving police canines where evidence of GBI was not redacted. (See Exs. O–R (Use of Force Reports) [describing injuries similar to those above, including punctures, lacerations, torn skin, and broken bones].) Only FRESNO redacted this information.

3. Rather than Categorically Claiming Exemption Based on Type of Force Applied, FRESNO Must Assess Each Report to Determine if it Describes GBI

The PRA is clear that § 832.7(b) applies to records of an incident where use of force *resulted* in GBI, not where use of force was *likely* to result in GBI. The disclosure requirement turns on the injuries that actually occurred, not the type of force that was used. The PRA does not permit an agency to categorically withhold records based on the type of force used. The Court recognized this, requesting assurances that FRESNO conducted "individualized determination on each case as to whether it is or isn't GBI . . . [rather than] just a categorical approach." (Tr. 48:3–8.) FRESNO was unable to provide such assurances and appears to have instead broadly redacted each canine use of force and accidental bite report. This was improper. FRESNO must review each individual record to determine the extent of the injuries any use of force or accidental bite reports where the force resulting in GBI.

B. FRESNO MUST DISCLOSE REASONABLY SEGREGABLE INFORMATION, INCLUDING FACTUAL CIRCUMSTANCES SURROUNDING ARRESTS

FRESNO redacted entire sections of responsive records containing narrative information that must be disclosed.[23] FRESNO claimed that because ACLU did not specifically request "arrest records"

[23] FRESNO completely redacted information under headers "Crisis Details" and "Narrative." (Padilla First Decl. ¶¶ 8, 11; Ex. E.) Similar records produced by other public agencies do not redact factual information in corresponding sections. (Padilla First Decl. ¶ 10; Ex. F; Padilla Second Decl. ¶¶ 5-7; Exs. O–R.)

it does not have to disclose narrative information.[24] FRESNO is incorrect. As the Court explained, the public is entitled to "at least" "the officers' original narratives," (Tr. 13:18–20) which are "[c]ertainly. . . not entirely protected from disclosure." (*Id*. 11:16–18 [describing narrative portions of reports].) Gov. Code § 7923.610 requires public agencies to "make public. . . the factual circumstances surrounding the arrest," including the narrative before, during, and immediately after, as well as the circumstances under which an officer employed canine force and how that force was applied. Neither the statute nor courts limit this disclosure requirement specifically to "arrest records" and § 7923.610 applies to "Law Enforcement Records Generally." FRESNO must disclose factual circumstances regarding arrests regardless of whether that information is contained in investigatory records.

RELIEF

ACLU requests the Court order FRESNO to produce the inappropriately withheld and redacted police canine use of force and accidental bite records. Even if the Court finds that some withheld or redacted records could be considered investigatory, rather than administrative, the Court should order FRESNO to: (1) review each record to determine whether it is investigatory or involves GBI, (2) produce all non-exempt records, including records involving GBI, and (3) reexamine the redacted reports to determine on an individualized basis whether the redactions hide non-exempt information—such as factual information about an arrest—which must be disclosed.[25]

CONCLUSION

The ACLU requests nothing more than the PRA and California Constitution require. FRESNO is attempting to rewrite the law to hide evidence of harm caused by police canines. The Court should reject this effort to subvert the state's legislative will and the People's right to access public records, and order FRESNO to comply with state transparency laws by producing the requested information.

[24] FRESNO argues that this exception is only for disclosures made to the arrestee. (Opp. at 5; Tr. at 29:11–21.) This argument is unsupported. Factual circumstances must be disclosed to any member of the public.

[25] These records must include all the information required by Gov. Code § 7923.610. While Penal Code § 832.7(b)(6) allows limited redactions to GBI reports, it does not permit FRESNO to redact the names of police officers.

Dated: March 7, 2025

Respectfully submitted,

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