

No. _____

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE**

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA,
Petitioner,

v.

THE SUPERIOR COURT OF SOLANO COUNTY,
Respondent;
CITY OF VALLEJO,
Real Party in Interest.

Solano County Superior Court
Case No. FCS059257
Hon. Stephen Gizzi

**AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA'S PETITION FOR
WRIT OF MANDATE**

PUBLIC – REDACTS MATERIAL FROM SEALED RECORD


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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with Rule 8.208 of the California Rules of Court, Plaintiffs/Petitioners ACLU of Northern California, by and through their undersigned counsel, certify that there are no interested entities or persons that must be listed in this Certificate under Rule 8.208.

Dated: October 22, 2024


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INTRODUCTION

In 2018, the Legislature enacted Senate Bill 1421 to secure the public’s “right to know all about serious police misconduct, as well as about officer-involved shootings.” (Stats. 2018, ch. 988, § 1(b) (“S.B. 1421”). Born from a recognition that “[c]oncealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement,” S.B. 1421 provided that all records “relating to the report, investigation, or findings of...an incident involving the discharge of a firearm at a person by a peace officer” must be publicly disclosed. (*Id.* at §§ 1(b); 2.)

Two years later, the community of Vallejo was rocked by allegations that a secret gang of officers within its Police Department had a practice of celebrating and commemorating shooting at civilians by ritualistically bending the tips of their badges. These allegations, published by local news outlet Open Vallejo, called for a re-examination of the Department’s extraordinary track record of deadly force. In the preceding decade alone, Vallejo officers killed 19 residents – a rate of police killings per capita that exceeded all but one of the 100 biggest cities nationwide.

Shortly after the badge-bending story broke, the Department announced an independent investigation into the “disturbing allegations” of “officers taking part in the act after an officer-involved shooting occurs.” [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner the ACLU of Northern California (“Petitioner” or “ACLU”) seeks records relating to the badge-bending investigation to promote transparency and accountability. Yet the Department has refused to publicly disclose any information regarding the investigation, its findings, and whether discipline resulted. Discovery in this matter has made plain what was obvious from the outset—the badge-bending investigation concerned officer-involved shootings, and related records must be disclosed. The legislative text, intent, and established principles of statutory interpretation all require this application of S.B. 1421.

The superior court found S.B. 1421 inapplicable to these records, but this was error. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] These reasons do not support the superior court’s decision and order denying Petitioner all requested records. Because that order is reviewable only by way of this Petition, Gov. Code § 7923.500, this Court should issue a peremptory writ of mandate reversing the superior court’s order.

VERIFIED PETITION FOR WRIT OF MANDATE

1. This Petition seeks to enforce Petitioner/Plaintiff's right to public records under the California Constitution and the California Public Records Act (CPRA), Government Code § 7920 *et seq.*

I. Parties

2. Petitioner/Plaintiff American Civil Liberties Union of Northern California is a non-profit corporation dedicated to advancing the civil rights and liberties of Californians, including by ensuring the right of public access to and participation in civic affairs. ACLU is a member of the public under the CPRA, is beneficially interested in these proceedings, has a right to the relief sought, and no plain, speedy and adequate remedy at law exists other than that sought herein.

3. Defendant/Real Party in Interest City of Vallejo (City), representing the Vallejo Police Department, is a local agency within the meaning of Government Code section 7920.510.

4. Respondent Superior Court of the State of California, County of Solano issued the order challenged herein.

II. Jurisdiction, Venue, and Basis for Writ Review

5. The superior court had jurisdiction over this matter under article VI, section 10 of the California Constitution and Government Code sections 7923.100 and 7923.110. Venue was proper because the records at issue are located in Solano County.

6. This Court has jurisdiction under article VI, section 10 of the California Constitution and Government Code section 7923.500, which provides that “[a]n order of the court, either

directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.”

7. On October 9, 2024, the superior court issued a written order that, in substantial part, endorsed Defendant’s withholding of requested records. (PA Vol. I at pp. 3-4.)¹

8. This Petition is therefore timely because it was filed before October 29, 2024. (Gov. Code, § 7923.500, subd. (b).)

9. Under the CPRA, “writ review is the exclusive means of appellate review of a final order or judgment.” (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114; Gov. Code, § 7923.500.) Accordingly, “an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.” (*Ibid.*; see, e.g., *Leone v. Med. Bd. of Cal.* (2000) 22 Cal. 4th 660, 670 [“Where a writ petition is the “only authorized mode of appellate review ... an appellate court *must* judge the petition on its procedural and substantive merits.”] [italics added]); Code Civ. Proc., § 1086 [“The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.”].)

¹ Citations marked “PA” are to Petitioner’s Appendix.

III. Authenticity of Exhibits

10. The exhibits submitted in conjunction with this petition are true copies of the original documents on file with respondent court and true copies of the reporter's transcript of proceedings.

IV. Legal Background: the CPRA, Penal Code 832.7(a) and S.B. 1421

11. Under the CPRA, all records that are in the possession of a public agency, and that are not subject to statutory exemptions from disclosure, must be made publicly available for inspection and copying upon request. (*See* Gov. Code, §§ 7922.525, 7922.530.)

12. Historically, Penal Code sections 832.7(a) and 832.8 (collectively referred to as *Pitchess* statutes) constituted one such exemption to disclosure under the CPRA. (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 914.)

13. Under the *Pitchess* statutes, two categories of information were considered confidential: information obtained from officer "personnel records," as defined by section 832.8, and from records relating to citizen complaints, as maintained by state or local agencies under section 832.5. (Pen. Code, §§ 832.5, 832.7, 832.8.)

14. The exemptions created by the *Pitchess* statutes shielded virtually all misconduct investigations from public view, rendering California "one of the most secretive states in the nation in terms of openness when it comes to officer misconduct and uses of force." (*Becerra, supra*, 44 Cal.App.5th at p. 920.)

15. In 2018, the Legislature sought to redress this state of affairs by enacting S.B. 1421, a bill intended to secure the public's "right to know all about serious police misconduct, as

well as about officer-involved shootings and other serious uses of force.” (Stats. 2018, ch. 988, § 1.)

16. S.B. 1421 was motivated by the principle that transparency in investigations of serious misconduct and uses of force would “promote better policies and procedures that protect everyone...and build trust in law enforcement.” (*Becerra, supra*, 44 Cal.App.5th at p. 920.) The legislative findings underscored this point: “[c]oncealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.” (Stats. 2018, ch. 988, § 1.)

17. Functionally, S.B. 1421 amended the *Pitches* statutes to make records relating to four categories of incidents available to the public. Relevant here, the statute made public any record 1) “relating to the report, investigation, or findings of...an incident involving the discharge of a firearm at a person by a peace officer”; or 2) “relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer...directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer.” (Pen. Code, § 832.7, subd. (b)(1)(A)(i), (b)(1)(C).)

18. The Legislature subsequently expanded the categories of misconduct that must be disclosed to the public with the passage of Senate Bill 16, which took effect in January of 2022. (Stats.

2021, ch. 402 (S.B. 16).) The particulars of that enactment are not pertinent to the present petition.

V. Factual Background

1. Vallejo Police Department's Deadly History and the Badge-Bending Scandal

19. Vallejo is a small city with a staggering history of police use of force and lethal shootings. From April 2001 to June 2020, Vallejo police officers shot 56 civilians, killing 30. (PA Vol. 1 at pp. 72-78.) Nineteen of those deaths occurred in the decade between 2010 and 2020, a rate of police killings that was found to exceed all but one of the 100 biggest cities nationwide. (Shane Bauer, *How A Deadly Police Force Ruled a City*, *The New Yorker* (Nov. 16, 2020) <<https://www.newyorker.com/magazine/2020/11/23/how-a-deadly-police-force-ruled-a-city>> (as of Oct. 15, 2024).) During that same period, the City of Vallejo reportedly paid out nearly \$16 million to settle excessive force suits, a higher per-officer cost than any of the nation's 100 largest police departments. (*Ibid.*) The cost of legal settlements for use of force rose so high that in 2018, the City's insurer took the unprecedented step of raising its annual deductible from five-hundred thousand to \$2.5 million, prompting the City to find another insurer. (*Ibid.*) One study determined that Vallejo officers used more force per arrest than any other law enforcement agency in California. (*Ibid.*)

20. As of 2019, nearly 40% of Vallejo Police Department officers had at least one shooting on their record, and one third of those officers had participated in two or more. (PA Vol. 1 at p. 81.)

21. In 2020, the City Council commissioned an external review of the Department by the OIR Group. The resulting OIR report noted a “siege mentality” and “us against the world’ mindset” within the Department. (OIR Group, *Vallejo Police Department: Independent Assessment of Operations, Internal Review Systems, and Agency Culture* (May 2020) at pp. 2, 3, 11 <https://www.oirgroup.com/_files/ugd/d85a96_9acef98ea30e4a98b97e119a7d44fbab.pdf> (as of Oct. 16, 2024).) The OIR Report concluded with a lengthy list of recommendations, covering such topics as the recruitment and promotion of more diverse staff, reexamination and reform of use of force policies, greater responsiveness to community concerns, and greater transparency. (*Id.* at pp. 65-66.)

22. The public has seen little accountability in response to this rash of unjustified violence. In 2021, Officer Jarrett Tonn became the first Department officer fired in decades for the killing of a civilian, Sean Monterrosa. (Geoffrey King, *Termination Overturned for Vallejo Detective who Killed Sean Monterrosa*, Open Vallejo (Aug. 26, 2023) <<https://openvallejo.org/2023/08/26/termination-overturned-for-vallejo-detective-who-killed-sean-monterrosa/>> (as of Oct. 15, 2024).) His dismissal was overturned in arbitration, and he returned to the Department with backpay in September 2023. (Daniel Egitto & Thomas Gase, *Vallejo Hands Six-figure Payout to Officer who Killed Monterrosa*, Vallejo Times-Herald (Oct. 13, 2023) <<https://www.timesheraldonline.com/2023/10/13/vallejo-hands-six-figure-payout-to-officer-who-killed-monterrosa/>> (as of Oct. 15, 2024).) The Department has

been under a settlement with the California Department of Justice since April of this year, including for not “adequately investigating, or addressing force that is unreasonable or otherwise contrary to VPD policy.” (Office of Attorney General, *Attorney General Bonta Secures Settlement Agreement with Vallejo Police Department and City of Vallejo to Expediently Institute Reforms, and Strengthen Accountability, Police Policies and Practices* (Apr. 11, 2024) <<https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-settlement-agreement-vallejo-police-department>> (as of Oct. 15, 2024).)

23. Against this backdrop, allegations that some officers were celebrating their role in lethal shootings prompted serious questions about the reasonableness of prior uses of force. Local news organization Open Vallejo broke the badge-bending story in an article published on July 28, 2020. (PA Vol. 1 at pp. 80-90.) The article reported that a “secretive clique” within the Department “commemorate[d] fatal shootings with beers, backyard barbeques, and by bending the points of their badges each time they kill in the line of duty.” (*Id.* at p. 80.) It alleged that the Department had a culture where “the pressure to shoot and kill civilians is strong” and that in order to be invited to participate in badge-bending an officer had to both shoot someone and “be trusted not to talk.” (*Id.* at p. 85.) One source alleged that bent badges were “[k]ind of like a notch on the bedpost. It’s an indicator to each other how many hoodlums they’ve shot.” (*Id.*) Open Vallejo reported that past command personnel in the

Department were aware of the practice but swept it under the rug. (*Id.* at pp. 89-90.)

2. The Badge-Bending Investigation

24. On July 31, 2020, three days after the Open Vallejo story broke, the Department issued a press release announcing it was launching a third-party investigation into “disturbing allegations” of badge bending, including allegations of “officers taking part in the act after an officer-involved shooting occurs.” (PA Vol. 1 at p. 227.) Robert Giordano, designated as lead investigator, and Christine Maloney were selected to conduct the investigation. (PA Vol. 1 at p. 99.) Robert Giordano is the retired Sheriff of Sonoma County. His contract was for a period of one year and an amount not to exceed \$100,000. (PA Vol. 1 at pp. 239, 242.)

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2 at p. 299 [sealed per Dec. 20, 2023 Protective Order].)

26. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2 at p. 304 [sealed per Dec. 20, 2023 Protective Order]; PA Vol. 1 at p. 254 — PA Vol. 2 at 270 [sealed per Dec. 20, 2023 Protective Order].)

27. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2 at p. 272
[emphasis in original] [sealed per Dec. 20, 2023 Protective
Order].) Department Policy 300 governs when the use of deadly
force is permissible. (PA Vol. 2 at pp. 313-23.)

28. [REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2
at p. 309 [sealed per Dec. 20, 2023 Protective Order].)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.* at p. 300 [sealed per Dec. 20, 2023 Protective
Order].) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.*
[sealed per Dec. 20, 2023 Protective Order].)

29. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(PA Vol. 2 at p.300 [sealed per Dec. 20, 2023 Protective Order].)

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA
Vol. 2 at pp. 301, 303 [sealed per Dec. 20, 2023 Protective Order].)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.* [sealed per Dec. 20, 2023 Protective Order]; PA
Vol. 2 at pp. 325-26.)

31. [REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2
at pp. 328-29 [sealed per July 2, 2024 Order].)

VI. Relevant Procedural History

32. On January 18, 2022, ACLU submitted a CPRA request to the Vallejo Police Department, seeking, in relevant part: “[a]ll records related to an internal investigation by Robert Giordano, regarding allegations of Vallejo police officers bending their police badges in response to their involvement in officer-involved shootings” and “[a]ll communications by Department employees regarding allegations of badge bending, from January 1, 2010, to the present.” (PA Vol. 2 at pp. 334-36.) The Department refused to produce virtually all records responsive to these requests, asserting they were exempt pursuant to Penal Code section 832.7(a), and subsequently claiming that some communications

were withheld pursuant to the “deliberative process” or attorney-client privileges. (PA Vol. 2 at pp. 338-41, 347-48, 370.)

33. The ACLU filed a Verified Complaint and Petition for Writ of Mandate on November 22, 2022 in the Solano County Superior Court, seeking to compel disclosure of records responsive to its CPRA request. (PA Vol. 1 at pp. 9-35.)

34. The ACLU subsequently conducted written discovery to obtain records and information to support its arguments for disclosure. (See PA Vol. 1 at pp. 96-101, 108-12; PA Vol. 2 at pp. 328-29, 394-96, 418-20, 425-34.) During the course of discovery, the City refused to respond to a number of discovery requests, asserting the information was confidential pursuant to Penal Code section 832.7(a), but produced a privilege log identifying all documents withheld in response to the underlying CPRA request. (PA Vol. 2 at pp. 401-16.) Withheld documents included Robert Giordano’s investigative report with attachments, his supplemental report, witness and subject notices, interviews, resolution documents, communications between the investigators and members of the police department and/or members of the City Attorney’s office, communications relating to the selection of investigators and contract preparation, and communications relating to public relations responses. (*Ibid.*)

35. On November 3, 2023, after meeting and conferring regarding the need for additional discovery, the ACLU filed a *Pitchess* motion under Evidence Code § 1043, seeking the Giordano investigation report and related records to inform its arguments for public disclosure. (PA Vol. 3 at pp. 657-58.) More

specifically, the ACLU sought evidence relevant to five questions: 1. What was the Department’s purpose in initiating the Giordano investigation; 2. Whether any action that could be construed as a “complaint” prompted the investigation; 3. Whether discipline ever was, or could have been, imposed; 4. Whether portions of the badge bending report are reasonably segregable; and 5. Whether the investigation was intended to and did explore the relationship between badge bending and officers’ discharge of firearms at civilians. (PA Vol. 3 at pp. 662-63.) The ACLU explicitly contested that the records sought were confidential, but indicated it was seeking discovery via the *Pitchess* process to avoid further discovery disputes. (PA Vol. 3 at p. 661.)

36. In its responsive brief and at the hearing on the *Pitchess* motion, the City represented that it did not oppose *in camera* review and agreed that disclosure of a limited subset of records under protective order was appropriate, but contested the full scope of documents sought by the ACLU. (PA Vol. 3 at pp. 747-57; PA Vol. 3 at pp. 769:13-770:15; 781:22-787:9.)

37. The court granted ACLU’s *Pitchess* motion and set a hearing for *in camera* review on December 20, 2023. (PA Vol. 3 at pp. 795:23-801:26.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 3 at pp. 807 – PA Vol. 4 at pp.

1129 [sealed per Dec. 20, 2023 Protective Order].) The court

signed a protective order for records released pursuant to the *Pitchess* motion, and an order sealing the transcript of the *in camera* review. (PA Vol. 4 at pp. 1131-32, 1134.)

38. Following the *Pitchess* motion, the parties met and conferred regarding additional written discovery the ACLU wished to propound to clarify whether disciplinary action resulted from the investigation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (PA Vol. 3 at pp. 562-63 ¶¶ 5-6, 569-70, 572-73 [sealed per July 2, 2024 Order].) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Ibid.*)

39. On June 26, 2024, the ACLU filed a Motion for Judgment on the Complaint and Petition for Writ of Mandate. (PA Vol. 1 at pp. 37-38.) The motion argued that records of the badge-bending investigation and communications pertaining to badge-bending were public pursuant to S.B. 1421, and additionally contended that some records were not properly categorized, either in whole or in part, as confidential “personnel records” under section 832.7, subdivision (a) in the first instance. (PA Vol. 1 at pp. 40-63.)

40. The ACLU also filed a Motion to Clarify the Scope of Discovery Protective Order, [REDACTED]

[REDACTED]

██████████ (PA Vol. 2 at pp. 552-58 [sealed per July 2, 2024 Order].)

41. Both motions were lodged conditionally under seal, as they contained information that was released to the ACLU pursuant to protective order, or pursuant to stipulation requiring treatment as such. (PA Vol. 3 at pp. 592-604.)

42. The City opposed both motions, and applied to seal portions of its opposition. (PA Vol. 3 at 609-18.) The court granted sealing orders for the ACLU's briefs and the City's opposition. (PA Vol. 3 at pp. 606-7, 620, 632-33.)

43. On October 1, 2024, the court issued a tentative ruling that the hearing on the ACLU's motions would be closed to the public and that the transcript of the hearing would be sealed. (PA Vol. 3 at p. 649.) The ACLU filed an objection to the orders closing the hearing and sealing any subsequent transcript. (PA Vol. 3 at pp. 651-55.)

44. On October 2, 2024, the court held a hearing on the ACLU's Motions for Judgment and to Clarify the Scope of Discovery Protective Order.

45. During the closed hearing, the court provided a substantive tentative ruling granting in part and denying in part ACLU's Motion for Judgment and granting the Motion to Clarify the Scope of Discovery Protective Order. (PA Vol. 1 at pp. 7-8.) The court indicated that it was denying ACLU's Motion for Judgment insofar as it contended that the records sought were public under S.B. 1421 as records relating to the investigation of shooting incidents ██████████.

46. [REDACTED]

[REDACTED] (PA Vol. 5 at p.1151:3-10 [sealed per Oct. 9, 2024 Order].) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

(PA Vol. 5 at 1151:5-16 [sealed per Oct. 9, 2024 Order].)

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PA Vol. 5 at p. 1159:2-6 [sealed per Oct. 9, 2024 Order].)

49. In addition to finding the records non-disclosable as records relating to the “investigation [of]...incident[s] involving the discharge of a firearm,” [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

(PA Vol. 5 at p. 1164:10-15 [sealed per Oct. 9, 2024 Order].)

50. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

(PA Vol. 5 at p. 1156:15-27 [sealed per Oct. 9, 2024 Order].)

51. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

(PA Vol. 5 at p. 1156:15-27 [sealed per Oct. 9, 2024 Order].) [REDACTED]

[REDACTED]

[REDACTED] (*id.* at p. 1156:8-9 [sealed per Oct. 9, 2024 Order]), [REDACTED]

[REDACTED]

[REDACTED] (*id.* at p. 1157:1-3 [sealed per Oct. 9, 2024 Order]).

52. The court granted the Motion for Judgment in part [REDACTED]

[REDACTED]

[REDACTED] (PA Vol. 5 at pp. 1141:26-1142:11, 1146:15-20 [sealed per Oct. 9, 2024 Order].) [REDACTED]

[REDACTED]

[REDACTED] (*Id.* at p. 1144:16-19 [sealed per Oct. 9, 2024 Order].)

[REDACTED]

[REDACTED] (*Id.*

at p. 1142:11-18 [sealed per Oct. 9, 2024 Order].) The court did not order that any records could be withheld on the basis of the deliberative process privilege.

53. At the end of the hearing, the court adopted the tentative ruling, indicated its intent to unseal the transcript of the hearing, and directed the ACLU to prepare a final judgment and order.

[REDACTED]

[REDACTED] (PA Vol. 5 at p. 1165:12-18 [sealed per Oct. 9, 2024 Order].)

54. The court issued the final judgment and order incorporating its tentative ruling and transcript unsealing order on October 9, 2024. (PA Vol. 1 at pp. 3-8.) That order is stayed pursuant to an Order issued by this Court on October 9, 2024, in response to the City's Petition for Extraordinary Writ of Mandate (No. A171451) filed on October 8, 2024.

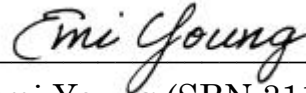
VII. Prayer for Relief

55. For the foregoing reasons, and as discussed below, this Court should issue a writ of mandate directing the superior court to order the following:

- a. that the City disclose the disputed records pursuant to Penal Code section 832.7(b);
- b. that the City pay costs and attorney's fees associated with this petition under Government Code section 7923.115;
- c. such other relief as the court deems proper.

Dated: October 22, 2024

Respectfully submitted,



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VERIFICATION

I, Emi Young, am attorney of record for the ACLU of Northern California and am licensed to practice law in the State of California. I have read the foregoing Petition and have personal knowledge that the facts stated in paragraphs 1-4, 7, 10, and 32-54 are true. I am informed and believe that the remainder of the Petition is true.

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

Executed this 22 day of October, 2024 at Oakland, California.



Emi Young

MEMORANDUM IN SUPPORT OF PETITION

I. SUMMARY OF ARGUMENT

Four years ago, residents of Vallejo learned that members of their police department were allegedly commemorating shooting at civilians and celebrating uses of force against so-called “hoodlums,” including by bending the tips of their duty badges. In the wake of decades of shocking police violence, this revelation suggested what many in the community already felt—that some members of the Department did not have the proper respect for human life and had acted recklessly, or worse, in the course of shooting incidents. The Department quickly called in former Sonoma Sheriff Robert Giordano to investigate these allegations, but nothing of his process or findings has ever been made public.

The Legislature enacted S.B. 1421 to address issues precisely like this. Recognizing that silence and secrecy around allegations of serious police misconduct are toxic to community trust and undermine public safety, the Legislature required disclosure of all records relating to investigations of shooting incidents [REDACTED]. [REDACTED]. The records requested by the ACLU are public under these provisions, and the superior court’s order denying release on this basis was error. This Court should accordingly issue a writ of mandate to vindicate the purposes of S.B. 1421 and give the people of Vallejo a long-awaited measure of transparency and accountability.

II. STANDARD OF REVIEW

Under the CPRA, a public agency bears the burden of showing that a record or part thereof is exempt from disclosure under the CPRA, and exemptions are narrowly construed. (*Becerra, supra*, 44 Cal.App.5th at p. 914.) This burden applies to any assertion of peace officer personnel record confidentiality under Penal Code sections 832.7(a) and 832.8. (*Ibid.*)

In reviewing a superior court's order under the CPRA, this Court conducts "an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence." (*Times Mirror Co. v. Superior Ct.* (1991) 53 Cal.3d 1325, 1336.) Questions of statutory interpretation are reviewed de novo. (*BondGraham v. Superior Court* (2023) 95 Cal.App.5th 1006, 1015.)

III. ARGUMENT

1. The Superior Court Erred in Finding the Records Were Not Disclosable Under S.B. 1421.

Records of badge-bending, including from the Giordano investigation, are disclosable under two prongs of S.B. 1421. *First*, the Giordano investigation and underlying materials are records "relating to the report, investigation, or findings of...incident[s] involving the discharge of a firearm at a person by a peace officer." (Pen. Code, § 832.7, subd. (b)(1)(A)(i).) This section requires release of the entirety of the Giordano investigation materials and report. *Second*, portions of the Giordano investigation pertain [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. The Giordano Investigation “Related to” the Investigation of Prior Shooting Incidents.

Substantial, undisputed evidence establishes that Giordano’s investigation was intended, at least in part, to directly examine whether badge-bending was evidence of the unreasonableness of officers’ prior uses of deadly force. [REDACTED]

[REDACTED]

(PA Vol. 2 at pp. 299-300 [sealed per Dec 20, 2023 Protective Order].) Those allegations included that a secret group of officers bent their badges as a “notch on the bedpost” to celebrate shooting at alleged “hoodlums.” (PA Vol. 1 at pp. 80-85.) Such attitudes towards civilian life would be unquestionably relevant to determining if the same officers acted with recklessness or even malicious intent in discharging their firearm at civilians, whether before or after their badge was bent. (*See, e.g., People v. Rivera* (2019) 7 Cal.5th 306, 332 [“subsequent conduct may constitute circumstantial evidence of intent”]; *Andrews v. Cty. and Cnty. of San Francisco* (1988) 205 Cal.App.3d 938, 945 [officer’s prior misconduct spoke to intent in later incident].)

The Department appeared to publicly acknowledge the seriousness of this implication with then-Chief Williams’ statement calling for an investigation of the “very troubling and disturbing” badge-bending allegations. (PA Vol. 1 at p. 227.) That the Department commissioned an investigation that spanned a calendar year at a cost of \$100,000 is consistent with this

purpose. (PA Vol. 1 at pp. 239-244.) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 2 at pp.
304-07; *see also* PA Vol. 1 at pp. 254 – PA Vol. 2 at pp. 270 [sealed
per Dec. 20, 2023 Protective Order].) [REDACTED]

[REDACTED]

(*See, e.g.*, PA Vol. 2 at pp. 272-81 [italics removed] [sealed per
Dec. 20, 2023 Protective Order].)² Department Policy 300
specifically proscribes when officers are authorized to use deadly
force. (*Id.* at pp. 313-19.)

² The factual record presented by ACLU is necessarily limited to
materials the superior court ordered disclosed in response to its
Pitchess motion. [REDACTED]

[REDACTED] (PA Vol. 2 at p. 300 [REDACTED]
[REDACTED]
[REDACTED] [sealed per Dec. 20, 2023
Protective Order].) [REDACTED] the
point for present purposes is in examining badge-bending;
Giordano was investigating the conduct of officers in shootings, a
fact that brings the requested records squarely within the ambit
of S.B. 1421 as “record[s] relating to the . . . investigation [of] . .
. [a]n incident involving the discharge of a firearm at a person by
a peace officer or custodial officer.” (Pen. Code, § 832.7, subd.
(b)(1)(A)(i).)

The superior court’s decision to the contrary was multiply
flawed. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Because the superior court’s order denying disclosure
under Penal Code section 832.7, subdivision (b)(1)(A)(i), rested on
misapplications of law, reversal is appropriate.

[REDACTED]

S.B. 1421 requires release of records “relating to the... *investigation*...[of an] incident involving the discharge of a firearm at a person by a peace officer.” (Pen. Code, § 832.7, subd. (b)(1)(A)(i) [emphasis added].) All that is required under this provision is that the records relate to investigation of a shooting incident.

[REDACTED] (See *ante* at pp. 32-34.) [REDACTED]

This was a legal error requiring reversal.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (PA Vol. 5 at p 1152:5-8; *see also id.* at p. 1159:2-6 [sealed per Oct. 9, 2024 order].) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

By its terms, the statute requires disclosure of any record relating to the investigation of shooting incidents. (Pen. Code, § 832.7, subd. (b)(1)(A)(i).) This is in keeping with the legislative purpose of securing public access to independent oversight investigations, which are necessarily distinct from the underlying internal affairs investigation of an incident. (*See Becerra, supra*, 44 Cal.App.5th at p. 920.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(PA Vol. 5 at p. 1151:3-10 [sealed per Oct. 9, 2024 Order].) Under settled principles of statutory interpretation, S.B. 1421 requires release of all records “relating to the report investigation or findings of...[a]n incident involving the discharge of a firearm at a person.” (Pen. Code, § 832.7, subd. (b)(1)(A)(i).) The plain text of “relating to” means “to be connected with” (Merriam-Webster), or

“connected in some way” (Black’s Law Dict. (11th ed. 2019)). This “choice of words suggests . . . some breadth.” (*Celotex Corp. v. Edwards* (1995) 514 U.S. 300, 307-08.) As the California Supreme Court has said, “the fact that ‘related’ can encompass a wide variety of relationships” is revealing because “a word with a broad meaning or multiple meanings may be used for that very reason—its breadth—to achieve a broad purpose.” (*Bay Cities Paving & Grading, Inc. v. Lawyers’ Mutual Ins. Co.* (1993) 5 Cal.4th 854, 868.) Accordingly, courts interpret the phrase “relating to” broadly, to encompass both direct *and* indirect relationships. (See *Dan’s City Used Cars, Inc. v. Pelkey* (2013) 569 U.S. 251, 260-61 [“The phrase ‘related to’ . . . embraces [connections] whether directly or indirectly.”]; *City of Cerritos v. State of California* (2015) 239 Cal.App.4th 1020, 1054 [“broad common-sense meaning” of “relate to” encompasses “indirect” relationships].)

Further, in requiring disclosure of a different category of records elsewhere in the same statute, the Legislature used the phrase “*directly* relating.” (Pen. Code, § 832.7, subd. (b)(1)(C) [emphasis added].) By choosing to forego the qualifier “directly” with respect to shooting incidents, the Legislature signaled an intention to mandate broad disclosure. (*Skidgel v. California* (2021) 12 Cal.5th 1, 14 [“[w]e must harmonize the various parts of the enactments by considering them in the context of the statutory [framework] as a whole.”].)

The “nature and obvious purpose” of S.B. 1421 supports the same conclusion. (See *ibid.*) “[T]he legislative intent behind

Senate Bill 1421 was to provide transparency regarding instances of an officer’s use of significant force.” (*Becerra, supra*, 44 Cal.App.5th at p. 921; *see also* Stats. 2018, ch. 988, § 1 [guaranteeing the public’s “right to know all about serious police misconduct, as well as about officer-involved shootings”].) An investigation of later-discovered evidence relevant to a disclosable use of force must be encompassed by the statute; to hold otherwise would permit law enforcement agencies to frustrate the legislative intent of transparency simply by manipulating how the later investigation is framed.

Finally, because S.B. 1421 was designed to increase the public’s access to information under the PRA, it must be “broadly construed” to “further[] the people’s right of access” under the California Constitution. (Cal. Const., art. 1, § 3, subd. (b)(2); *Becerra, supra*, 44 Cal.App.5th at p. 922.) In light of the plain text of the statute, its intent and obvious purpose, S.B. 1421 compels public disclosure of records that relate – whether directly or indirectly – to the investigation or findings of incidents involving the discharge of a firearm at a person. This Court should adopt this reading in favor of the public’s right to know and compel disclosure of the records withheld below.

[REDACTED]

[REDACTED] (PA Vol. 2 at p. 301 [sealed per Dec. 20, 2023 Protective Order]; *id.* at pp. 325-26.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED] (PA Vol. 2 at pp. 454-55 [sealed per July 26, 2024 Order].) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (*Ibid.*) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] (*See id.* at p. 301; *see generally* Vol. 3 at pp. 807 – Vol. 4 at pp. 1129 [sealed per Dec. 20, 2023 Protective Order].)

[REDACTED]
[REDACTED]

[REDACTED] (PA Vol. 5 at p. 1164:10-19, 25-27
[sealed per Oct. 9, 2024 Order].) [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] (*Ibid.*) [REDACTED]

[REDACTED]

[REDACTED] (*Ibid.*) [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Ibid.*)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (PA
Vol. 2 at p. 301 [sealed per Dec. 20, 2023 Protective Order]; *id.* at
pp. 325-26.) [REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The superior court
accordingly erred in concluding such conduct was not disclosable
as a matter of law.

Second, as a procedural matter, the superior court erred in
failing to conduct any *in camera* review relevant to the contested
factual issue, [REDACTED]
[REDACTED]. While the decision of whether to conduct an *in*
camera inspection pursuant to Government Code section
7923.105 is normally reserved to the sound discretion of the
court, *Register Div. of Freedom Newspapers, Inc. v. County of*
Orange (1984) 158 Cal.App.3d 893, its factual determinations
must be supported by substantial evidence, *County of Los Angeles*
v. Superior Court (2012) 211 Cal.App.4th 57, 67.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] (PA Vol. 2 at p. 301 [sealed per Dec. 20, 2023 Protective Order].)

[REDACTED]

[REDACTED]

[REDACTED] (*Skidgel, supra*, 12 Cal.5th at p. 14 [“we construe the words in question in context, keeping in mind the statutes’ nature and obvious purposes”].)

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (See *Becerra*,
supra, 44 Cal.App.5th at p. 921.)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This reading is consistent with the legislative intent of S.B. 1421 and the settled principle that “[w]here more than one statutory construction is arguably possible,” the Court’s “policy has long been to favor the construction that leads to the more reasonable result.” (*Com. on Peace Officer Standards & Training v. Superior Ct.* (2007) 42 Cal.4th 278, 290.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

S.B. 1421 is an express exception to the *Pitchess* statutes; by nature, disclosures under this statute typically include officer

names because it compels disclosure of “personnel records” in certain circumstances. There is no carveout for the names of subject officers in the statutory text.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PA Vol.

5 at pp. 1156:15-16 [REDACTED]
[REDACTED] [sealed per Oct. 9, 2024 Order].) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (See PA Vol. 2 at pp. 294-98 [sealed per Dec. 20, 2023 Protective Order].) Such records stand to inform the public regarding the manner in which Giordano conducted his investigation, and to evaluate its thoroughness and the strength of any inferences he derived from it. They would also enlighten the public as to the sufficiency of the City’s response. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 73 [“[W]hen it comes to the disclosure of a peace officer’s name, the public’s substantial interest in the conduct of its peace officers outweighs, in most cases, the officer’s personal privacy interest.”].) The public has a right to know “all about” incidents of serious police misconduct, in part so people can identify officers with a history of misconduct for their own safety and to advocate for greater accountability.

[REDACTED]
[REDACTED]
[REDACTED] (*See id.* at p. 74 [“[I]f it is essential to protect an officer’s anonymity for safety reasons [t]hat determination [] would need to be based on a particularized showing[.]”]; *id.* [“Vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure of officer names. As we have said in the past, a mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to records.”] [internal citation and modifications omitted].) “While substantial evidence may inevitably consist of inferences, they must be the result of logic and reason emanating from the evidence and not mere speculation or conjecture.” (*Quigley v. McClellan* (2013) 214 Cal.App.4th 1276, 1282-83.) [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

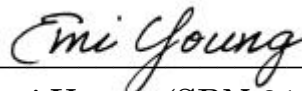
IV. CONCLUSION

At bottom, the City's refusal to produce the complete records of the Giordano investigation – and the superior court's order approving that decision – rest on the precept that the disclosure required by S.B. 1421 should be narrowly construed to permit secrecy about all but tightly circumscribed categories of misconduct. That is anathema to the intent of legislation described as securing the public's right to know "all about serious police misconduct, as well as about officer-involved shootings." If allowed to stand, the decision below would undermine that purpose, with serious consequences for the public's faith in the legitimacy of its law enforcement officers and agencies.

This Court should clarify public agencies' obligations under S.B. 1421 and enforce the right of public access and transparency with respect to officer-involved shootings [REDACTED] [REDACTED] by issuing a writ of mandate requiring the superior court to order release of the records at issue.

Dated: October 22, 2024

Respectfully submitted,

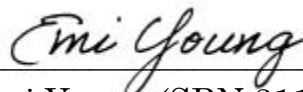


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CERTIFICATE OF WORD COUNT (8.204)

The text of this Petition for Writ of Mandate and Memorandum in Support comprises 9,137 words as counted by the Microsoft Word program used to generate it. This includes footnotes but excludes the tables of contents and authorities, the cover information, any certificate of interested entities or persons, the signature blocks, the verifications, this certificate, any proof of service, and any attachment. See Rules of Court 8.204(c), 8.486(a)(6).



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PROOF OF SERVICE

I, Kassie Dibble, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is kdibble@aclunc.org. On October 23, 2024, I served the attached,

ACLU's Petition for Writ of Mandate

BY ELECTRONIC TRANSMISSION OR U.S. MAIL: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system or a hard copy of the document via U.S. Mail as indicated:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 23, 2024 in Alameda, CA.



A handwritten signature in black ink, reading "Kassie Dibble", is written over a horizontal line.

Kassie Dibble