

Case No. C102316

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

SACRAMENTO TELEVISION STATIONS INC., d/b/a CBS NEWS
SACRAMENTO
Petitioner

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
PLACER
Respondent

CITY OF ROSEVILLE
Real Party in Interest

On Appeal From the Superior Court of California, County of Placer

Superior Court Case No. S-CV-0052277
The Honorable Glenn Holley, Judge Presiding

**APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF
LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES AS AMICI CURIAE IN
SUPPORT OF THE CITY OF ROSEVILLE**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed under California Rules of Court, rule 8.208.

Dated: January 10, 2025

By: _____/s/_____
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APPLICATION TO FILE

Pursuant to Rule 8.487, subdivision (e) of the California Rules of Court, the League of California Cities (Cal Cities) and the California State Association of Counties (CSAC) respectfully request leave to file the accompanying brief in support of the City of Roseville.

This brief was entirely drafted by counsel for the Amici and no party or counsel for a party in the pending case authored the proposed amicus brief in whole or in part or made any monetary contribution intended to fund its preparation. See Cal. Rules of Court, rule 8.200, subd. (c).

INTEREST OF APPLICANTS

Our interest in this proceeding is ensuring that California public agencies are not required to absorb additional burdens associated with responding to requests for public records that were not intended by the legislature. Because California cities and counties are subject to the California Public Records Act (CPRA, Gov. Code § 7920.000 *et seq.*) and must regularly ensure compliance with the CPRA, any decision affecting application of the CPRA has a significant impact on the workload and budgets of California public agencies. Further, counties and cities with law enforcement responsibilities have a vested interest in ensuring effective investigations and prosecutions.

The Amici believe that this brief will provide additional background and context regarding the importance of this matter and its potential impact on government resources and effectiveness.

The League of California Cities (Cal Cities) is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 city attorneys from all

regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

**AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER CITY OF
ROSEVILLE**

I. INTRODUCTION

The California Public Records Act (CPRA) is designed to balance competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness. In recognition of these competing interests, “. . . judicial decisions interpreting the [CPRA] seek to balance the public right to access to information, the government’s need, or lack of need, to preserve confidentiality, and the individual’s right to privacy.” (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447.)

In the wake of recent high-profile incidents involving alleged police misconduct, the legislature enacted several statutes designed to bring greater transparency to police activities and accountability for officers who abuse their authority, including Assembly Bill 748 (2017-2018 Reg. Sess.) and Senate Bill 1421 (2017-2018 Reg. Sess.). Like the CPRA overall, these statutes balance the right of the people to information about police use of force, the privacy rights of victims, and the need to effectively investigate and prosecute criminal activity. The statute at issue in this case, Government Code section 7923.625, which was added by Assembly Bill 748, requires law enforcement agencies to disclose audio and/or video that depicts a “critical incident.” Critical incidents are use of force incidents that include either “the discharge of a firearm at a person” by an officer, or an incident in which the use of force by an officer causes “death or great bodily injury.” (Gov. Code, § 7923.625, subd. (e).)

Here, Petitioner Sacramento Television Stations Inc., d/b/a CBS News Sacramento (CBS), requested and received body camera footage depicting the audio and video of an officer-involved shooting at a Roseville

park, initiated by the California Highway Patrol but to which City of Roseville (Roseville) police officers responded. Following a brief shootout with police, the suspect escaped the established perimeter, which led to a search for the suspect. CBS now seeks additional footage from the search, including additional body-worn camera footage and drone surveillance footage. The Amici understand that none of the footage now sought depicts the actions of police officers firing their weapons at a person, or any other use of force. While nothing in this additional video depicts the use of force by officers, it does have implications for the privacy of victims and, as appropriately determined by the trial court, its release would substantially interfere with the ongoing and active investigation into the actions of the defendant.

II. ARGUMENT

A. **Section 7923.625 is narrowly focused to require the release of video depicting police use of force only.**

Assembly Bill 748 (2017-2018 Reg. Sess.), which added the statute now located at Government Code section 7923.625, was enacted to provide greater transparency into the actions of law enforcement officers following significant use of force incidents. As intended, the law “[e]stablishes a standard for the release of body-worn camera footage by balancing privacy interests with the public’s interest in the footage.” (Conc. in Sen. Amendments, Analysis of AB 748 (2017-2018 Reg. Sess.) as Amended August 23, 2018, p.1.)

In response to concerns expressed by the Amici and others about privacy, the burdens on local agencies, and the potential for disclosure to interfere with successful investigation and prosecution of offenses, the legislature “limited [the] bill to ‘critical incidents,’ defined as an incident involving the discharge of a firearm at a person by a peace officer or

custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.” (Assem. Com. on Privacy and Consumer Protection, Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) as amended Aug. 23, 2018, p. 8.)

Of course, the statutory language itself “is the best indicator of legislative intent.” (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 350.) Here, the legislature limited disclosures to audio and/or video depicting an incident involving a significant use of force (discharge of a firearm at a person, or a use of force resulting in death or great bodily injury. (Gov. Code, § 7923.625, subd. (e).) In construing a statute, courts “must look to the statute's words and give them their usual and ordinary meaning.” (*People v. Arias* (2008) 45 Cal.4th 169, 177.)

While CBS focuses on the meaning of the term “involving” as used in the statute, the term “incident” is the operative term. The term “involving” is a merely a modifier that identifies the type of incidents that are subject to disclosure. As discussed in detail in the Return of Real Party in Interest City of Roseville to Petition for Writ of Mandate or Other Appropriate Relieve (Return), the term “incident” is commonly understood as “[a] discreet occurrence or happening.” (See Black’s Law Dictionary (7th Ed., 1999) p. 765, Col. 1.)¹ In this case, the events involving the Roseville Police Department encompassed a series of discreet occurrences—a mutual aid response that resulted in an officer-involved shooting, a search for the suspect, a de-escalation and arrest of the suspect, and an effort to render medical aid to the victims. In other words, there was a series of incidents

¹ This is consistent with the Merriam-Webster definition cited by Roseville (“an occurrence of an action or situation that is a separate unit of experience.” <https://www.merriam-webster.com/dictionary/incident>, definition #1.) Return p. 39-40.

that began at the time Roseville officers responded to the request for assistance from the California Highway Patrol. Under the CPRA, only the incident that involved a discharge of a firearm at a person is required to be disclosed.

In this case, the series of incidents occurred within about an hour, but it does not always happen so quickly. For example, on October 22, 2019, officers from the Los Angeles Police Department were involved in an officer-involved shooting in which a suspect fired at officers. The officers returned fire, but no one was hit by bullets. The suspect ran, and officers pursued him on foot, but eventually lost contact. (See <https://abc7.com/officer-injured-lapd-ois-boyle-heights/5639879/>, retrieved on January 7, 2025). This led to an extensive search involving numerous officers and equipment, including a helicopter, the Special Weapons and Tactics (SWAT) Team, canines, and officers conducting interviews of suspects. (*Id.*)

The search for the suspect in the October 22, 2019 officer-involved shooting lasted for two days, until the suspect was arrested on October 24, 2019. (See <https://www.cbsnews.com/losangeles/news/lapd-releases-video-of-officer-involved-shooting-in-boyle-heights/>, retrieved on January 7, 2025). Under CBS's interpretation, the entire two-day search would be considered an incident involving the discharge of a firearm at a person. This interpretation would require the review, redaction and release of hundreds of hours of video footage, including helicopter surveillance footage, witness interviews, tactical discussions among officers, search footage, and other audio and video. This review and redaction would potentially need to be completed within 45 days. This was not the intent of the legislature in enacting Assembly Bill 748.

The trial court in this case declined to decide when the incident began and ended, but it acknowledged that the "language reasonably applies

to the act of discharging a weapon and some portion of the event or occurrence wherein the discharging weapon took place.” (See Ruling on Submitted Matter (Ruling) p. 4:21 - 5:2). CBS argues for disclosure of video for the broadest possible period of time following the discharge of a weapon. But this is not consistent with the language or intent of the statute. “The purposes of the CPRA should be honored through a reasonableness standard, so that not only the agency response, but the request that generates it, are within reasonable boundaries that are appropriate in light of the statutory scheme.” (*Fredricks v. Superior Court* (2015) 233 Cal.App.4th 209, 228). Here, the reasonable boundaries of disclosure would include video that depicts the actions that provoked the officer-involved shooting through the time that the police activities transitioned from a shooting to a search.

B. Agencies are not required to disclose the broad video coverage requested by CBS. Such a requirement would be overly burdensome, and jeopardize agencies’ ability to comply.

CBS argues that Roseville’s interpretation “is an outlier among other law enforcement agencies.” (Verified Petition for Writ of Mandate or Other Appropriate Relief by Sacramento Television Stations Inc. (Petition) p. 48.) This is not true. Government Code section 7923.625 subdivision (c) allows agencies to provide “greater public access to video or audio recordings” than otherwise required under the CPRA. The fact that some agencies, in response to some incidents, have released more audio/video recordings that required, does not mean that there is significant disagreement regarding the interpretation of the CPRA.

While CBS has identified a number of videos in which agencies have disclosed more than the minimum necessary², even those agencies that

² See Petition p. 48-50.

have released more video than required, do not do so in circumstances similar to the video at issue here. For example, in the October 22, 2019, Los Angeles Police Department incident described above, the Los Angeles Police Department released a combined total of about six minutes of body-worn camera footage from three officers.³ The release did not include any of the two-day search and eventual arrest of the suspect.

CBS cites the City of San Diego as having a more expansive policy. (Petition p. 48-49.) However, the longest of the combined videos on the website identified by CBS is thirteen minutes long. In many cases, while the videos depict more than the minimum required (including as CBS asserts “where the officers arrive on scene and run throughout the confrontation” (Petition p. 49)), the videos include only excerpts of events beyond the depiction of the discharge of a weapon at a person or the use of force by officers. None of the San Diego videos depicts the extensive footage that would be implicated by CBS’s interpretation of the CPRA.

Similarly, the City of Paso Robles released footage of an officer-involved shooting that took place on July 6, 2021. This case involved an hours-long standoff with a suspect that ended in fatal shooting. Paso Robles released excerpts of the events leading up to the shooting, but only the actual officer-involved shooting was disclosed in full. (See <https://www.youtube.com/watch?v=VQTW2ewqICI>, retrieved on January 8, 2025.)

Given the short time-frame agencies have to release audio and/or video from a critical incident, the broad disclosure requirement that CBS argues for would make compliance difficult. Even well-resourced agencies

³ The 11 minute and 20 second video, that includes body-worn camera footage and additional description is located at https://www.youtube.com/watch?v=uKJ_bb3dZgY&t=19s (retrieved on January 8, 2025).

like Los Angeles and San Diego would have difficulty reviewing, redacting, and distributing the many hours of footage that are obtained during an extended event that includes a critical incident. For smaller agencies it would be even more difficult. The legislature was mindful of these burdens in limiting the audio and/or video recordings that are required to be disclosed, while giving agencies flexibility to go beyond the minimum disclosure requirements. Government efficiency will suffer if public agencies are forced to use already stretched resources to review and redact hours of footage that may not do anything to shed light on police conduct or enhance accountability.

C. An active investigation does not end when charges are filed against a defendant.

The trial court did not make findings about the scope of video required to be released under the CPRA, instead finding that the additional video was exempt from disclosure under Government Code section 7923.625 subdivision (a)(2) because its release would substantially interfere with an active investigation. (Ruling p. 5: 1-13.) CBS argues that there is no active investigation. But, as the trial court was certainly aware, an investigation is not closed until either the suspect is cleared of wrongdoing or the case has resulted in a conviction or acquittal. Particularly in serious felony cases, prosecutors do not simply accept the police reports and evidence as initially submitted by police agencies. They will frequently request supplemental information, monitor defendants, seek corroboration from their own investigators, request additional interviews, and perform other investigatory activities up to the time of trial. In this case, the suspect has been charged, but is still awaiting trial. Thus, there is an ongoing and active investigation.

CBS argues that because Penal Code section 832.7 subdivision (b)(8)(B) includes an exception from disclosure of personnel records

through trial and Government Code section 7923.625 does not, that demonstrates a legislative intent not to exempt disclosure under the CPRA. (Petition p. 35-36). This argument is misplaced. Penal Code section 832.7 provides that police officer personnel records are confidential. Subdivision (b) creates an exception to that confidentiality for certain sustained findings of misconduct, and for critical incidents. However, agencies may delay disclosure under certain circumstances. One of those circumstances is when there have been charges filed, including charges filed *against the officer*. (Pen. Code § 832.7 subd. (b)(8)(B).) In a case where the officer is charged, there may not be an active investigation of the original suspect, so it is important to clarify that the exception includes *any* active prosecution.

Here, the court relied on the declaration of the prosecutor in the criminal case, and the joinder by counsel for the suspect, to find that there is “clear and convincing evidence that further disclosure of requested audio or video recordings would substantially interfere with the ongoing, active investigation.” (Ruling p. 5:28 – 6:21). Contrary to CBS’s assertion, the court made appropriate findings based on submitted evidence.

D. Nothing in the CPRA requires agencies to identify every applicable exemption from disclosure in its initial response.

Agencies are required to respond to a request for public records within 10 days of the request in most cases. (Gov. Code, §7922.535.) If a written request is denied in whole or in part, the response must be in writing, identify the agency employee responsible for the determination, and identify the basis of the denial. (Gov. Code, §§ 7922.540, 7922.000.) Nothing in the statute requires the agency to identify every possible basis for denial.

In this case, it appears that the agency did not initially understand the request to include the now disputed video. However, based on parties’ statements of fact, the agency determined that the remaining footage was

exempt under the investigation exemption in Government Code section 7923.600 subdivision (a). At that point, the agency was not required to identify other exemptions from disclosure. The initial denial was sufficient, and nothing in statute or case law prohibited the agency from arguing in the alternative in the event the trial court found that the records were not exempt under the investigation exemption.

III. CONCLUSION

California agencies already face challenges in responding to frequent and voluminous CPRA requests. As acknowledged by the California Supreme Court, public agencies throughout the state receive “thousands and thousands of public records requests every year with the number of requests increasing each year to staggering proportions.” (*Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1189). Courts should not impose additional burdensome requirements beyond what was intended by the legislature. For those reasons, Amici respectfully request that CBS’s Petition be denied.

Dated: January 10, 2025

Respectfully submitted,

By: /s/
Donald A. Larkin (SBN 199759)
Attorney for Amici Curiae
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ASSOCIATION OF COUNTIES

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204 (c)(1), counsel for Amici Curiae exclusive of this certification, the cover, and the tables, this Application to File Amicus Curiae Brief and Amicus Curiae Brief of League of California Cities and California Special Districts Association in Support of Respondent contains 2,482 words, as determined by the word count of the computer program used to prepare the brief.

Dated: January 10, 2025

Respectfully submitted,

By: _____ /s/
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PROOF OF SERVICE

Re: *Sacramento Television Stations Inc. d/b/a CBS News
Sacramento v. Superior Court for the County of Placer (City of Roseville),
Third District Court of Appeal Case No. C102316*

I, Donald A. Larkin declare: I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action. My business address is Office of the City Attorney, 17575 Peak Avenue, Morgan Hill, CA 95037.

On January 10, 2025, I served the attached documents described as:

**APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF
LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES AS AMICI CURIAE IN
SUPPORT OF THE CITY OF ROSEVILLE**

On the parties in the above named case.

[X] TRUEFILING by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below:

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[X] BY UNITED STATES MAIL: I served the attached documents by enclosing true copies in a sealed envelope with postage fully paid thereon. I then placed the envelopes with postage fully paid in a U.S. Postal Service mailbox in Morgan Hill, CA, addressed as follows:

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10820 Justice Center Drive
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Honorable Glenn MacNeur Holley
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2025 at Morgan Hill, California.

_____/s/_____

Donald A. Larkin

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