

MICHAEL RISHER (State Bar No. 191627)
ROBERT LYNCH (State Bar No. 250557)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street, 2nd Floor
San Francisco, California 94111
Telephone: (415) 255-1478
Facsimile: (415) 863-7832

Attorney for Plaintiff/Petitioners
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA and
WILLIAM SIMON

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

UNLIMITED JURISDICTION

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA and
WILLIAM SIMON,

Petitioners/ Plaintiffs,

v.

CITY OF FRESNO and
JERRY DYER, in his official capacity as Chief
of Police,

Defendants/
Respondents.

No. _____

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. FACTS	1
III. ARGUMENT.....	3
Summary of Argument	3
A. Because the City's refusal to produce records showing the names of the officers involved in the Beaty incident violates the PRA, this court should order it to make the records public.....	4
1. The City cannot justify withholding these documents under any of the PRA's specific exemptions to disclosure.....	5
2. The City cannot justify withholding these documents under the PRA's catchall exception to disclosure (§ 6255).....	7
B. The city's policy of delaying the release of officers' names until after it has completed any internal investigation violates the PRA and should be declared unlawful.	10
IV. CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<i>California Assn. of Psychology Providers v. Rank</i> , 51 Cal.3d 1 (1990).....	6
<i>Commission on Peace Officer Standards and Training v. Superior Court</i> , 42 Cal.4th 278 (2007).....	4, 5, 7, 9
<i>Connerly v. State Personnel Bd.</i> , 92 Cal.App.4th 16 (2001).....	10
<i>Copley Press v. Superior Court</i> , 39 Cal.4th 1272 (2006).....	5, 6
<i>County of Santa Clara v. Superior Court</i> , 171 Cal.App.4th 119 (2009).....	10
<i>Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection</i> , 44 Cal.4th 459.....	10
<i>Filarsky v. Superior Court</i> , 28 Cal.4th 419 (2002).....	10
<i>Michaelis, Montanari & Johnson v. Superior Court</i> , 38 Cal.4th 1065 (2006).....	7, 11
<i>New York Times Co. v. Superior Court</i> , 52 Cal. App. 4th 97 (1997).....	5, 7, 8, 10, 11
<i>Powers v. City of Richmond</i> , 10 Cal.4th 85 (1995).....	4, 10
<i>Travis v. Board of Trustees of California State University</i> , 161 Cal.App.4th 335(2008).....	6
<i>Wilder v. Superior Court</i> , 66 Cal.App.4th 77 (1998).....	4, 10

Statutes

Code of Civil Procedure § 1021.5.....	12
Code of Civil Procedure § 1032.....	12
Code of Civil Procedure § 1033.5.....	12
Code of Civil Procedure § 1095.....	12
Code of Civil Procedure § 1109.....	12
Evidence Code § 915.....	5
Government Code § 6250.....	1, 4
Government Code § 6252(c).....	5
Government Code § 6253(a).....	5, 7
Government Code § 6253(b).....	4
Government Code § 6253(c).....	3, 4
Government Code § 6253(d).....	4

1	Government Code § 6253.1	7
2	Government Code § 6254	4, 5, 11
3	Government Code § 6255(a).....	4, 7
4	Government Code § 6258	5
5	Government Code § 6259	5
6	Government Code § 6259(b)	5, 10
7	Government Code § 6268	5
8	Government Code §§ 6276.1-6276.48.....	11
9	Government Code § 6258.	1
10	Government Code § 6259(a).....	1
11	Government Code § 6259(d)	12
12	Penal Code § 830.10	7

Other Authorities

14	CAL. CONST. ART. I, § 3(b)(1).....	4, 9
15	Cal. Atty. Gen. Op. No. 06-203, 89 Ops. Cal. Atty. Gen. 204 (2006).....	8
16	Cal. Atty. Gen. Op. No. 07-208, at 10, 91 Ops. Cal. Atty. Gen. 11 (2008).....	6

I. INTRODUCTION

The City of Fresno has an unlawful policy of refusing to release records containing the names of police officers involved in highly publicized incidents within the time limits mandated by the California Public Records Act (PRA).¹ Instead, the Department claims that it may withhold these records until after it has completed any internal investigation of the incident at issue. It has used this policy to justify its continuing refusal to disclose the names of two police officers who were involved in the widely reported videotaped beating of a homeless man more than three months ago.

This suit seeks a writ of mandate under the enforcement provisions of the PRA to compel the City to immediately release records relating to this incident. It also seeks a declaration that the City's policy itself is unlawful.

Because Count I of this suit seeks a writ of mandate under the PRA, "[t]he times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time." Gov't Code § 6258.

II. FACTS

The facts are taken from the verified Petition ("Pet."),² which serves as the factual basis in PRA enforcement suits. *See* Gov't Code § 6259(a).

On February 10, 2009, a local television station broadcast a video showing a Fresno police officer repeatedly punching a homeless man in the head as two officers took him into custody on February 9, 2009. Pet. ¶¶ 11-15. The man, Mr. Glen Beaty, does not appear to be struggling, resisting, or doing anything else that could warrant this level of force: he is lying on the ground as one officer holds his arm and the other punches him. *Id.* Mr. Beaty was lying face down on the ground with his arms behind his back when the officer delivered the final blow to the back of Mr. Beaty's head. *Id.* A copy of this broadcast is as the file "February 10 KSEE Broadcast," included on Exhibit A to the Verified Petition (a CD-ROM).³

¹ Government Code § 6250 *et seq.*

² More precisely, the Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief, filed with this memorandum.

³ Exhibit A is a CD-ROM containing three video recordings and one audio recordings, with file names indicated what each one depicts. The relevant paragraphs of the Petition specify, in minutes and

1 In this same broadcast, Fresno Police Chief Jerry Dyer provided what he claimed was
2 additional information about the incident, apparently taken from the officers' incident reports. Dyer
3 stated that "the individual [Beaty] was stiff, there was alcohol around him; it was pretty apparent that
4 he had been drinking excessively and when the officers contacted the individual there was resistance
5 in terms of the line of questioning At one point one of the officers was punched by the suspect in
6 the arm, the officer had his badge ripped off of his shirt." Pet. ¶ 15. The reporter stated that Dyer had
7 described Mr. Beaty as having "a history of violence" and that the Department had faxed to the
8 television station a copy of a 2004 police report involving an altercation between Mr. Beaty and a
9 sheriff's deputy. *Id.* ¶ 16.

10 Another new story reported that Dyer had said that "what may seem disturbing to most on the
11 surface, may not be considered an excessive use of force in the end, because of what [] detailed police
12 reports state happened leading up to Beaty's arrest." *Id.* ¶ 17. The story also reports that Chief Dyer
13 had stated that Mr. Beaty had three prior contacts with law enforcement. *Id.* ¶ 18.

14 On February 12, Fresno Mayor Ashley Swearengin and Chief Dyer held a press conference to
15 discuss the incident and the videotape. *Id.* ¶ 22. Mayor Swearengin called the contents of the video
16 "very very concerning" and stated that the City was investigating the incident. *Id.* Dyer confirmed that
17 he had "provided a statement to the media that according to the police report . . . one of the officers
18 was punched by the subject. Also, one of the officers had his badge ripped from his chest, his shirt.
19 And also that a pen was removed from his shirt pocket and was used to attempt to jab the officer." *Id.*

20 Over the next week, numerous reports regarding this incident and the follow up press
21 conference appeared in the local and national media. *Id.* ¶ 20. The Department issued a public
22 statement that the two officers "were placed on modified status," meaning that they would be limited
23 to office duty. *Id.* ¶ 19 and Ex. B.

24 Although Dyer has disclosed Mr. Beaty's name, has claimed that he has a history of violence,
25 and has provided the public with assertions about the incident itself that appear to defend the officers'
26 conduct, he and the City have refused to release the names of the officers involved. *Id.* ¶¶ 21, 39, 52.

27 On February 24, 2009, the ACLU-NC sent a letter to Dyer requesting documents showing the
28 _____
seconds, where within the recordings the quoted material appears.

1 names of the officers involved in the Beaty incident, citing a 2008 California Attorney General
2 opinion that requires the release of such information. *Id.* ¶ 24-27 and Ex. D (Feb. 24 request). Nobody
3 responded to this initial request within the 10-day deadline mandated by the PRA, Gov't Code
4 § 6253(c). *Id.* ¶ 28. Thus, on April 3, 2009, the ACLU-NC faxed a second letter to Dyer, asking for a
5 response to the February 24 request. *Id.* ¶ 29 and Ex. E.

6 Later that same day, counsel received a phone call from Fresno Police Department Legal
7 Advisor Melissa White of the Fresno City Attorney's Office. Ms. White stated that the failure to
8 respond to the February 27 request had been a mistake by a department employee, rather than a
9 deliberate violation of the PRA. *Id.* ¶ 31. Ms. White also stated that the City recognized its duty to
10 release the names of officers involved in critical incidents, but that the City had a policy of not
11 releasing the names until it had completed any internal investigation of the incident in question.
12 *Id.* ¶ 32. Ms. White further stated that the reason the names of the officers involved in the Beaty
13 beating had yet to be released was that there were ongoing investigations into the incident by agencies
14 outside of the police department, which had delayed the department's own investigation. *Id.* ¶ 33.

15 On April 10, the ACLU-NC sent a letter to Ms. White asking whether the City had any plans to
16 change its policy of refusing to release the names of officers involved in such incidents until it has
17 completed any internal-affairs investigation of the officers' conduct during the event. *Id.* ¶ 37 and Ex.
18 G (April 10 letter). The City has not in any way indicated that it would change this policy. Pet. ¶ 38.

19 On April 15, the ACLU-NC received a letter from Ms. White dated April 8, 2009, in which she
20 declined to identify the officers involved in the Beaty incident, writing that "we are still waiting for the
21 investigation to be complete." *Id.* ¶¶ 35-36 and Ex. F (April 8 letter).

22 III. ARGUMENT

23 SUMMARY OF ARGUMENT

24 Both the California Court of Appeal and the California Attorney General have recognized that the
25 PRA requires police departments to release the names of officers who are involved in highly
26 publicized incidents, except in unusual cases where specific facts require that the officers' identities
27 remain secret, such as cases involving undercover investigations or investigations of organized crime.
28 Nothing about the Beaty incident suggests that it is such an unusual case where the names can be

1 withheld. The PRA contains strict deadlines and does not allow the government to delay the release of
2 records beyond these deadlines. The City's refusal to release records containing these names thus
3 violates the PRA. Furthermore, the City's blanket policy of refusing to release the names of its
4 officers until the completion of any internal-affairs investigations, regardless of the particularized
5 circumstances, should be declared unlawful.

6 **A. Because the City's refusal to produce records showing the names of the officers**
7 **involved in the Beaty incident violates the PRA, this court should order it to make the**
8 **records public.**

9 In California, "information concerning the conduct of the people's business is a fundamental
10 and necessary right of every person." Gov't Code § 6250.⁴ See CAL. CONST. ART. I, § 3(b)(1) ("the
11 people have the right of access to information concerning the conduct of the people's business, and
12 therefore . . . the writings of public officials and agencies shall be open to public scrutiny."). A public
13 agency that receives a request for public records must respond to that request within 10 days by either
14 providing the records in question, by refusing to disclose the records and explaining in writing its
15 authority to do so, or, in unusual cases, requesting an additional 14 days to consider the request.
16 § 6253(c). Once it has determined that it will release records, the agency must produce them
17 "promptly." § 6253(b). The government must not delay or obstruct the inspection or copying of
18 public records. § 6253(d). These statutory provisions reflect the legislature's recognition that "the
19 *timeliness* of disclosure often is of crucial importance" under the PRA. *Wilder v. Superior Court*, 66
20 Cal.App.4th 77, 84 (1998), quoting *Powers v. City of Richmond*, 10 Cal.4th 85, 118 (1995) (George,
21 J., concurring).

22 An agency must release all requested records unless it can demonstrate either (1) "that the
23 requested records fall under one of the Act's stated exemptions" listed in § 6254, or (2) "that on the
24 facts of the particular case the public interest served by not disclosing the record clearly outweighs the
25 public interest served by disclosure of the record." § 6255(a); *Commission on Peace Officer*
26 *Standards and Training v. Superior Court*, 42 Cal.4th 278, 288 (2007) (hereinafter "*CPOST*"). The
27 agency bears the burden of justifying nondisclosure. § 6255(a); *CPOST*, 42 Cal.4th at 296. Even if
28 parts of a particular document are exempt, the agency must disclose the remainder of the document.

⁴ All statutory references are to the Government Code unless otherwise indicated.

1 § 6253(a); *CPOST*, 42 Cal.4th at 301-02.

2 If the government refuses to provide records or fails to provide them within these deadlines,
3 the PRA authorizes a person⁵ to file a petition for a writ of mandate “to enforce his or her right to
4 inspect or to receive a copy of any public record or class of public records.” § 6268.⁶ “ If the court
5 finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255,
6 he or she shall order the public official to make the record public.” § 6259(b).⁷

7 In the case at bar, the defendants have refused to release the records, and the statutory
8 deadlines have long passed — Plaintiffs first requested the records on February 24, more than two
9 months ago. Thus, the City must release the records immediately unless it establishes that the records
10 are exempt.

11 1. The City cannot justify withholding these documents under any of the PRA’s
12 specific exemptions to disclosure.

13 The California Court of Appeal and the California Attorney General have recognized that none
14 of the PRA’s specific exceptions authorize police departments to withhold the names of officers who
15 are involved in highly publicized incidents. The leading case is *New York Times Co. v. Superior*
16 *Court*, 52 Cal. App. 4th 97, 104-105 (1997), disapproved on other grounds by *Copley Press v.*
17 *Superior Court*, 39 Cal.4th 1272 (2006). *New York Times* involved a request for the names of five
18 sheriff’s deputies who had fired their weapons during a “firefight” in which a civilian was killed. 52

19 ⁵ Under the PRA, “person” includes an organization such as the ACLU-NC. § 6252(c).

20 ⁶ Section 6258 states in relevant part:

21 Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court
22 of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record
23 or class of public records under this chapter.

24 ⁷ Section 6259 states in relevant part:

25 (a) Whenever it is made to appear by verified petition to the superior court of the county where the
26 records or some part thereof are situated that certain public records are being improperly withheld from
27 a member of the public, the court shall order the officer or person charged with withholding the records
28 to disclose the public record or show cause why he or she should not do so. The court shall decide the
case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the
Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court
may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section
6254 or 6255, he or she shall order the public official to make the record public. If the judge determines
that the public official was justified in refusing to make the record public, he or she shall return the item
to the public official without disclosing its content with an order supporting the decision refusing
disclosure.

1 Cal.App.4th at 99-100. The sheriff's department had agreed to release "the names of all the deputies
2 who were present at the crime scene, but refused to provide the names of the deputies who had fired
3 their weapons." *Id.* at 100. The government tried to justify its actions by arguing that the names were
4 part of the officers' personnel files and were therefore exempt from disclosure under the statutory
5 protection of peace officer personnel records. *Id.* It also argued that disclosure would violate the
6 officers' privacy rights. *Id.* at 100-105.

7 The Court of Appeal rejected these arguments and held that none of the specific statutory
8 exemptions of the PRA applied to shield the deputies' names from disclosure. *Id.* The court thus
9 "h[e]ld that, under the California Public Records Act, the sheriff is required to disclose the names of
10 peace officers who fired shots at a citizen." *Id.* at 99.

11 The California Attorney General confirmed the continuing validity of the *New York Times*
12 holding just last year, concluding that

13 [i]n response to a request made under the California Public Records Act
14 for the names of peace officers involved in a critical incident, such as one in
15 which lethal force was used, a law enforcement agency must disclose those
16 names unless, on the facts of the particular case, the public interest served by
disclosing the names.

17 Cal. Atty. Gen. Op. No. 07-208, at 10, 91 Ops. Cal. Atty. Gen. 11 (2008).

18 In reaching this conclusion, the Attorney General reviewed recent opinions from our state high
19 court that had on the one hand made it clear that the contents of peace officers' personnel files are
20 strictly confidential but on the other hand held that peace officers' names are not confidential and must
21 generally be provided in response to a PRA request. *Id.* at 4-7 (discussing *Copley Press, supra*, and
22 *CPOST, supra*). The Attorney General also analyzed the PRA provisions relating to criminal
23 investigations and officer privacy. *Id.* at 8-9. This analysis led him to "conclude that the name of a
24 peace officer involved in a critical incident is not categorically exempt from disclosure under the
25 [Public Records] Act or the peace officer confidentiality provisions of the Penal Code." *Id.* at 9.

26 *New York Times*, which is binding on this court and legally indistinguishable from the case at
27 bar, and the 2008 Attorney General Opinion, which is also "entitled to great weight,"⁸ thus establish

28 ⁸ *California Assn. of Psychology Providers v. Rank*, 51 Cal.3d 1, 17 (1990); *Travis v. Board of Trustees of California State University*, 161 Cal.App.4th 335, 344-45 (2008). The considered opinion of our

1 that the officers' names are not categorically exempt from disclosure under the PRA. The department
2 and the City clearly have the officers' names recorded on some document other than the officers'
3 protected personnel files; for example the officers' incident reports and use-of-force reports, or the
4 City's investigation of the incident and reports relating to other incidents.⁹ See *CPOST*, 42 Cal.4th at
5 296 ("an officer's name and employing agency is information that ordinarily is made available, even to
6 a person who is arrested by the officer"). Although some — perhaps most — of the information in
7 these records may be exempt from disclosure, the PRA mandates that the agency redact such exempt
8 portions and release the remainder of the document, rather than withholding the whole document.
9 *CPOST*, 42 Cal.4th at 301-02; see § 6253(a).

10
11 2. The City cannot justify withholding these documents under the PRA's catchall
exception to disclosure (§ 6255).

12 Because none of the specific PRA exceptions apply, the government must disclose the names
13 unless it can demonstrate that "on the facts of the particular case the public interest served by not
14 disclosing the record clearly outweighs the public interest served by disclosure of the record."
15 § 6255(a). This provision places the "burden of proof on the proponent of nondisclosure to
16 demonstrate a clear overbalance on the side of confidentiality." *Michaelis, Montanari & Johnson v.*
17 *Superior Court*, 38 Cal.4th 1065, 1071 (2006) (citation omitted). The Attorney General has suggested
18 that an agency might be able to meet this burden and refuse to release the names of officers where
19 those officers are operating undercover or are involved in investigating gang activity and there is a real
20 possibility of retribution if the officers' identity is made public. Cal. A.G. Opn. 07-208 at 9-10.

21 The City will not be able to meet this burden in this case. The officers who abused Mr. Beaty
22 were not working undercover; the video shows that they were in full uniform, which means that they
23 were "statutorily required to wear identification" and cannot maintain that their identities are somehow
24 private. *New York Times*, 52 Cal.App.4th at 102; see Penal Code § 830.10; *CPOST*, 42 Cal.4th at 296
25

26 state's chief law-enforcement officer should be entitled to particularly great weight here, as it is
27 clarifying the legal duties of other law-enforcement agencies, an area where the Attorney General's
office has clear expertise.

28 ⁹ The government has a duty to assist in locating document that contain the officers' names, wherever
they are stored. Gov't Code § 6253.1.

1 (“an officer’s name and employing agency is information that ordinarily is made available, even to a
2 person who is arrested by the officer”). Nothing suggests that the officers would face any sort of
3 retribution if their names were disclosed — Mr. Beaty is a homeless man, not an organized-crime
4 boss. Without specific evidence to show that releasing the names of the officers would harm the
5 public interest, the City must release them. *New York Times*, 52 Cal.App.4th at 104 (rejecting
6 argument that catchall provision allowed non-disclosure of deputies’ names).

7 Nor can the City support its claim that releasing the officers’ names will somehow jeopardize
8 its internal-affairs investigation. First, releasing the names could not possibly harm the official
9 inquiry. The internal-affairs investigators who are probing the incident must already know the
10 officers’ names. Other members of the force who were present at the scene will obviously know who
11 the officers were, too. The only possible effect that releasing the names could have on the internal-
12 affairs investigation is that it could prompt members of the public to come forward with information
13 about their interactions with the officers involved, information that should be a part of any
14 investigation of police misconduct. Nobody would suggest that releasing the name of a criminal
15 defendant could somehow compromise the integrity of a prosecution; it is similarly absurd to claim
16 that releasing the names of these officers could adversely affect an investigation of them. *Cf. New*
17 *York Times*, 52 Cal.App.4th at 104 (“Disclosure [of the deputies’ names] would reveal no deliberative
18 process of the investigation.”).

19 Second, the defendants’ prior conduct in this matter belies their purported concern for the
20 integrity of the internal affairs investigation. When the video first surfaced, Chief Dyer made public
21 not just Mr. Beaty’s name, but also details of his purported past acts of violence against law
22 enforcement, a practice that the Attorney General has condemned as illegal. *See* Cal. Atty. Gen. Op.
23 No. 06-203, 89 Ops. Cal. Atty. Gen. 204 (2006). He also made damaging allegations against Mr.
24 Beaty, apparently taken from the officers’ reports: that Mr. Beaty “had been drinking excessively,”
25 that he put up “resistance,” and that he punched one of the officers, ripped a badge off, and tried to
26 stab one of them with a pen. Chief Dyer thus repeatedly and selectively disclosed non-public
27 information about the incident in what appears to be a calculated attempt to defend the behavior of the
28 offices as seen on the video. This type of information truly could jeopardize an investigation of the

1 incident, both by tainting the memory of witnesses or by leading them not to come forward with
2 damaging evidence against the officers: a citizen who believed the chief of police's assertion that Mr.
3 Beaty was a drunk with a history of violence toward law-enforcement and who had attacked the
4 officers before the video started could well be less inclined to come forward with evidence against the
5 officers or supporting Mr. Beaty. The City cannot deny the public access to information based on an
6 ill-supported theory that revealing the officers' names will jeopardize its investigation, and at the same
7 time selectively release details calculated to influence that same investigation. Thus, the public
8 interest in keeping the officers' names secret is minimal.

9 In contrast, the public interest in disclosure of the officers' names is great. As a general matter,
10 the public always has an interest in "information concerning the conduct of the people's business" and
11 how our government officials are using our tax dollars. CAL.CONST. ART. 1 § 3(b)(1). And the public
12 interest in scrutinizing the conduct of the police, who are sworn to uphold the law and are authorized
13 to carry weapons and use them against the residents of this state, is even more important:

14 [T]he public has a far greater interest in the qualifications and conduct of law enforcement
15 officers, even at, and perhaps especially at, an 'on the street' level than in the qualifications
16 and conduct of other comparably low-ranking government employees performing more
17 proprietary functions. The abuse of a patrolman's office can have great potentiality for social
18 harm.

19 *CPOST*, 42 Cal. 4th at 297-298.

20 This case brings these general interests into sharp focus. A sworn peace officer was seen in
21 broad daylight using what seems to be excessive force against a Fresno resident, with no objection by
22 his fellow officer, an incident that the Mayor of Fresno described as "very very concerning."
23 Although the department issued a public statement that the two officers will be limited to office duty
24 for the time being, if the public is prevented from learning the officers' names, it will have no way of
25 knowing whether these officers were, in fact, taken off the street. The public cannot know, in any
26 particular interaction with a Fresno police officer, whether the officer is one of the officers involved.
27 This uncertainty, in turn, could cause the public to fear the police in general. Also, the public cannot
28 know whether these officers have been the subject of prior news reports for abusing our fellow citizens
or otherwise misusing their authority. The City's refusal to release even the names of the officers
involved in this incident can only reduce respect for the law and for the police. This does not serve the

1 public interest.

2 Finally, the public interest demands that the names be released in a timely manner, within the
3 statutory deadlines of the PRA. The PRA is intended to require “disclosure of public information at a
4 time when the material still was newsworthy,” and to prohibit the government from delaying the
5 release of information. *Powers v. City of Richmond*, 10 Cal.4th 85, 118 (1995) (George, J.,
6 concurring); see *Filarsky v. Superior Court*, 28 Cal.4th 419, 426-27 (2002); *Wilder v. Superior Court*,
7 66 Cal.App.4th 77, 84 (1998). In the days immediately after Mr. Beaty’s arrest, the media were full of
8 stories about the incident. Chief Dyer took the time to comment repeatedly on the incident, and even
9 the mayor held a press conference to address it. The public is entitled to know about the misuse of
10 government power when it happens, not months later after other news has pushed the story from the
11 front page and from the public consciousness.

12 For these reasons, “the public interest here outweighs the right of the [officers] to have their
13 names withheld.” *New York Times*, 52 Cal.App.4th at 104.

14 Because the City cannot legally withhold the requested records, this Court should order the
15 defendants “to make the record public.” § 6259(b).

16
17 **B. The city’s policy of delaying the release of officers’ names until after it has completed
any internal investigation violates the PRA and should be declared unlawful.**

18 In addition to asking the court to order the release of records relating to the Beaty incident,
19 plaintiffs are challenging the policy itself as citizens and taxpayers.¹⁰ Representative suits by citizens
20 and taxpayers are appropriate vehicles for challenging government policies or practices that violate the
21 PRA. *County of Santa Clara v. Superior Court*, 171 Cal.App.4th 119, 128-130 (2009) (authorizing
22 taxpayer suit for declaratory relief against illegal PRA policies and practices).

23 The City’s policy of refusing to release officers’ names until the completion of any internal
24 investigation is illegal for the same reasons its refusal to release the names of the officers involved in
25 the Beaty incident violates the PRA. In fact, the City’s rigid adherence to that policy is what led it to
26 improperly withhold the names of the officers involved in the Beaty incident. A policy that results in

27 ¹⁰ See *Connerly v. State Personnel Bd.*, 92 Cal.App.4th 16, 29 (2001) (discussing citizens’ suits and
28 taxpayers’ suits); see also *Environmental Protection and Information Center v. California Dept. of
Forestry and Fire Protection*, 44 Cal.4th 459, 479-80 (citizen suit by association).

1 the illegal withholding of records is itself illegal. *New York Times* and the Attorney General opinion
2 demonstrate that none of the specific exceptions to the PRA apply. Although in certain cases the City
3 may well be able to justify delaying the release of names under the catchall exception, this
4 determination requires a “case-by-case balancing process.” *Michaelis, Montanari & Johnson v.*
5 *Superior Court*, 38 Cal.4th 1065, 1071 (2006) (citation omitted). The City may not substitute a
6 categorical rule barring disclosure where the PRA requires an analysis based on the facts of each
7 individual case.

8 When the Legislature intends to exempt entire categories of information from disclosure under
9 the PRA it does so: § 6254 alone lists 29 categories of records that are exempt from production, and
10 other specific provisions of the PRA and other statutes create numerous other exemptions.¹¹
11 Conspicuously absent from this list is an exemption for the names of peace officers under
12 investigation. It is for the legislature, not individual cities, to create categorical exceptions to the
13 PRA. This Court should therefore issue a declaration that the City’s policy of categorically refusing to
14 release the names of officers involved in critical incidents until the completion of internal-affairs
15 investigations violates the PRA.

16 IV. CONCLUSION

17 “Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws
18 of the state. In order to maintain trust in its police department, the public must be kept fully informed
19 of the activities of its peace officers.” *CPOST*, 42 Cal.4th at 297 (quoting *New York Times*, 52
20 Cal.App.4th at 104-105). The City’s policy of refusing to release the names of officers involved in
21 highly publicized incidents violates this principal and the PRA. Plaintiffs therefore request that this
22 court make the following orders:

- 23 1. On the first cause of action, that the Court issue a peremptory writ of mandate compelling
24 Defendants to allow Plaintiffs to inspect, and to provide them with a copy of, records showing
25 the names of the officers involving in the Beaty incident;
- 26 2. On the second cause of action, that the Court issue a declaration that Defendants’ maintenance
27

28 ¹¹ See e.g., §§ 6254.1 – 6254.18; see also §§ 6276.1-6276.48 (cross referencing scores if not hundreds of other specific exceptions to PRA disclosure requirements).

1 of, and expenditure of money on, its practice and policy of refusing to release the names of
2 officers involved in highly publicized incidents until after the completion of any internal-
3 affairs investigation violates the PRA;

4 3. That Plaintiffs/Petitioners be awarded their attorneys' fees and costs under Government Code
5 § 6259(d) and Code of Civil Procedure §§ 1021.5, 1032, 1033.5, 1095, and 1109; and

6 4. For such other and further relief as the Court deems proper and just.

7
8
9 Dated: 5/18/09

By: Michael D. Risher
Attorney for Plaintiffs