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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,

Plaintiffs/Petitioners,

v.

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

Defendants/  
Respondents.

No. \_\_\_\_\_

**VERIFIED PETITION FOR  
PEREMPTORY WRIT OF  
MANDATE AND COMPLAINT  
FOR DECLARATORY RELIEF**

[Gov't Code §§ 6258, 6259; Cal. Civ.  
Proc. Code §§ 526a, 1085; CAL.  
CONST. ART. I § 3]

INTRODUCTION

1. This is a suit to require the City of Fresno to comply with the California Public Records Act ("PRA"), Government Code § 5250 *et seq.* The City has a policy of refusing to release the names of police officers who are involved in publicized incidents involving possible police misconduct within the time limits mandated by the PRA. Instead, it withholds these records until it has completed its internal investigation of the incidents, a practice that in this case has resulted in a delay of more than three months.
2. This refusal to release records in a timely manner, within the PRA's statutory deadlines, is unlawful. Plaintiffs therefore seek the immediate release of records that they requested

1 on February 24, 2009, relating to one such incident, under the specific enforcement  
2 provisions of the PRA. Acting as taxpayers and interested citizens, Plaintiffs also seek  
3 a declaration that the City's policy is unlawful.

#### 4 JURISDICTION AND VENUE

- 5 3. This court has jurisdiction under Government Code § 6258, Code of Civil Procedure  
6 §§ 526a, 1060, and 1085, and Article VI section 10 of the California Constitution.
- 7 4. Venue is proper in this Court: The acts and omissions complained of herein occurred  
8 in this County. Code Civ. Pro. § 393. Defendants are all situated in, reside in, or work  
9 in this County. *Id.* § 394(a). The records in question are situated in this County. Gov't  
10 Code § 6259.

#### 11 PARTIES

- 12 5. Plaintiff American Civil Liberties Union of Northern California ("ACLU-NC") is a  
13 nonprofit public-interest organization with a longstanding goal of advancing free-  
14 speech and open-government rights in California.
- 15 6. ACLU-NC is a member of the public within the meaning of Gov't Code §§ 6252(b),  
16 (c).
- 17 7. ACLU-NC has several hundred members who reside and pay taxes in the City of  
18 Fresno.
- 19 8. Plaintiff William Simon is a taxpayer, a citizen, and a resident of the City of Fresno.  
20 Simon has paid property and sales taxes within the past year. He is the chair of the  
21 Fresno Chapter of the ACLU-NC.
- 22 9. Defendant City of Fresno ("City" or "Fresno") is a charter city under the laws of the  
23 State of California and a local agency within the meaning of Government Code  
24 § 6252(a).
- 25 10. Defendant Jerry Dyer is the Chief of the Fresno Police Department ("Department"),  
26 and in that capacity is ultimately responsible for the operations of the Department,  
27 including the Department's compliance with the PRA. The Fresno Police Department  
28

1 is an instrumentality of the City of Fresno.

2 GENERAL ALLEGATIONS

- 3 11. On or about February 9, 2009, two officers with the Fresno Police Department were  
4 videotaped as they took Mr. Glen Beaty, a homeless man, into custody.
- 5 12. A videotape of this incident ("the incident") shows one of the officers repeatedly  
6 striking Mr. Beaty in the head. The final blow to the back of Mr. Beaty's head was  
7 delivered as Mr. Beaty was lying face down on the ground with his arms behind his  
8 back.
- 9 13. On or about February 10, part of this video was shown on a news broadcast on KSEE  
10 television in Fresno. A copy of this video is included on Exhibit A to this Complaint (a  
11 CD-ROM), with the file name "February 10 KSEE broadcast," incorporated by  
12 reference. It is also available at the website of the television station, at  
13 <http://www.ksee24.com/news/local/39403357.html?video=YHI&t=a>.
- 14 14. Both officers' faces are visible in this video.
- 15 15. This same broadcast shows Chief Dyer discussing the incident. Dyer states on camera  
16 that "the individual [Beaty] was stiff, there was alcohol around him; it was pretty  
17 apparent that he had been drinking excessively and when the officers contacted the  
18 individual there was resistance in terms of the line of questioning . . . . At one point . . .  
19 one of the officers was punched by the suspect in the arm, the officer had his badge  
20 ripped off of his shirt." February 10 KSEE broadcast at 2:22-2:55.
- 21 16. This broadcast further reports that Dyer had stated that Mr. Beaty had "a history of  
22 violence" and that the Department had provided the television station with a copy of a  
23 2004 police report describing an incident in which Beaty allegedly struck a sheriff's  
24 deputy. *Id.* at 3:57-4:23. On information and belief, Dyer did make this statement and  
25 did provide the station with this report.
- 26 17. On or about February 11, Dyer was again shown on KSEE discussing the incident,  
27 arguing that "what may seem disturbing to most on the surface, may not be considered  
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1 an excessive use of force in the end, because of what [] detailed police reports state  
2 happened leading up to Beaty's arrest." A copy of this video is included on Exhibit A  
3 to this Complaint (a CD-ROM), with the file name "February 11 KSEE broadcast." It  
4 is also available at the website of the television station at  
5 <http://www.ksee24.com/news/local/39417932.html>. The quoted material appears at  
6 2:13-23.

- 7 18. According to the reporter, "Dyer says Glen Beaty is a man with a proven history of  
8 violence.... Before Monday's arrest, 3 prior law enforcement contacts, including  
9 resisting arrest and injuring a sheriff's deputy." February 11 Broadcast at 1:50-2:02.  
10 On information and belief, Dyer did make this statement.
- 11 19. On information and belief, the Fresno Police Department issued a public statement that  
12 the two officers involved in the incident "were placed on modified status," meaning  
13 that they would be limited to office duty. This was reported in Jim Guy, *Video Shows*  
14 *Officer Hitting Man; Dyer Says an Investigation Will Examine the Incident in Fresno*,  
15 *FRESNO BEE*, February 11, 2009, at B1. (Attached as Exhibit B).
- 16 20. In the days that followed the violent arrest of Mr. Beaty, there were numerous reports  
17 in the local and national media regarding this incident and the follow up press  
18 conference. See Carolyn Bruck, *CAUGHT ON TAPE: Fresno Police Officers[']*  
19 *Violent Arrest of a Homeless Man*, KSEE 24 NEWS, Feb. 10, 2009; Jim Guy, *BRIEF:*  
20 *Officers Taken Off Street Duty After Video Surfaces*, *THE FRESNO BEE*, Feb. 10, 2009;  
21 Cyndee Fontana et al., *Witness: Officer Caught on Tape Used 'Unnecessary Force,'*  
22 *THE FRESNO BEE*, Feb. 11, 2009; *Today: Beating Caught on Videotape Lands Two*  
23 *Fresno Police Officers on Desk Duty Pending Investigation* (NBC television broadcast  
24 Feb. 11, 2009); *Violent Arrest Caught on Tape Sparks Investigation*, CNN.COM, Feb.  
25 11, 2009, <http://www.cnn.com/2009/CRIME/02/11/police.violence/index.html>. True  
26 and accurate copies of these articles are attached as Exhibit C to this Complaint.
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- 1 21. No media report of which Plaintiffs are aware provides the names of the officers  
2 involved in the Beaty incident.
- 3 22. At a February 12 press conference Fresno mayor Ashley Swearengin stated that the  
4 Beaty video was “certainly very disturbing” and “very very concerning,” and that the  
5 City was investigating the incident. An audio copy of this press conference is included  
6 on Exhibit A to this Complaint, with the file name “February 12 Press Conference.” It  
7 is also available on the website of Indymedia, at  
8 <http://www.indybay.org/newsitems/2009/02/12/18569804.php>. The quoted material  
9 appears at 1:07-1:10 and 1:35:1:40.
- 10 23. At that same February 12 press conference, Chief Dyer confirmed that he had  
11 “provided a statement to the media that according to the police report . . . one of the  
12 officers was punched by the subject. Also, one of the officers had his badge ripped  
13 from his chest, his shirt. And also that a pen was removed from his shirt pocket and  
14 was used to attempt to jab the officer.” February 12 Press Conference at 9:19-9:39.  
15 Dyer went on to claim that his own viewing of the video confirmed these facts. *Id.* at  
16 9:45-10:13.
- 17 24. On February 24, 2009, the ACLU-NC faxed a request to the Fresno Police Department,  
18 requesting the disclosure of documents showing the names of the officers involved in  
19 the Beaty incident. A photocopy of this request is attached to this Complaint as Exhibit  
20 D, incorporated by reference.
- 21 25. On February 24, 2009, the ACLU-NC mailed a copy of this same request to Chief Dyer  
22 by first-class mail.
- 23 26. On February 24, 2009, William Simon mailed a copy of this same request to Chief  
24 Dyer by first-class mail.
- 25 27. This February 24 request asked for the names of the officers involved in the incident  
26 under the authority of the PRA and, more specifically, a 2008 opinion by the California  
27 Attorney General that concludes that such records must typically be released:

28 In response to a request made under the California Public Records Act for the

1 names of peace officers involved in a critical incident, such as one in which  
2 lethal force was used, a law enforcement agency must disclose those names  
3 unless, on the facts of the particular case, the public interest served by not  
disclosing the names clearly outweighs the public interest served by disclosing  
the names.

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

4 28. As of April 3, 2009, the Department had failed to respond to the February 24 request  
5 for records.

6 29. On April 3, 2009, the ACLU-NC faxed a second letter to the Department, asking for a  
7 response to the February 24 request. A photocopy of this letter is attached to this  
8 Complaint as Exhibit E.

9 30. The April 3 letter also requested documents showing the names of the officers who  
10 have been involved in the death of Mr. Stephen Willis, who had been shot and killed on  
11 March 28, 2009 by Fresno police officers. This shooting was also widely reported in  
12 the press.

13 31. Later on April 3, counsel received a phone call from Fresno Police Department Legal  
14 Advisor Melissa White of the Fresno City Attorney's Office. Ms. White stated that the  
15 failure to respond to the February 27 request had been a mistake by a Department  
16 employee, rather than a deliberate decision to violate the PRA.

17 32. Ms. White also stated that the Department recognized its duty to release the names of  
18 officers involved in critical incidents, but that the Department had a policy of not  
19 releasing the names until it had completed any internal investigation of the incident in  
20 question.

21 33. Ms. White further stated that the reason the names of the officers involved in the Beaty  
22 incident had yet to be released was that there were ongoing investigations into the  
23 incident by agencies outside of the Department, which had delayed the Department's  
24 own investigation.

25 34. Also on April 3, Ms. White called William Simon and told him that the names of the  
26 offices involved in the Beaty incident would be released only after the "IA"  
27 investigation was complete, and that this was the City's policy.  
28

- 1 35. On April 15, ACLU-NC received a letter from Ms. White dated April 8, 2009 that  
2 identifies the names of the officers involved in the Willis shooting. A copy of this  
3 letter is attached as Exhibit F, incorporated by reference.
- 4 36. In this April 8 letter Ms. White declined to identify the officers involved in the Beaty  
5 incident, writing that "we are still waiting for the investigation to be complete."
- 6 37. On April 10, before receiving Ms. White's April 8 letter, the ACLU-NC sent a letter to  
7 Ms. White thanking for her phone call and asking that the City inform it if it had any  
8 plans to change its policy of refusing to release the names of officers involved in such  
9 incidents until it has completed any internal-affairs investigation of the officers'  
10 conduct during the incident. A copy of this letter is attached as Exhibit G.
- 11 38. The City did not respond to this letter to indicate that it would change its policy.
- 12 39. The City has to date refused to release records showing the names of the officers  
13 involved in the Beaty incident to Mr. Simon or to the ACLU-NC.
- 14 40. On information and belief, the names of the officers involved in this incident are  
15 recorded in various documents that are maintained by the Department and the City  
16 outside of the officers' personnel files.
- 17 41. On information and belief, the names of the officers involved in all such publicized  
18 incidents are recorded in various documents that are maintained by the Department and  
19 the City outside of the officers' personnel files.
- 20 42. The Department has a practice and policy ("policy") of refusing to release records  
21 showing the names of officers involved in highly publicized incidents, at least until the  
22 completion of any internal investigation of the officers' conduct during the incident in  
23 question.
- 24 43. As the Beaty incident shows, this policy may result in months of delay before the  
25 names of these officers are released. Thus, although the Beaty incident was broadcast  
26 on local television on February 10, the City still refuses to release the names of the  
27 officers who were depicted taking Mr. Beaty into custody.
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- 1 44. The PRA requires the government to determine whether it will disclose records within  
2 10 days of receiving a request, unless “unusual circumstances” justify a 14-day  
3 extension of that period. Govt. Code § 6253(c). The government must then inform the  
4 requesting party of what records will be disclosed and provide an estimate of when they  
5 will be available. *Id.* It must then “promptly” provide an “exact copy” of the records  
6 to the requesting person. *Id.* § 6253(b). The statute does not allow the government to  
7 delay providing records. *Id.* § 6253(d).
- 8 45. The Department’s policy of refusing to release officers’ names until it has completed its  
9 internal investigations effectively creates a timetable for releasing such records that  
10 conflicts with the strict statutory time limits of the PRA.
- 11 46. The public’s interest in the release of the names of the officers involved in the Beaty  
12 incident outweighs its interest in nondisclosure of this information.
- 13 47. More generally, the public’s interest in the timely release of the names of police  
14 officers involved in highly publicized incident outweighs its interest in delaying the  
15 disclosure of this information until it has completed its internal investigations.

16  
17 **FIRST CAUSE OF ACTION**

18 **For Peremptory Writ of Mandate for Violation of the California Public Records Act, Gov’t**  
19 **Code § 6250 et seq., Cal. Civ. Proc. Code § 1085, & Article I, § 3 of the California Constitution**

20 (Plaintiffs ACLU-NC and Simon against Defendants City of Fresno and Dyer)

- 21 48. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 47  
22 above, as if set forth in full.
- 23 49. Plaintiffs are members of the public and are beneficially interested in the outcome of  
24 these proceedings; they have a clear, present and substantial right to the relief sought  
25 herein. Plaintiffs have no plain, speedy and adequate remedy at law other than that  
26 sought herein.
- 27 50. A member of the public who believes that public records are being improperly withheld  
28 may bring suit for mandate to enforce the PRA. Govt. Code §§ 6258, 6259(a). If the  
Court finds that the public official’s decision to refuse disclosure is not justified, it shall



1 order the public official to make the record public. *Id.* § 6259(b).

2 51. Plaintiffs, as stated in their February 24 PRA request, were at all times ready to tender  
3 the reasonable photocopying costs for the identifiable public records requested.

4 52. Defendants have refused, and continue to refuse to release these records to Plaintiffs.

5 53. Defendants have a present duty to release the records, and their failure to do so violates  
6 the Public Records Act and Article I, § 3 of the California Constitution.

7  
8 **SECOND CAUSE OF ACTION**

9 **For Declaratory Relief to Compel Performance of a Public Duty and to Restrain the Illegal and  
Wasteful Expenditure of Public Funds under Code of Civil Procedure §§ 526a, 1060**

10 (Plaintiffs ACLU-NC and Simon against Defendants City of Fresno and Dyer)

11 54. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 53,  
12 above, as if set forth in full.

13 55. An actual, existing, and substantial controversy exists between the Plaintiffs and  
14 Defendants as to the Defendants' responsibilities under the PRA. Plaintiffs contend  
15 that the Defendants have a duty to provide the names of officers involved in critical  
16 incidents within the time limits set by the PRA, unless the circumstances of an  
17 individual incident justify withholding this information, and that the Defendants' policy  
18 of waiting until the completion of all internal investigations violates the PRA.  
19 Defendants dispute these contentions, and contend instead that their policy comports  
20 with applicable law. Unless the Court issues an appropriate declaration of the  
21 respective rights and responsibilities of the parties with reference to requests for public  
22 records under the PRA, the legal status of Defendants' actions in instituting,  
23 implementing, and enforcing the policy will remain uncertain, and there will continue  
24 to be disputes and controversies surrounding the Policy. Declaratory relief is therefore  
25 necessary and appropriate under Code of Civil Procedure section 1060.  
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1 56. Defendants have wasted and unlawfully used public funds, and will continue wasting  
2 and unlawfully using public funds, by implementing and enforcing the policy in  
3 violation of the PRA and Article I § 3 of the California Constitution.

4 57. Plaintiffs are interested both as taxpayers and as members of the public in having the  
5 laws relating to the release of public records executed and the duty in question  
6 enforced.

7 58. As a direct consequence of the Defendants' continuing failure to perform their public  
8 duty to comply with the PRA and their expending public funds to implement and  
9 enforce the Policy in violation of California law, Plaintiffs are entitled to declaratory  
10 relief.

11 59. A judicial declaration is necessary and appropriate at this time, so that Plaintiffs may  
12 ascertain their rights and Defendants' duties under law.

13 WHEREFORE, Plaintiffs pray as follows:

14 1. On the first cause of action, that the Court issue a peremptory writ of mandate compelling  
15 Defendants to provide them with a copy of the requested records;

16 2. On the second cause of action, that the Court issue a declaration, order and judgment that  
17 Defendants' practice and policy of refusing to release the names of officers involved in highly  
18 publicized incidents until after the completion of any internal-affairs investigation violates the PRA  
19 and that the expenditure of money on the implementation or enforcement of this illegal practice and  
20 policy constitutes an illegal expenditure of public funds;

21 3. That Plaintiffs be awarded their attorneys' fees and costs under Government Code  
22 § 6259(d) and Code of Civil Procedure §§ 1021.5, 1032, 1033.5, 1095, and 1109; and

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

24 Dated: 5/18/09

25 By: 

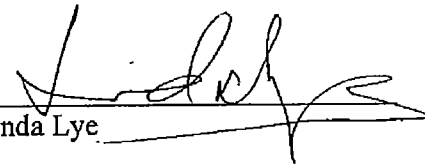
26 Michael T. Risher  
27 Attorney for Plaintiffs  
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**VERIFICATION**

I, Linda Lye, am Vice Chair of the American Civil Liberties Union of Northern California. I have read this Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief in the matter of *American Civil Liberties Union of Northern California, et al., v. City of Fresno et al.*, and am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

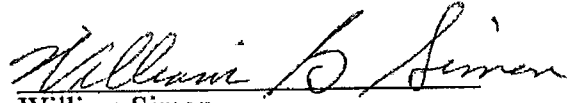
DATED: May 18, 2009

  
Linda Lye

**VERIFICATION**

I, William Simon, have read this Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief in the matter of *American Civil Liberties Union of Northern California, et al., v. City of Fresno et al.* The facts alleged in paragraphs 7, 8, 10-14, 16, 17, 21-23, 26-28, 34, 42, 43, and 51 are within my own knowledge and I know these facts to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 5/18/09

  
William Simon