

FAXED

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 10 Attorneys for Plaintiff
 National Lawyers Guild,
 11 San Francisco Bay Area Chapter

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 IN AND FOR THE COUNTY OF ALAMEDA
 15 Unlimited Civil Jurisdiction

16 NATIONAL LAWYERS GUILD,
 17 SAN FRANCISCO BAY AREA
 18 CHAPTER,
 19 Petitioner,
 20 vs.
 21 DIANE URBAN, in her official
 capacity as Chief of Police, City of
 22 Hayward, California; ADAM D.
 PEREZ, in his official capacity as
 23 Records Administrator, City of
 Hayward California, Police
 24 Department, THE CITY OF
 HAYWARD, California, and DOES 1
 25 - 10,
 26 Respondents.

NO. **RG15785743**

VERIFIED PETITION FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF and WRIT
 OF MANDATE

California Public Records Act,
 Government Code § 6250 et seq.

ENDORSED
 FILED
 ALAMEDA COUNTY
 SEP 15 2015

CLERK OF THE SUPERIOR COURT
 BY MARGARET J. DOWNIE
 Deputy

1
2 For its verified petition pursuant to the California Public Records Act (Gov.
3 Code, §§ 6250 et seq.), petitioner hereby alleges:

4 PARTIES

5 1. Petitioner NATIONAL LAWYERS GUILD, SAN FRANCISCO
6 BAY AREA CHAPTER is a not-for-profit organization. The National Lawyers
7 Guild, San Francisco Bay Area Chapter is an association dedicated to the need for
8 basic change in the structure of our political and economic system. It seeks to
9 unite lawyers, law students, legal workers and jailhouse lawyers to function as an
10 effective force in the service of the people, to the end that human rights shall be
11 regarded as more sacred than property interests. Its goals include promoting justice
12 in the administration of the law, eliminating racism and protecting civil rights and
13 liberties.

14 2. Petitioner NATIONAL LAWYERS GUILD, SAN FRANCISCO
15 BAY AREA CHAPTER is a "person" and a "member of the public" within the
16 meaning of Government Code §§ 6252(b), (c) and 6259(a).

17 3. Respondent DIANE URBAN is the Chief of Police of the City of
18 Hayward, California. Respondent URBAN is sued in her official capacity.

19 4. Respondent ADAM D. PEREZ is the Records Administrator the City
20 of Hayward Police Department. Respondent PEREZ is sued in his official
21 capacity.

22 5. The City of Hayward is "local agency" within the meaning of the
23 California Public Records Act, Government Code § 6252(a).

24 6. Petitioner does not know the true names and capacities of
25 Respondents Does I through X, inclusive, who are therefore sued by such
26 fictitious names. Petitioner is informed and believes and therefore alleges on
27 information and belief that each person designated as Does I through X, is
28 responsible in some manner for improperly withholding and charging fees to

1 obtain public records as alleged herein. Petitioner will seek leave to amend this
2 petition when the true names and capacities of each Doe defendant has been
3 ascertained.

4 FACTS

5 7. On January 27, 2015, Petitioner, through its president, sent a Public
6 Records Act request pursuant to California Government Code §§ 6250 et seq. to
7 The City of Hayward Police Department. The request included eleven categories
8 of records relating to the City of Hayward Police Department's participation in
9 mutual aid within the City of Berkeley, California in connection with public
10 demonstrations on December 6, 2014, protesting the deaths of Michael Brown and
11 Eric Garner, which had received national attention and notoriety. The records
12 requested are "public records" within the meaning of Government Code § 6252(e).
13 The request stated that the Public Records Act required a response within 10 days
14 of the request.

15 8. In its request, Petitioner asked the Police Department to produce
16 records as they become available, and if portions of records are exempt from
17 disclosure, to provide non-exempt portions.

18 9. In its request, Petitioner asked the Police Department to email any
19 records in electronic form without incurring any copying costs.

20 10. In its request, Petitioner asked the Police Department to waive any
21 fees that would normally be applicable to a Public Records Act request.

22 11. In its request, Petitioner asked the Police Department to seek
23 clarification of the scope of the request if clarification will help it comply with the
24 request.

25 12. The Police Department responded by letter from respondent ADAM
26 D. PEREZ, dated February 23, 2015. The letter stated that the Department is in
27 possession of documents responsive to all eleven categories and that documents
28 would be produced on a rolling basis, but that all documents would be produced

1 by April 15, 2015. The letter stated that documents exempt from disclosure would
2 not be produced. It did not identify any such documents.

3 13. On March 18, 2015, after further communication between Petitioner
4 and the Police Department, Petitioner temporarily narrowed the request as it
5 pertained to police body camera and hand held videos as follows:

6 “In terms of our request for all body camera video, as we discussed, for now
7 we can narrow that request to the following times on December 6, 2014, and
8 December 7, 2014:

9
10 7:56pm-8:30pm
11 Sgt. Corsollini
12 Ofc. McGiboney

13 9:52pm-10:30pm
14 Ofc. Blum
15 Ofc. Green
16 Ofc. McGiboney
17 Sgt. Linteo
18 Sgt. Corsollini

19 12:55am-1:10am
20 Ofc. Blum
21 Ofc. Green
22 Ofc. McGiboney
23 Sgt. Linteo
24 Sgt. Corsollini

25 14. On May 15, 2015, Petitioner was informed by the Police Department
26 that the available videos requested (as described in the narrowed request) were
27 ready for pick-up, but the cost would be \$2,938.58. Petitioner was informed that
28 this figure is based on the cost of the DVD (\$1.00) as well as the staff time
necessary to accommodate the PRA request (\$2,937.58).

15. On May 18, 2015 the Police Department informed Petitioner “we
cannot release the videos or allow duplication of them for you unless this fee is
paid.”

1 16. On July 24, 2015, Petitioner identified and requested that additional
2 body camera and handheld videos in the possession of the Respondents pertaining
3 to the same events on December 6, 2014 and December 7, 2014 be produced, as
4 follows.

5 1) All body camera and other police video taken by Lt. Matthews, Lt.
6 Deplitch, Sgt. Ormsby, Sgt. Linteo, Sgt. Corsollini, Sgt. Lunger, Sgt.
7 Sill, Sgt. Wagner, Det. Valderrama, Det. Maloney, Det. Tong, Det.
8 Humpert, Ofc. McGiboney, Ofc. Niedenthal, Ofc. Harden, Ofc. Blum,
9 Ofc. Green, Ofc. Naik, Ofc. Marion, Ofc. Waters, Ofc. Carrasco, Ofc.
10 Bell, Ofc. Agustin, Ofc. Wilson or any other Hayward Police Officers
11 during the time period of 7:56pm-8:30pm on December 6, 2014.

12 2) All body camera and other police video taken by Lt. Matthews, Lt.
13 Deplitch, Sgt. Ormsby, Sgt. Linteo, Sgt. Corsollini, Sgt. Lunger, Sgt.
14 Sill, Sgt. Wagner, Det. Valderrama, Det. Maloney, Det. Tong, Det.
15 Humpert, Ofc. McGiboney, Ofc. Niedenthal, Ofc. Harden, Ofc. Blum,
16 Ofc. Green, Ofc. Naik, Ofc. Marion, Ofc. Waters, Ofc. Carrasco, Ofc.
17 Bell, Ofc. Agustin, Ofc. Wilson or any other Hayward Police Officers
18 during the time period of 9:52pm-10:30pm on December 6, 2014.

19 3) All body camera and other police video taken by Lt. Matthews, Lt.
20 Deplitch, Sgt. Ormsby, Sgt. Linteo, Sgt. Corsollini, Sgt. Lunger, Sgt.
21 Sill, Sgt. Wagner, Det. Valderrama, Det. Maloney, Det. Tong, Det.
22 Humpert, Ofc. McGiboney, Ofc. Niedenthal, Ofc. Harden, Ofc. Blum,
23 Ofc. Green, Ofc. Naik, Ofc. Marion, Ofc. Waters, Ofc. Carrasco, Ofc.
24 Bell, Ofc. Agustin, Ofc. Wilson or any other Hayward Police Officers
25 during the time period of 12:55am-1:10am on December 7th, 2014.

26 17. On August 18, 2015 Petitioner paid the City of Hayward \$2,938.58.
27 The Police Department produced copies of the available videos requested by the
28 March 18, 2015 narrowed request, as described in paragraph 13 above.

 18. The videos identified in paragraph 16 have not been produced for
inspection and copies have not been made available to Petitioner.

 19. Respondents will not allow inspection, nor produce copies of videos,
nor allow Petitioner to make its own copies of videos identified in paragraph 16,
unless and until Petitioner pays fees comparable to and on the same basis as the
fees charged on August 18, 2015.

 20. On or about August 25, 2015 Petitioner filed a claim with the City of
Hayward for return of \$2,938.58 previously paid for production of the videos
described in paragraph 13. As of the filing of this Petition, the City of Hayward

1 has not granted or rejected the claim.

2 FIRST CLAIM FOR RELIEF

3 (California Public Records Act)

4 21. Petitioner realleges and incorporates herein by reference each and
5 every allegation of paragraphs 1 through 20.

6 22. The requested documents and information consist of "public records"
7 within the meaning of Government Code § 6252(e), and such records are within
8 the possession, custody or control of the Respondents.

9 23. The documents and information requested are not exempt from public
10 disclosure.

11 24. Petitioner has the right to inspect and obtain copies of the information
12 and documents requested. Gov. Code §§ 6253(a) and (b).

13 25. "Public records are open to inspection at all times during the office
14 hours of the state or local agency and every person has a right to inspect any
15 public record," except those within the Act's specifically enumerated exceptions.
16 Gov. Code § 6253(a).

17 26. The agency, "upon a request for a copy of records that reasonably
18 describes an identifiable record or records, shall make the records promptly
19 available to any person upon payment of fees covering direct costs of duplication,
20 or a statutory fee if applicable. Upon request, an exact copy shall be provided
21 unless impracticable to do so" Gov. Code § 6253(b).

22 27. Information that is in an electronic format must be made available in
23 an electronic format when requested by any person and, when applicable, must
24 comply with the following: (1) The agency shall make the information available in
25 any electronic format in which it holds the information. (2) The agency shall
26 provide a copy of the electronic record in the format requested if the requested
27 format is one that has been used by the agency to create copies for its own use or
28 for provision to other agencies. The cost of duplication shall be limited to the

1 direct cost of producing a copy of a record in an electronic format. Gov. Code §
2 6253.9(a).

3 28. An agency is only permitted to impose additional charges when the
4 request would require data compilation, extraction, or programming to produce the
5 record. Gov. Code § 6253.9(b).

6 29. The body camera video requested do not require compilation,
7 extraction or programming.

8 30. Respondents have failed to make the records "promptly available" as
9 required by Government Code § 6253(b).

10 31. Respondents require payment of unauthorized and excessive charges
11 for the duplication and production of police body camera and hand held videos as
12 a condition of producing such records to members of the public.

13 32. Petitioner is informed and believes and therefore alleges on
14 information and belief that, unless enjoined by this court, the Respondents will
15 continue to require payment of unauthorized and excessive charges for the
16 duplication and production of police body camera videos as a condition of
17 produced such records to members of the public.

18 33. The costs charged for the production of body camera and hand held
19 videos are unauthorized and excessive.

20 PRAYER FOR RELIEF

21 Wherefore Petitioner respectfully prays, pursuant to Government Code §
22 6259:

23 1. For an order requiring Respondents to refund the money previously
24 paid, or an order to show cause why they should not be required to do so.

25 2. For a declaratory judgment declaring that the requested records are
26 public records and that the Respondents may not charge a member of the public
27 more than the direct costs of duplication.

28 3. For a peremptory writ of mandate requiring Respondents immediately

1 to permit the inspection and to provide copies of the requested records and
2 documents without requiring payment in excess of the direct costs of duplication.


3 4. In the alternative, for appropriate injunctive relief
4 requiring Respondents immediately to permit the inspection and to provide copies
5 of the requested records and documents without requiring payment in excess of the
6 direct costs of duplication.

7 5. For an order awarding Petitioner its costs of suit and reasonable
8 attorneys' fees pursuant to Government Code § 6259 and Code of Civil Procedure
9 § 1021.5.

10 6. For such further relief as this court deems proper.

11
12 Dated: September 14, 2015 Respectfully submitted,

13
14 LAW OFFICES OF AMITAI SCHWARTZ
15 AMERICAN CIVIL LIBERTIES UNION
16 FOUNDATION OF NORTHERN CALIFORNIA

17 By: 
18 Amitai Schwartz
19 Attorney for National Lawyers Guild,
20 San Francisco Bay Area Chapter
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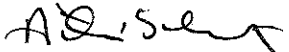
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VERIFICATION

I, Amitai Schwartz, have read the foregoing pleading. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true. I make this verification on behalf of Petitioner because it is absent from the county where I have my office.

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

Executed at Emeryville, California this 14th day of September, 2015.



Amitai Schwartz