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ASSIGNED TO
JUDGE Stephen Gizzi
FOR ALL PURPOSES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN
CALIFORNIA,

Petitioner/Plaintiff,

v.

VALLEJO POLICE DEPARTMENT,

Respondent/Defendant.

CASE NO. **FCS059257**

**VERIFIED COMPLAINT AND
PETITION FOR WRIT OF MANDATE**

[Gov. Code, § 6250 et seq.; Code Civ. Proc., §
1085 et seq.]

INTRODUCTION

1
2 1. This is a suit to enforce the California Public Records Act (“PRA”), Government
3 Code section 6250 et seq., against Respondent Vallejo Police Department (“Respondent” or
4 “Department”) regarding records related to the Department’s badge-bending scandal.

5 2. Over nearly two decades, numerous Department officers bent the tips of their
6 badges to commemorate firing their service weapons at civilians. Senior officers within the
7 Department knew of the practice and attempted to cover it up.

8 3. In 2020, local independent news outlet Open Vallejo broke the badge-bending
9 story, identifying specific officers involved and connecting them to particular shootings, many of
10 which resulted in the killing of civilians.

11 4. In the ensuing scandal, the Department hired outside consultant and former
12 Sonoma County Sheriff Robert Giordano to investigate. Giordano conducted interviews,
13 reviewed records, and completed a report of some 100 pages. That report, its findings, and all
14 supporting evidence remain secret.

15 5. Petitioner the American Civil Liberties Union of Northern California (“Petitioner”
16 or “ACLU”) submitted a PRA request to the Department seeking the Giordano Report and related
17 documents. Petitioner seeks these records to promote transparency and accountability, as each is
18 necessary for the community to heal and regain trust in its police department.

19 6. The Department has substantially refused to comply with Petitioner’s request. It
20 alleges that all withheld documents—concerning what the Department knew about badge-bending
21 prior to the Giordano investigation; the Department’s instructions to Giordano; the evidence
22 gathered during the investigation; and the entire Giordano report—are “personnel records” under
23 Penal Code section 832.7, subd. (a) (hereafter “section 832.7(a)"). The Department also alleges
24 that withheld records are shielded by the attorney-client and deliberative process privileges.

25 7. The Department is incorrect, and its withholding is unlawful. The records
26 Petitioner has requested are not “personnel records” under Penal Code section 832.8. As
27 discussed in Petitioner’s supporting Memorandum of Points and Authorities, the requested
28 records were neither created for the purpose of, nor could they result in, officer discipline, *id.* at

1 section 832.8, subd. (a)(4), and they were not responsive to “complaints,” *id.* at section 832.8,
2 subd. (a)(5).

3 8. In any event, even “personnel records” must be disclosed if they pertain to “[a]n
4 incident involving the discharge of a firearm at a person by a peace officer.” (Pen. Code, § 832.7,
5 subd. (b)(1).) The Legislature enacted this disclosure requirement in 2018 through Senate Bill
6 1421 (“SB 1421”) because it “viewed the then-existing lack of public access to records involving
7 independent oversight investigations as a significant impediment to transparency regarding
8 officer misconduct and use of force incidents.” (*Becerra v. Superior Court* (2020) 44 Cal.App.5th
9 897, 920.) Here, where officer discharges of firearms and a subsequent independent oversight
10 investigation are at the root of the records Petitioner seeks, SB 1421 controls.

11 9. Petitioner seeks a writ of mandamus from this Court to enforce its rights under the
12 PRA. This action is necessary to compel the Department to cease its pattern of secrecy
13 surrounding Department violence—and glorification of that violence—towards community
14 members. It is only through full transparency, consistent with the purposes of the PRA and SB
15 1421, that residents of Vallejo can seek meaningful accountability, promote necessary reforms,
16 and restore confidence in their police department. Petitioner turns to this Court to begin that
17 process now.

18 PARTIES

19 10. Plaintiff and Petitioner AMERICAN CIVIL LIBERTIES UNION OF
20 NORTHERN CALIFORNIA is a non-profit corporation that defends the fundamental rights
21 outlined in the United States Constitution and the California Constitution. ACLU is committed
22 to principles of transparency and accountability and seeks to ensure that the public is informed
23 about the conduct of government officials, including members of law enforcement in particular.
24 ACLU is a member of the public with the right to enforce its requests for records under
25 Government Code sections 6252, subdivisions (b) and (c), and 6258.

26 11. Defendant and Respondent VALLEJO POLICE DEPARTMENT is a California
27 local agency within the meaning of the PRA, Government Code section 6252, subdivisions (a)
28 and (d). The records requested by ACLU are maintained by the Department.

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction under Government Code sections 6258 and 6259, Code
3 of Civil Procedure sections 1060 and 1085, and Article VI, section 10 of the California
4 Constitution.

5 13. Venue is proper in this Court because Respondent and the records in question, or
6 some portion of them, are situated in Solano County. (*See* Code Civ. Proc., §§ 394, subd. (a), 395,
7 subd. (a), 401, subd. (1); Gov. Code § 6259, subd. (a).)

8 **FACTUAL BACKGROUND**

9 **a. The Badge-Bending Scandal and Petitioner’s Request for Records Reflect a**
10 **Lengthy History of Violence by the Department’s Officers Without Accountability.**

11 (i) Historic Violence by Officers of the Department

12 14. Vallejo is a small city (population 122,000), but its 100-member police force has
13 killed 19 residents since 2010 alone—a rate of police killings per capita that exceeds all but one
14 of the 100 biggest cities nationwide. A study determined that the Department’s officers use more
15 force per individual arrest than any other law enforcement agency in California.¹ From April
16 2001 to June 2020, Vallejo officers shot 56 civilians, killing 30.

17 15. True and correct copies of the Vallejo Police Department’s critical incident review
18 logs for April 2001-June 2020, reflecting these shootings, are attached as Exhibit 1.

19 16. Publicly available information suggests that many killings by Department officers
20 were needless and unjustified.

21 17. In 2012, while investigating possible neighborhood burglaries, Department
22 officers killed Mario Romero while he sat in the front seat of a car with a friend. The officer who
23 killed Romero did so by climbing onto the hood of his vehicle and firing 30 shots through the
24 windshield.²

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26 _____
27 ¹ Shane Bauer, *How A Deadly Police Force Ruled a City*, The New Yorker (Nov. 16, 2020)
<<https://www.newyorker.com/magazine/2020/11/23/how-a-deadly-police-force-ruled-a-city>> (as
28 of Nov. 14, 2022).

² *Id.*

1 18. In 2018, a Department officer shot and killed Ronell Foster as he fled. The officer
2 had initially stopped Foster for not having a light on his bicycle. Foster fled after the officer
3 Tased him and beat him with a flashlight.³

4 19. In 2019, six Department officers shot Willie McCoy a total of 55 times, killing
5 him, as McCoy sat asleep in his vehicle at a Taco Bell drive-through.⁴

6 20. In 2020, Department officers killed Sean Monterrosa as he kneeled in a Walgreens
7 parking lot. The officers were responding to reported looting, found Monterrosa alone, and shot
8 him five times after he dropped to the ground in response to police directives.⁵

9 21. There is a significant racial component to Department violence against community
10 members. Vallejo is a diverse community; its residents are 30% white, 25% Asian, 22% Black,
11 and 20% Latino. Yet 69% of Department officers are white, many of whom reside outside
12 Vallejo, and only 7% are Black. Between 2017 and 2019, 50% of use of force incidents by the
13 Department's officers were against Black residents.⁶

14 (ii) Community Outrage and Distrust

15 22. Police killings, abuses of force, and other forms of misconduct have repeatedly
16 traumatized and outraged Vallejo's residents, causing a deep and widening divide between the
17 community and its police department.

18 23. One measure of the community's distrust and anger is the volume of litigation
19 brought against the Department:

20 24. Between 2014 and 2019, the Department was a defendant in 147 legal claims for
21 damages, 60 of which alleged excessive force.⁷

22 _____
23 ³ Nate Gartrell, *Vallejo Police Killing Lawsuit Settles for \$5.7 Million, Attorney Says*, Mercury
24 News (Sept. 3, 2020) <<https://www.mercurynews.com/2020/09/03/vallejo-police-killing-lawsuit-settles-for-5-7-million-attorney-says/>> (as of Nov. 14, 2022).

25 ⁴ Bauer, *Deadly Police Force*, *supra*.

26 ⁵ *Id.*

27 ⁶ Bob Scales, *Police Force Analysis System First Summary Report: Vallejo Police Department*,
28 Police Strategies LLC (Jul. 2020) <https://cdn5-hosted.civiclive.com/UserFiles/Servers/Server_13423/File/VPD/Use%20of%20Force%20Report%20-%20Vallejo%20PD%20-%20July%202020.pdf> (as of Nov. 14, 2022).

⁷ Otis R. Taylor, Jr., *In Vallejo, Police Encounters Often Turn Violent*, S.F. Chronicle (Sept. 13, 2020) <<https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Litany-of-complaints-describes->

1 25. From 2010 to 2020, Vallejo paid out \$16 million to settle suits against the
2 Department. That sum reflects the highest per-officer settlement cost of any law enforcement
3 agency in California.⁸

4 26. In 2017, the City’s insurer, the California Joint Powers Risk Management
5 Authority, raised the City’s deductible from \$500,000 to \$2.5 million in response to the payouts.
6 This was the first time the Authority had ever raised a deductible. Vallejo did not agree to the
7 increase and instead joined a different risk-sharing pool.⁹

8 27. In 2020, Vallejo was a defendant in 24 active suits alleging excessive force. The
9 City estimated that these suits would cost approximately \$50 million to defend.¹⁰

10 (iii) An Absence of Accountability

11 28. Despite the frequency and magnitude of Department violence, the resulting
12 litigation costs to the City, and the breakdown of police-community relations, there has been little
13 meaningful professional or criminal accountability for Department officers who perpetrate
14 violence or other forms of misconduct.

15 29. No officer has been criminally charged in relation to any of the 19 killings since
16 2010.¹¹

17 30. Solano County District Attorney Krishna Abrams has uniformly refused to
18 prosecute members of the Department.¹²

19 31. In the killings of Sean Monterrosa and Willie McCoy, after body worn camera
20 footage of each was made public, Abrams recused herself “in the interest of safety and justice”
21 despite no apparent conflict of interest. Abrams originally asked former State Attorney General
22

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24 _____
25 how-police-15559987.php> (as of Nov. 14, 2022).

26 ⁸ Bauer, *Deadly Police Force*, *supra*.

27 ⁹ Taylor, *In Vallejo*, *supra*.

28 ¹⁰ Bauer, *Deadly Police Force*, *supra*.

¹¹ Michael Cabantuan, “*Badge bending*” and Vallejo’s history of police killings: What’s led to the crisis, S.F. Chronicle (Aug. 8, 2020) <<https://www.sfchronicle.com/bayarea/article/Badge-bending-and-Vallejo-s-history-of-15468430.php>> (as of Nov. 14, 2022).

¹² Cabantuan, “*Badge bending*,” *supra*.

1 Xavier Becerra to conduct the investigation; when he refused, Abrams hired outside counsel, who
2 recently absolved all six officers in the McCoy killing.¹³

3 32. Likewise, the Department has imposed few professional sanctions for these deadly
4 incidents, and what sanctions have been imposed are often delayed or far removed from the use of
5 force.

6 33. For instance, the Department terminated officer Ryan McMahon, one of the
7 McCoy shooters, and the lone shooter in the killing of Ronell Foster, but not for his violence
8 towards civilians. Rather, the Department fired him for discharging his weapon during the McCoy
9 incident while his partner was close to the line of fire.¹⁴

10 34. While Department Lieutenant and President of the Vallejo Police Officers'
11 Association ("VPOA") Michael Nichelini was suspended for destroying evidence of the Sean
12 Monterrosa killing,¹⁵ it was not until October 3, 2022—over two years after the killing—that the
13 Department fired Officer Jarrett Tonn for his unreasonable use of deadly force in the incident.¹⁶

14 35. In 2018, according to former Department Captain John Whitney, Whitney revealed
15 to the Vallejo Mayor and City Council that officers were bending the tips of their badges to
16 commemorate firing their service weapons at civilians. The Mayor and City Council took no
17 action. Instead, Whitney was fired by the Department, purportedly for removing family photos
18 from his cell phone during an internal affairs investigation. Whitney filed a whistleblower action
19 alleging wrongful termination that is ongoing.¹⁷

20 36. Meanwhile, officers involved in shooting and killing civilians continue to be
21 promoted within the Department. Lieutenant Bobby Knight was one of four officers involved in

22 ¹³ *Id.*; see also Brian Krans, *Captain Taser*, *The Appeal* (Jan. 21, 2021)
23 <<https://theappeal.org/vallejo-police-force/>> (as of Nov. 14, 2022).

24 ¹⁴ Krans, *Captain Taser*, *supra*.

25 ¹⁵ Bauer, *Deadly Police Force*, *supra*.

26 ¹⁶ Thomas Gase, *Vallejo Police officer who killed Sean Monterrosa fired for policy violations*,
27 *Mercury News* (Oct. 5, 2022) <<https://www.mercurynews.com/2022/10/05/vallejo-police-department-fires-jarrett-tonn-for-policy-violations/>> (as of Nov. 14, 2022).

28 ¹⁷ Katy St. Clair, *Former police captain set to move forward with "whistleblower lawsuit" against the city, Vallejo Police Department*, *East Bay Times* (Dec. 28, 2020) <<https://www.eastbaytimes.com/2020/12/28/former-police-captain-set-to-move-forward-with-lawsuit-against-the-city-vpd/>> (as of Nov. 14, 2022).

1 the 2005 killing of Otis McPeters, who was Tased, hit with a baton, and placed in a chokehold
2 before his death. Knight was made Provisional Captain in November 2022. Provisional Captain
3 Drew Ramsay shot at Eric Robinson in 2010, after Robinson discarded a handgun during a foot
4 chase. Ramsay was recently promoted to a permanent Captain position. And Sergeant Jeremy
5 Huff shot and killed a juvenile who was hiding behind a concrete wall in 2012. Huff was
6 promoted to Lieutenant.¹⁸

7 37. In the absence of timely, meaningful accountability, violence has proliferated
8 across the Department, with many officers engaging in repeated shootings and killings.

9 38. In 2020, 40% of the Department had been involved in at least one officer-involved
10 shooting, and 14 officers had been involved in two or more.¹⁹

11 39. Officer Sean Kenney was involved in five shootings, killing three people in 2012
12 alone.²⁰

13 40. Officer Josh Coleman has been involved in four shootings.²¹

14 41. Officer Matt Komoda has been involved in four shootings.²²

15 42. Former Officer Jarrett Tonn fired his service weapon four times during a five-year
16 period.²³

17 (iv) Resistance to Reform

18 43. Reform efforts have proved unsuccessful. The VPOA is an active campaign
19 contributor and has had significant influence over the City Council.²⁴

21 ¹⁸ Laurence Du Sault & Geoffrey King, *Shake-up looms as Vallejo police chief takes time off*,
22 Open Vallejo (Oct. 27, 2022) <<https://openvallejo.org/2022/10/27/shake-up-looms-as-vallejo-police-chief-takes-time-off/>> (as of Nov. 14, 2022).

23 ¹⁹ Geoffrey King, *Vallejo police bend badges to mark fatal shootings*, Open Vallejo (Jul. 28,
24 2020) <<https://openvallejo.org/2020/07/28/vallejo-police-bend-badges-tips-to-mark-fatal-shootings/>> (as of Nov. 14, 2022); Taylor, *In Vallejo, supra*.

25 ²⁰ Bauer, *Deadly Police Force, supra*.

26 ²¹ Scott Morris, *Vallejo: The Bay Area's Leader in Police Violence*, Oakland Reporter (Mar. 13,
27 2017) <<https://www.oaklandreporter.org/2017/03/vallejo-bay-areas-leader-in-police.html>> (as of
28 Nov. 14, 2022).

²² Krans, *Captain Taser, supra*.

²³ Bauer, *Deadly Police Force, supra*.

²⁴ *Id.*

1 44. In 2009, the Council created a civilian review committee, but the VPOA was
2 successful in reducing its function to making nonbinding policy recommendations. The VPOA
3 also won three seats on the seven-member committee for former officers.²⁵

4 45. In 2020, in an effort to mitigate heightened insurance premiums, the City Council
5 commissioned an external review of the Department by the OIR Group.²⁶ The resulting OIR
6 Report was deferential, but nonetheless noted a “siege mentality” and “us against the world”
7 mindset” within the Department, cautioning that “[t]he perception of being embattled public
8 servants in a hostile environment can be self-perpetuating as well as deleterious.”²⁷ The OIR
9 Report concluded with a lengthy list of recommendations, covering such topics as the recruitment
10 and promotion of more diverse staff, reexamination and reform of use of force policies, more
11 responsiveness to community concerns, and greater transparency generally.²⁸

12 46. The California Department of Justice (“DOJ”) has been investigating the
13 Department since 2020 regarding both its use of force generally and the destruction of evidence in
14 the Monterrosa case in particular.²⁹ To date, the DOJ has not released any findings, nor has the
15 Department responded to the investigation by proactively instituting reforms.

16 **b. Available Evidence of the Badge-Bending Scandal and the Department’s Response**
17 **Reveals a Department Culture of Hostility Towards Community Members.**

18 47. It is now widely known that Department officers bent the tips of their badges to
19 commemorate shooting at civilians—shootings which many times resulted in civilian death. The
20 Department has endeavored to conceal information about badge-bending and its responses to this
21 misconduct, but information from a number of sources has come into the public sphere,
22 portraying a police department that celebrated violence and held its own community in contempt.

23 _____
24 ²⁵ *Id.*

25 ²⁶ OIR Group, *Vallejo Police Department: Independent Assessment of Operations, Internal*
26 *Review Systems, and Agency Culture* (May 2020)
<https://www.oirgroup.com/_files/ugd/d85a96_9acef98ea30e4a98b97e119a7d44fbab.pdf> (as of
27 Nov. 14, 2022).

27 ²⁷ *Id.* at 2, 3, 11, italics omitted.

28 ²⁸ *Id.* at 65-66.

²⁹ Taylor, *In Vallejo, supra.*

1 (i) The Open Vallejo Story

2 48. Open Vallejo publicly broke the story of the badge-bending scandal in an article
3 published July 28, 2020.³⁰

4 49. A true and correct copy of the July 28, 2020 article titled “Vallejo police bend
5 badges to mark fatal shootings” is attached as Exhibit 2.

6 50. Based on interviews, including of unnamed senior Department officers, the article
7 reported that a secret cohort of officers bent the tips of their badges to commemorate having fired
8 their guns at civilians. Open Vallejo reported that badge-bending took place in unofficial
9 ceremonies at bars and backyard barbecues, and was described as a “notch on the bedpost” to
10 mark shooting at so-called “hoodlums” in the community.³¹

11 51. The article stated that at least 14 officers had bent their badges, with seven having
12 bent two or more tips to mark multiple shootings. The article specifically identified Sean Kenney,
13 Joe McCarthy, and Steve Darden as having bent multiple badge-tips.³²

14 52. Open Vallejo reported that badge-bending in the Department was longstanding and
15 known to Department leadership. In the wake of the McCoy killing, then-Chief of Police Andrew
16 Bidou directed Captain Whitney to put an end to the practice.³³

17 53. The article stated that Whitney met with command staff and ordered them to
18 inspect the badges of their subordinates and return any bent badges for replacement. Within an
19 hour, 10 badges with bent tips came back. Bidou thought that an invoice for 10 new badges would
20 attract attention and reflect poorly on his leadership, so he instructed Whitney to return the badges
21 for the officers to bend the tips back themselves.³⁴

22 54. The Department took no further action related to badge-bending prior to release of
23 the Open Vallejo article.³⁵

24
25 _____
³⁰ King, *Vallejo Police Bend Badges, supra*.

26 ³¹ *Id.*

27 ³² *Id.*

28 ³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

1 55. After Open Vallejo broke the story, local officials denied knowledge of badge-
2 bending. VPOA President Nichelini said he “would never permit unauthorized modification of
3 badges,” adding, “I believe this is a figment of someone’s imagination.”³⁶

4 56. A representative for City Manager Greg Nyhoff said, “We don’t have any
5 information about a current practice by our officers related to badges.”³⁷

6 57. Solano County Chief Deputy District Attorney Paul Sequeira told Open Vallejo,
7 “We don’t respond to rumors. Nobody brought that to us.”³⁸

8 58. But former Department Captain Whitney told Open Vallejo that he had personally
9 reported the badge-bending to then-Mayor Bob Sampayan, City Manager Nyhoff, and then-City
10 Attorney Claudia Quintana, all of whom took no action in response.³⁹

11 (ii) Testimony in *People v. Dominic Milano*

12 59. A pending criminal prosecution, *People v. Dominic Milano*, Case No.
13 VCR233208, has provided further insight into the badge-bending scandal. Defendant Milano is
14 charged with attempted murder of a police officer, but argues that he fired in self-defense after
15 Officer Komoda, an alleged badge-bender, fired first. The court permitted testimony concerning
16 badge-bending as pertinent to the theory of defense in an evidentiary hearing held March 22-23,
17 2022.

18 60. A true and correct copy of pertinent excerpts of the *Milano* hearing transcript
19 referenced herein is included as Exhibit 3.

20 61. Now-retired officer Kent Tribble testified that he initiated the practice of badge-
21 bending at the Department, bringing it from his prior employment as a police officer in Concord,
22 California. (Ex. 3 at Vol. I, 63:3-64:26; 67:6-68:8.)

23 62. Questioned about the purpose of badge-bending, and whether it was about “being
24 in a shooting,” Tribble testified, “Yes, it was. It was – it was about whether – you know, right,
25 wrong, or indifferent, a lot of people don't know if when they get to that point in – if and when

26 _____
³⁶ *Id.*

27 ³⁷ *Id.*

28 ³⁸ *Id.*

³⁹ *Id.*

1 they get to that point in their career that they'll actually perform or they'll freeze. And that's what
2 it was about.” (*Id.* at Vol. I, 89:13-19.)

3 63. One officer testified that Tribble bent the tip of his badge, then swore him to
4 secrecy about the practice of badge bending. (*Id.* at Vol. II, 35:23-26.)

5 64. Tribble testified that in 2017, he was approached by his superior officer, Captain
6 Lee Horton, who asked Tribble what was wrong with his badge and then said, “he knew what it
7 was about and that he didn’t ever want to see it again[.]” (*Id.* at Vol. I, 82:28-84:6.)

8 65. Tribble testified that Captain Horton delivered a similar remark to him, more
9 sternly, in 2018. According to Tribble, Horton said, “I’m going to talk to you about the badge
10 bending. And I don’t want to hear any bullshit excuses or reasons or explanations,” repeating that
11 “he knew what it was all about and he didn’t ever want to see it again.” (*Id.* at Vol. I, 86:23-
12 87:27.)

13 (iii) Ed Jones Company Records

14 66. The Ed Jones Company is a private vendor that provides and repairs badges for the
15 Department. A Vallejo Sun review of approximately 1,200 pages of Ed Jones Company invoices
16 and emails regarding services for the Department corroborates evidence of badge-bending as well
17 as Department leadership’s awareness of the practice.⁴⁰

18 67. One 2017 invoice reveals that the Department paid for refurbishment of a badge
19 belonging to Officer Waylon Boyce, which was submitted with a note to “Straighten point above
20 ‘E’ in ‘Vallejo.’” Boyce was one of eight Department officers who shot and killed Sherman
21 Peacock in 2011. Todd Tribble was also a shooter in the Peacock killing. Boyce has since been
22 promoted to Sergeant.⁴¹

23 68. Ed Jones Badge Company records also reveal that in 2013, three Department
24 officers—Sean Kenney, Jason Bauer, and Jeremy Huff—ordered replacement chrome badges on
25

26 ⁴⁰ Scott Morris & Brian Krans, *Records show Vallejo police paid for repaired or replacement*
27 *badges for officers in shooting*, Vallejo Sun (July 13, 2022)
<[https://www.vallejosun.com/records-show-vallejo-police-paid-for-repaired-or-replacement-](https://www.vallejosun.com/records-show-vallejo-police-paid-for-repaired-or-replacement-badges-for-officers-in-shootings/)
28 [badges-for-officers-in-shootings/](https://www.vallejosun.com/records-show-vallejo-police-paid-for-repaired-or-replacement-badges-for-officers-in-shootings/)> (as of Nov. 14, 2022).

⁴¹ *Id.*

1 the same invoice. Kenney shot and killed three people in 2012: Anton Pat Barrett, Mario Romero,
2 and Jeremiah Moore. Bauer was one of two shooters in the 2012 killing of Peter Mestler. Huff
3 was one of two shooters in the 2012 killing of Jared Huey.⁴²

4 **c. The Department Responded to the Badge-Bending Exposé with the Giordano**
5 **Investigation.**

6 69. On July 31, 2020, three days after the Open Vallejo story broke, the Department
7 issued a press release announcing a third-party investigation into badge-bending. The Department
8 clarified that the investigation concerned allegations of “officers taking part in the act [of bending
9 their badges] after an officer-involved shooting occurs.” A true and correct copy of the press
10 release is included as Exhibit 4.

11 70. On August 14, 2020, the City of Vallejo, through City Manager Nyhoff, signed a
12 contract with Robert Giordano of R. Giordano Consulting & Investigations LLC. A true and
13 correct copy of this contract is included as Exhibit 5. The contract was for a period of one year
14 and an amount not to exceed \$100,000 to “[c]onduct a workplace investigation in the Vallejo
15 Police Department involving ‘badge bending’ and other alleged, related practices arising from
16 police-related incidents.” (Ex. 5, Att. 1 to Ex. A, “Scope of Work”.)

17 71. The Department’s retention of a third-party investigator distinguished this
18 investigation from standard employment investigations, as the Department’s policy manual
19 provides that employment evaluations and investigations regarding potential misconduct are to be
20 conducted by a departmental supervisor or Internal Affairs.

21 72. True and correct copies of Policies 1003 and 1011 of the Vallejo Police
22 Department Policy Manual are attached as Exhibit 6.

23 73. On December 16, 2020, Attorney Michael Rains sent a letter to Giordano on
24 behalf of the VPOA to “preview [] information . . . likely [to] be developed by virtue of
25 [Giordano’s] interviews of various officers.” The letter stated that the purpose of badge-bending
26 was to mark an officer’s survival of an officer-involved shooting. The letter further cautioned that
27

28 ⁴² *Id.*

1 discipline of any officer for badge-bending was time-barred by the one-year statute of limitations
2 of the Police Officers' Bill of Rights ("POBR"), Government Code, section 3304.⁴³

3 74. Giordano investigated VPD badge-bending during 2020 and 2021, principally by
4 interviewing current and former officers in recorded interviews. (Ex. 3 at Vol. III, 22:16-20.)

5 75. Upon completion of his investigation, Giordano completed a written report setting
6 out his findings and conclusions. No portion of that report has been made public.

7 76. No interview transcript, recording, or other materials gathered or relied upon by
8 Giordano in the course of that investigation has been made public.

9 77. On information and belief, the Department has not disciplined any officer or
10 proposed or implemented any policy change in apparent response to the Giordano investigation or
11 report.

12 78. At least two current Vallejo Police Department officers, Matthew Komoda and
13 David McLaughlin, have admitted to participating in badge-bending without apparent sanction.
14 (Ex. 3 at Vol. I, 31:15-43:14; Vol. III, 5:14-13:20.)

15 79. In proceedings in the ongoing *Milano* criminal matter, Solano County Superior
16 Court Judge Healy reviewed the entire Giordano Report *in camera* and expressed concern that the
17 Giordano report had not been publicly released, or even provided to the City Council:

18 I – I just don't see how the community benefits from any of this. I don't –
19 it seems to me just the opposite. It seems to me that the community is
20 suffering grievous harm because of something that, to a certain extent,
21 has been readily identified, it seems to me to a large extent at this point
22 has been contained, and yet remains this specter of silence and – just
23 lends itself to the community not understanding what happened here,
24 which just exacerbates the protests and the lack of confidence and all of
25 that.

26 (*Id.* at Vol. I, 16:7-15.)

27 80. Ultimately, Judge Healy declined to release the Report for purposes of Mr.
28 Milano's criminal case, calling the question of whether the Report is a public record "academic"

⁴³ Katy St. Clair, *VPOA attorney says badge bending occurred at Vallejo Police Department, but for a different reason*, Vallejo Times-Herald (Jul. 28, 2021)
<<https://www.timesheraldonline.com/2021/07/28/attorney-says-badge-bending-occurred-for-vallejo-police-department-but-for-a-different-reason/>> (as of Nov. 14, 2022).

1 because the Court “released [to the defense] everything that matters in terms of the relevance of
2 badge bending to [the defendant’s criminal case].” (*Id.* at Vol. III, 64:25-28.) Judge Healy noted
3 that “in some other forums a lot of this needs to be revisited[.]” (*Id.* at Vol. III, 45:26; *see also id.*
4 at Vol. III, 59:6-16 [“[I]n a different forum, I think this discussion is appropriate.”].)

5 **d. ACLU’s Public Records Act Request.**

6 81. On January 18, 2022, ACLU submitted a request for records under the California
7 Public Records Act, Gov. Code, § 6250 et seq., seeking:

8 1. All records related to an internal investigation by Robert Giordano, regarding
9 allegations of Vallejo police officers bending their police badges in response to their
10 involvement in officer-involved shootings and deaths. This request includes but is not
11 limited to:

- 12 i. All reports (including supplemental reports) and findings regarding the badge
13 bending allegations;
- 14 ii. All records of interviews conducted as part of this investigation, including but
15 not limited to audio recordings and existing transcripts of these interviews;
- 16 iii. All photographs relating to the badge bending investigation;
- 17 iv. All records pertaining to agreements, background materials, and instructions
18 given to Giordano regarding the scope and purpose of his investigation;
- 19 v. All records documenting the potential witnesses who were interviewed as part
20 of Giordano’s investigation.

21 2. All records of internal *or* public complaints alleging a practice of badge bending
22 amongst Vallejo Police Department officers in response to police-involved shootings.
23 This request applies to the time period of January 1, 2010, to the present.

24 3. All communications by Department employees regarding allegations of badge
25 bending, from January 1, 2010, to the present. “Communications” includes but is not
26 limited to electronic mail, written letters, press releases, text messages, and social
27 media messages or posts. We specifically request records pertaining to badge bending
28 that contain any of the following terms: “badge bending,” “John Whitney,”
“Whitney,” “Open Vallejo.”

4. All Vallejo Police Department policies regarding the use, maintenance and/or
replacement of police badges.

5. All records of police badge replacement orders and requests for badge replacement
from January 1, 2010, to the present. This request includes the names of police officers
for whom badge replacements were requested, as well as dates of such requests.

1 A true and correct copy of this request is included as Exhibit 7.

2 82. On January 28, 2022, the Department responded that it considered records
3 responsive to request 1, subdivisions (i), (ii), (iii), and (v) to be exempt under Penal Code section
4 832.7(a), and seeking clarification of the meaning of “complaint” in request 2. The Department
5 provided a link to the publicly available policy handbook in response to request 4, and indicated
6 that it needed additional time, until February 11, 2022, to collect and review responsive records.
7 A true and correct copy of the Department’s January 28, 2022 correspondence is included as
8 Exhibit 8.

9 83. ACLU responded by letter on February 1, 2022, objecting to the Department’s
10 asserted exemption under section 832.7 on the grounds that the records were not “personnel
11 records” and fell within the ambit of SB 1421 in any event. ACLU further defined “complaint”
12 for purposes of request 2 as “citizen complaints, complaints made to the internal affairs
13 department, and any complaints or reports made by department employees or former department
14 employees to the Chief of Police, his deputies, or other supervisory staff in the department.” A
15 true and correct copy of this letter is included as Exhibit 9.

16 84. On February 14, 2022, the Department acknowledged receipt of ACLU’s letter of
17 February 1 and stated that it needed additional time, giving itself until February 25, 2022 to
18 comply. A true and correct copy of this correspondence is included as Exhibit 10.

19 85. On February 28, 2022, the Department wrote that in light of the definition of
20 “complaint” in ACLU’s February 1 letter, the Department had no records responsive to request 2.
21 A true and correct copy of this correspondence is included as Exhibit 11.

22 86. Also on February 28, 2022, ACLU sent a letter to the Department noting that it
23 had twice exceeded its own extensions of the timeline for compliance. This letter asked the
24 Department to comply with all outstanding requests by March 4, 2022. A true and correct copy of
25 ACLU’s letter is included as Exhibit 12.

26 87. Also on February 28, 2022, the Department wrote to provide a record in response
27 to request 1, subsection (iv), providing the web location of the contract for services between the
28 Department and Robert Giordano. The Department asserted that all other records responsive to

1 request 1, subsection (iv) were exempt under section 832.7(a), and otherwise gave itself until
2 March 11, 2022 to review and provide nonexempt records. A true and correct copy of this
3 correspondence is included as Exhibit 13.

4 88. On March 10, 2022, the Department extended its own deadline to March 25, 2022.
5 A true and correct copy of this notification is included as Exhibit 14.

6 89. On March 18, 2022, the Department indicated that with regards to request 5, its
7 records do not go back to 2010, as requested, and that it would need additional time to respond
8 fully to request 5. The Department also provided a document listing badge vendor transactions
9 from 2015 to 2022. A true and correct copy of the Department's correspondence is included as
10 Exhibit 15.

11 90. On March 24, 2022, the Department extended its own deadline for further
12 compliance to April 8, 2022. A true and correct copy of this notice is included as Exhibit 16.

13 91. On April 7, 2022, the Department extended its own deadline to April 22, 2022. A
14 true and correct copy of this notice is included as Exhibit 17.

15 92. On April 11, 2022, ACLU sent the Department a letter stating that it had
16 repeatedly extended its own deadlines without providing records or a substantive response as to
17 requests 3 or 5. A true and correct copy of this letter is included as Exhibit 18.

18 93. On April 21, 2022, the Department provided notice of receipt of ACLU's letter of
19 April 11. A true and correct copy of this notice is included as Exhibit 19.

20 94. On April 25, 2022, the Department provided records. In response to request 3, it
21 provided a press release concerning Chief Shawny Williams's decision to hire a third-party
22 consultant to investigate the badge-bending scandal. By accompanying cover letter, the
23 Department indicated it was conducting an email search for the other keywords identified in
24 request 3. A true and correct copy of this correspondence is included as Exhibit 20. In response to
25 request 5, the Department provided invoices and receipts concerning orders by the Department
26 from the Ed Jones Badge Company dating from January 2019 through May 2021.

27 95. On May 4, 2022, the Department wrote to extend its deadline for further
28 production until May 20, 2022. A true and correct copy of this notice is included as Exhibit 21.

1 96. On May 19, 2022, the Department produced records responsive to request 5 in the
2 form of invoices and receipts concerning orders by the Department from the Ed Jones Badge
3 Company for the fiscal year 2015-16. The Department stated that it would provide further
4 records, including additional invoices, on or before June 3, 2022. A true and correct copy of the
5 Department’s correspondence is attached as Exhibit 22.

6 97. On June 1, 2022, ACLU sent the Department a letter requesting an update as to the
7 timeline of production for records found during its email keyword search and arguing that records
8 responsive to request 1 subsections (i), (ii), (iii), and (v) are not properly classified as “personnel
9 records” and may not be withheld on that basis. A true and correct copy of ACLU’s June 1st letter
10 is included as Exhibit 23.

11 98. On June 3, 2022, the Department responded that it had received the letter of June
12 1, would respond in substance later, and would disclose further responsive records before June
13 17, 2022. A true and correct copy of this notice is included as Exhibit 24.

14 99. On June 9, 2022, the Department responded in substance to ACLU’s letter of June
15 1 maintaining that records responsive to request 1, subsections (i), (ii), (iii), and (v) are
16 “personnel records” and not discoverable pursuant to SB 1421. Through its attorney, Katelyn
17 Knight, the Department indicated that it was construing Penal Code section 832.7, subd. (b) to
18 exclude badge bending that “allegedly occurred after” officer-involved shooting incidents. A true
19 and correct copy of this letter is included as Exhibit 25.

20 100. On June 17, 2022, the Department produced records responsive to request 5 in the
21 form of invoices and receipts concerning orders by the Department from the Ed Jones Badge
22 Company for the fiscal years 2016-17 and 2017-18. The Department stated that it would provide
23 further records, including additional invoices, on or before July 1, 2022. A true and correct copy
24 of this correspondence is included as Exhibit 26.

25 101. On June 23, 2022, ACLU wrote to the Department’s counsel Katelyn Knight to
26 request a meet and confer regarding the exemptions asserted by the Department under Penal Code
27 section 832.7(a). A true and correct copy of this request is included as Exhibit 27.

28

1 102. The parties met and conferred on June 28, 2022, to discuss ACLU’s request and
2 the Department’s claimed exemptions. The Department clarified its position that withheld records
3 are “personnel records” under Penal Code section 832.8. The parties disagreed on this point and
4 were unable to reach a resolution. The Department also stated that it does not consider section
5 832.7, subd. (b) to require disclosure of the requested records whether they are “personnel
6 records” or not. The parties disagreed on this point and were unable to reach a resolution.

7 103. On June 30, 2022, the Department wrote to extend its deadline for further
8 production until July 15, 2022. A true and correct copy of this notice is included as Exhibit 28.

9 104. On July 15, 2022, the Department wrote to extend its deadline for further
10 production until July 29, 2022. A true and correct copy of this notice is included as Exhibit 29.

11 105. On July 29, 2022, the Department produced records responsive to request 5 in the
12 form of invoices and receipts concerning orders by the Department from the Ed Jones Badge
13 Company for the fiscal years 2018-19 and 2019-20. The Department also produced a 21-page
14 document titled “Badge Bending emails 2010-2022_Redacted.” A true and correct copy of this
15 21-page document is included as Exhibit 30.

16 106. The Department further asserted that all additional responsive records (including
17 the results, if any, of its email keyword search in response to request 3) were exempt from
18 disclosure under Penal Code section 832.7(a), or the attorney-client or deliberative process
19 privileges. It stated that ACLU’s request for public records was thereby closed. A true and correct
20 copy of the July 29, 2022 communication asserting these privileges and completion of production
21 is included as Exhibit 31.

22 **e. The Department’s Withholding of Responsive Documents Violates the Public**
23 **Records Act.**

24 107. Under the PRA, “access to information concerning the conduct of the people’s
25 business”—business conducted by public agencies on behalf of the people—is a “fundamental
26 and necessary right of every person in this state.” (Gov. Code, § 6250.)

27 108. To ensure that state and local agencies are transparent and accountable, the PRA
28 empowers members of the public to inspect and copy agency records. (*See id.* §§ 6253, subds. (a),

1 (d)(1.) The PRA facilitates this transfer of information by codifying specific requirements and
2 deadlines that agencies must observe upon receipt of a public records request.

3 109. Upon request, a public agency must “promptly” make publicly available for
4 inspection or copy any record that it prepared, owns, uses, or retains—so long as the record is not
5 subject to the PRA’s limited exemptions to disclosure. (*Id.* § 6253, subd. (b).) If an agency
6 determines that a request should be denied, it must issue a denial in writing. (*Id.* § 6255, subd.
7 (b).)

8 110. “Grounds to deny disclosure of information ‘must be found, if at all, among the
9 specific exceptions to the general policy that are enumerated in the Act.’ The general policy of
10 disclosure reflected in the act ‘can only be accomplished by narrow construction of the statutory
11 exemptions.’” (*Fairley v. Super. Ct.* (1998) 66 Cal.App.4th 1414, 1419-20.) The responding
12 agency bears the burden of proving that an exemption applies. (*Rogers v. Super. Ct.* (1993) 19
13 Cal.App.4th 469, 476.)

14 111. In 2018, the California Legislature enacted SB 1421, which modifies Penal Code
15 section 832.7 in making public three categories of records related to peace officers. These include
16 records related to (1) use of serious or deadly force; (2) a sustained finding of sexual assault by a
17 peace officer; and (3) a sustained finding of dishonesty tied to police officers’ unique powers in
18 investigating and prosecuting crimes, such as perjury or the fabrication of evidence, or police
19 misconduct. (*See* Penal Code, §§ 832.7, subds. (b)(1)(A)-(C) (effective Jan. 1, 2019).) Under SB
20 1421, a member of the public who filed a PRA request on or after January 1, 2019 is entitled to
21 disclosure of all such documents in the possession of the public agency, regardless of when those
22 documents were created. (*See Walnut Creek Police Officers’ Assn. v. City of Walnut Creek* (2019)
23 33 Cal. App. 5th 940, 941-42.)

24 112. In enacting SB 1421, the Legislature recognized the strong public interest in access
25 to these records:

26 The public has a right to know all about serious police misconduct, as
27 well as about officer-involved shootings and other serious uses of force.
28 Concealing crucial public safety matters such as officer violations of
civilians’ rights, or inquiries into deadly use of force incidents, undercuts

1 the public's faith in the legitimacy of law enforcement, makes it harder
2 for tens of thousands of hardworking peace officers to do their jobs, and
endangers public safety.

3 (SB 1421, section 1(b).)

4 113. The new amendments to section 832.7 mandate redaction of certain categories of
5 information (such as to protect the identity of a complainant) but do not permit withholding entire
6 records subject to disclosure. (*See* Pen. Code, § 832.7, subd. (b)(6).) An agency may only actually
7 withhold a disclosable record under limited, enumerated circumstances during “an active criminal
8 or administrative investigation[.]” (*Id.* § 832.7, subd. (b)(7).)

9 114. The PRA makes clear that a verified petition is the correct procedural vehicle to
10 address public records improperly withheld: “Whenever it is made to appear by verified petition
11 to the superior court of the county where the records or some part thereof are situated that certain
12 public records are being improperly withheld from a member of the public, the court shall order
13 the officer or person charged with withholding the records to disclose the public record or show
14 cause why the officer or person should not do so.” (Gov. Code, § 6259, subd. (a).)

15 115. The California Constitution provides an additional, independent right of access to
16 government records: “The people have the right of access to information concerning the conduct
17 of the people's business, and, therefore, the meetings of public bodies and the writings of public
18 officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3(b)(1).)

19 116. A writ of mandate lies to compel the government to comply with the PRA and the
20 California Constitution. (Gov. Code, § 6258; Code Civ. Proc., § 1085.)

21 117. The Department's blanket refusal to produce many of the records responsive to
22 ACLU's PRA request violates the PRA.

23 118. The Department's claimed exemption under Penal Code section 832.7(a) is invalid
24 because the records requested are not “personnel records” under any subsection of section 832.8
25 or records of “complaints” under section 832.5.

26 119. The records requested are not records relating to “employee [] appraisal, or
27 discipline,” section 832.8, subd. (a)(4), because the Giordano investigation was not initiated for
28

1 the purpose of evaluating employee discipline, it has not resulted in discipline of any officer, and
2 under POBR, it could not result in discipline because “investigation of the allegation [was] not
3 completed within one year of the public agency’s discovery by a person authorized to initiate an
4 investigation of the allegation of an act, omission, or other misconduct.” (Gov. Code, § 3304,
5 subd. (d).)

6 120. The requested records are likewise not “[c]omplaints, or investigations of
7 complaints, concerning an event or transaction in which [the officer] participated,” Penal Code
8 section 832.8, subd. (a)(5), or complaints maintained under Penal Code section 832.5. By its letter
9 of February 28, 2022 in response to ACLU’s PRA request, the Department admits that it has no
10 record of any such “complaints.” (*See Ex. 11.*)

11 121. Regardless, the records must be disclosed pursuant to SB 1421, as records
12 pertaining to an officer’s discharge of a firearm. (Pen. Code, § 832.7, subd. (b)(1).) As former
13 Department Sergeant Tribble testified, badge-bending was inextricably tied to officers
14 discharging their weapons—the purpose of badge-bending was to commemorate an officer’s
15 having fired his gun. ACLU seeks records pertinent to badge-bending. Consistent with the broad
16 construction of the PRA, the purposes of SB 1421, and the narrow construction afforded
17 exemptions, the records requested must be construed as falling squarely within section 832.7,
18 subd. (b)(1).

19 122. ACLU also challenges the Department’s production and responses to request 3 as
20 not credible.

21 123. The Department’s provision of 21 pages of emails in response to request 3—all
22 apparently responding to external requests for information—is facially implausible as comprising
23 all “communications” about badge-bending by Department employees. (*See Ex. 30.*)

24 124. To the extent that the Department asserts all additional communications fall under
25 either the attorney-client or deliberative process privileges, it has not met its burden under either
26 privilege. The Department’s overbroad interpretation of the attorney-client privilege is contrary to
27 law. (*State Farm Fire & Casualty Co. v. Super. Ct.* (1997) 54 Cal.App.4th 625, 640.) Moreover,
28 the Department has not asserted and cannot establish that the public interest clearly favors

1 nondisclosure, as it must in order to invoke the deliberative process privilege. (*Citizens for Open*
2 *Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306.)

3 125. ACLU provides a full discussion of the Department's failure to comply with the
4 PRA in its Memorandum of Points and Authorities, filed concurrently herewith. This document
5 incorporates that Memorandum in full by reference.

6 **FIRST CAUSE OF ACTION**

7 **For Writ of Mandate for Violation of the California Public Records Act,**
8 **Gov. Code, § 6250 et seq., & Article I, § 3 of the California Constitution**

9 126. Plaintiff incorporates by reference the foregoing paragraphs as though fully set
10 forth herein.

11 127. The PRA creates a mandatory duty for public agencies to produce non-exempt
12 records in response to a request.

13 128. The Department's refusal to produce non-exempt, responsive records violates the
14 PRA and Article I, section 3 of the California Constitution.

15 129. Issuance of a writ of mandate compelling the Department to perform its duties
16 under the PRA is required because there exists no plain, speedy, and adequate remedy in the
17 ordinary course of law which would protect Plaintiff's rights and interests.

18 **SECOND CAUSE OF ACTION**

19 **For Declaratory Relief for Violation of the California Public Records Act,**
20 **Gov. Code, § 6250 et seq., and Article I, § 3 of the California Constitution**

21 130. Plaintiff incorporates by reference the foregoing paragraphs as though fully set
22 forth herein.

23 131. The Department has acted and is continuing to act in violation of the PRA by
24 refusing to produce non-exempt, responsive records.

25 132. The Department's practice of violating the PRA in this manner is an illegal
26 expenditure of public funds in violation of a non-discretionary duty.

27
28

1 133. An actual controversy exists between the parties concerning whether the
 2 Department has engaged in conduct that violates the disclosure requirements of the PRA and
 3 violates the California Constitution.

4 134. A judicial determination to resolve this actual controversy is necessary and
 5 appropriate at this time.

6 **PRAYER FOR RELIEF**

7 135. WHEREFORE, Plaintiff prays for judgment as follows:

- 8 i. For issuance of a peremptory writ of mandate compelling the Department to
 9 immediately disclose all non-exempt, requested public records in its possession;
 10 ii. For issuance of an alternative writ of mandate, directing and requiring the
 11 Department to immediately disclose all non-exempt, requested public records in
 12 its possession, or show cause why the Department should not have to; and upon
 13 return to the alternative writ, issue a peremptory writ as set forth in paragraph i.,
 14 above;
- 15 iii. For a declaration that the Department’s conduct violates the PRA and the
 16 California Constitution in failing to timely disclose all non-exempt, requested
 17 public records in its possession;
- 18 iv. For reasonable attorneys’ fees pursuant to California Code of Civil Procedure
 19 section 1021.5 and Government Code section 6259, subd. (d);
- 20 v. For costs of suit; and
- 21 vi. For such other and further relief as the Court may deem just and proper.

22 Dated: November 22, 2022

Respectfully submitted,

24 AMERICAN CIVIL LIBERTIES UNION OF
 25 NORTHERN CALIFORNIA

26 By: Emi Young

Emi Young (SBN 311238)
 eyoung@aclunc.org
 Avram Frey (MJP 804789)

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VERIFICATION

I, Emi Young, am a Staff Attorney for the American Civil Liberties Union Foundation of Northern California (“ACLU”).

I have read the foregoing VERIFIED PETITION FOR A WRIT OF MANDATE AND COMPLAINT and know the contents thereof. The facts alleged in paragraphs 15, 49, 60, 69, 70, 72, and 81-106 are within my knowledge and I know them to be true. As to all other matters, they are alleged on information and belief, and as to those matters, I believe them to be true.

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

Executed on November 22, 2022, in Oakland, California.



Emi Young