

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FIRST APPELLATE DISTRICT
DIVISION _____

CITY OF VALLEJO,

Petitioner,

v.

SOLANO COUNTY SUPERIOR COURT,

Respondent.

AMERICAN CIVIL LIBERTIES UNION
OF NORTHERN CALIFORNIA,

Real Party in Interest.

Case No. A _____

Public-Redacts Material from
Conditionally Sealed Record

**PETITION FOR EXTRAORDINARY WRIT OF MANDATE
IMMEDIATE STAY REQUESTED**

Solano County Superior Court, Case No. FCS059257

Honorable Stephen Gizzi

Immediate Stay Requested of Order for Documents and Transcript of
Argument to be Publicly Disclosed after on October 10, 2024, at 5:00 p.m.

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PETITION FOR EXTRAORDINARY WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF

The City of Vallejo requests an extraordinary writ of mandate directing respondent Solano County Superior Court, the Honorable Stephen Gizzi (Dept. 3, (707) 207-7303), to vacate its order to publicly disclose portions of peace officer personnel records and information from those records, and to enter a different order.

Petitioner alleges as follows:

I.

On January 18, 2022, the City of Vallejo received a Public Records Act request from the American Civil Liberties Union of Northern California (the “ACLU”) for (1) all records related to “an internal investigation by Robert Giordano, regarding allegations of Vallejo police officers bending their police badges in response to their involvement in officer-involved shootings and deaths” including reports, interviews, photos, agreements, background materials, and instructions given to Giordano, and records identifying interviewed witnesses, (2) all records of complaints alleging a practice of badge bending in response police-involved shootings from January 1, 2010 to present, (3) all communications by Department employees regarding allegations of badge bending from January 1, 2010 to present, all (4) Vallejo Police Department policies regarding use, maintenance or replacement of badges, and (5) all records of badge replacement orders and replacement requests from January 1, 2010 to present.

II.

The investigation at issue is an internal affairs investigation into allegations that officers bent the tips of their badges following a fatal shooting. Independent investigator Rob Giordano was hired to conduct the

investigation. Giordano was charged with making determinations as to whether one or more officers violated Vallejo Police Department policy, which could lead to discipline.

III.

The City of Vallejo produced the contract with Giordano, the requested policies, records relating to badge replacement orders and requests, and all non-exempt records of responsive communications. The remaining records were withheld as exempt from public disclosure under Penal Code § 832.7(a), and Government Code §§ 6254(k) and 6255(a).

IV.

On November 21, 2022, real party in interest the ACLU filed a verified Complaint and Petition for Writ of Mandate in Solano County Superior Court.

V.

On November 3, 2023, the ACLU filed a *Pitchess* Motion under Evidence Code § 1043 seeking the investigation report and related records. The purpose of the Motion was to allow the ACLU to obtain factual information under protective order to assist it in formulating arguments for its Writ Petition. The City opposed the Motion in part, but did not oppose the request for an *in camera* review or provision of some records with redactions and under protective order.

VI.

On November 29, 2023, the Hon. Stephen Gizzi granted the *Pitchess* motion and set an *in camera* review to take place on December 20, 2023. On that date, the Court reviewed the investigation records and related e-mail correspondence *in camera* and ordered a subset of those records disclosed with redactions. The disclosures consisted of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VII.

The Court signed a protective order precluding disclosure of the records produced in connection with the *Pitchess* motion pursuant to Evidence Code § 1045 and an order sealing the transcript of the *in camera* review.

VIII.

Following the *Pitchess* motion and resulting production, the parties met and conferred regarding additional written discovery Petitioner wished to propound. Petitioner was particularly seeking information pertaining to any disciplinary action taken as a result of the badge bending investigation. The parties reached a compromise and agreed the City would provide a response to specific requests for admission on that topic subject to the existing protective order, without prejudice to the ACLU's right to file a motion to remove the confidentiality designation. The City accordingly provided written responses to requests for admission under protective order related to any discipline imposed as a result of the investigation.

IX.

On June 27, 2024, the ACLU filed a Motion for Judgment on its Complaint and Petition for Writ of Mandate arguing that the badge bending investigation was subject to public disclosure under Penal Code § 832.7(b) on various theories. The ACLU also filed a Motion to Clarify the Scope of the Protective Order, seeking public disclosure of the City's discovery responses related to any discipline as a result of the investigation. Both were filed conditionally under seal with an application for sealing as the Motions discussed information from records subject to the Court's

protective order. The City opposed both Motions and submitted an application sealing portions of its opposition brief. The Court granted all applications to seal.

X.

On October 1, 2024, the Court issued a tentative ruling ordering the parties to appear for hearing and further ordering that the hearing would be closed to members of the press and public, as matters under protective order would be discussed. The tentative ruling also provided that the transcript of hearing would be sealed. The ACLU filed an objection to the orders closing the hearing and sealing any subsequent transcript.

XI.

On October 2, 2024, the parties appeared for hearing on the pending Motions. At the closed hearing, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

XII.

The City requested that the Court stay its order for disclosure of records and unsealing the hearing transcript until expiration of the time to

appeal. The Court stayed its order making public the records and transcript of the October 2, 2024 hearing until October 10, 2024 at 5:00 p.m..

XIII.

Respondent Court erred in ordering disclosure of records and information provided under *Pitchess* and pursuant to protective order. Penal Code § 832.7(a) makes confidential peace officer personnel records and all information from those records. Having ruled that the internal affairs investigation at issue is confidential under Penal Code § 832.7(a), there is no legal basis for public disclosure of [REDACTED]

[REDACTED]

[REDACTED]

XIV.

Petitioner has no other plain, speedy, or adequate remedy at law. If an immediate stay is not granted, the records and information provided to the ACLU under protective order will no longer be protected, at which point the ACLU may disclose the records publicly and the City will be irreparably harmed.

XV.

Under Rule 8.486(b) of the California Rules of Court, the petition includes copies of all written motions and oppositions thereto, pleadings, exhibits, and written orders relevant and necessary to decide this matter. *See Sherwood v. Superior Court*, 24 Cal. 3d 183, 186 (1979).

PRAYER FOR RELIEF AND REQUEST FOR STAY

WHEREFORE, Petitioner City of Vallejo requests that the Court:

1. Issue an extraordinary writ of mandate directing respondent Superior Court to vacate the portion of its ruling making public records and information provided under protective order, and the transcript of the October 2, 2024 hearing discussing that information, and to instead command respondent Court to enter a new and different order denying the ACLU of Northern California's Petition for Writ of Mandate and Motion to Clarify Scope of Protective Order in full.
2. Stay the Superior Court's ruling and all further proceedings in the respondent court on this matter until this Court grants or denies this petition; and
3. Order any other appropriate relief.

Dated: October 7, 2024

Respectfully submitted,

By: /s/ Katelyn M. Knight
Katelyn M. Knight
Assistant City Attorney for
the City of Vallejo

VERIFICATION

I am an Assistant City Attorney for the City of Vallejo and am licensed to practice law before all courts of this state. I am the attorney of record for petitioner City of Vallejo in this case. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on this 7th day of October, 2024 at Vallejo, California.

/s/ Katelyn M. Knight
Katelyn M. Knight
Assistant City Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This petition for extraordinary writ arises from an action seeking disclosing of peace officer personnel records under the Public Records Act. On October 2, 2024, the Respondent Court ruled correctly that an internal affairs investigation into allegations that officers bent the tips of their badges following a fatal shooting is a confidential peace officer personnel record under Penal Code § 832.7(a), and is not subject to any of the exceptions under subsection (b). The Respondent Court erred, however, in ordering public disclosure of [REDACTED]

[REDACTED] Having found that the investigation records are confidential under Penal Code § 832.7(a), the law does not permit disclosure of any portion of the investigation.

An immediate stay of the Respondent Court's order is necessary for the City to obtain relief. The Respondent Court has ordered that investigation records provided following a *Pitchess* motion and under protective order be made public. The City requested a stay of the Respondent Court's disclosure order until expiration of the time to appeal, but was granted a stay only until October 10, 2024 at 5:00 p.m.. If an immediate stay is not granted by this Court, the records and information provided to the ACLU under protective order will no longer be protected, at which point the ACLU may disclose the records publicly and the City will be irreparably harmed.

STATEMENT OF THE CASE

Following allegations in 2020 that some officers within the Vallejo Police Department would bend their badges after a shooting incident, the City hired an independent third-party, Robert Giordano, to conduct an internal affairs investigation into the allegations and to make findings as to

whether or not any policy was violated. (Exhibit S, attachment 7 and Exhibit C, ¶ 9.) The investigation was opened as an Internal Affairs investigation and assigned investigation number IA2020-13. (Exhibit C, ¶ 9.)

On January 18, 2022, the City of Vallejo received a Public Records Act request from the ACLU for all records related to “an internal investigation by Robert Giordano, regarding allegations of Vallejo police officers bending their police badges in response to their involvement in officer-involved shootings and deaths” including reports, interviews, photos, agreements, background materials, and instructions given to Giordano, and records identifying interviewed witnesses, among other things. (Exhibit S, attachment 19.) The City of Vallejo produced the contract with Giordano and other non-exempt responsive records, but withheld the investigation report and related records as exempt from public disclosure under Penal Code § 832.7(a) and Government Code §§ 6254(k) and 6255(a). (Exhibit S, attachments 21-30.)

On November 21, 2022, real party in interest the ACLU filed a verified Complaint and Petition for Writ of Mandate in Solano County Superior Court. (Exhibit A.) During the course of litigation, the ACLU conducted written discovery to obtain records and information to support its arguments. (*See* Exhibit C.)

On November 3, 2023, after meeting and conferring regarding its need for factual information about the investigation records, the ACLU filed a *Pitchess* Motion under Evidence Code § 1043 seeking the investigation report and related records. (Exhibit N.) The purpose of the Motion was to allow the ACLU to obtain factual information under protective order to assist it in formulating arguments for its Writ Petition. (Exhibit N at 4:12-17.) The City opposed the Motion in part, but did not oppose the request for an *in camera* review or provision of some records with redactions and under

protective order. (Exhibit O at 1:26-2:8.)

On November 29, 2023, the Hon. Stephen Gizzi granted the *Pitchess* motion and set an *in camera* review to take place on December 20, 2023. (Knight Decl., ¶¶ 3-4.) At the *in camera* review, the Court examined the investigation records and related e-mail correspondence in camera and ordered a subset of those records disclosed with redactions. (Knight Decl., ¶ 5.) [REDACTED]

[REDACTED] The Court signed a protective order precluding disclosure of the records produced in connection with the *Pitchess* motion pursuant to Evidence Code § 1045 and an order sealing the transcript of the *in camera* review. (Exhibits P-Q.)

Following the *Pitchess* motion and resulting production, the parties met and conferred regarding additional written discovery the ACLU wished to propound. The ACLU was particularly seeking information pertaining to any disciplinary action taken as a result of the badge bending investigation. The parties reached a compromise and agreed the City would provide a response to specific requests for admission on that topic subject to the existing protective order, without prejudice to the ACLU's right to file a motion to remove the confidentiality designation. The City accordingly provided written responses to requests for admission under protective order related to any discipline imposed as a result of the investigation. (Exhibit I attached declaration at ¶ 3.)

On June 27, 2024, the ACLU filed a Motion for Judgment on its Complaint and Petition for Writ of Mandate arguing that the badge bending

investigation was subject to public disclosure under Penal Code § 832.7(b) on various theories. (Exhibits B and R-S.) The ACLU also filed a Motion to Clarify the Scope of the Protective Order, seeking public disclosure of the City's discovery responses related to any discipline imposed for badge bending as a result of the investigation. (Exhibits V-W.) Both were filed conditionally under seal with an application for sealing as the Motions discussed information from records subject to the Court's protective order. (Exhibits E-H and K.) The City opposed both Motions and submitted an application sealing portions of its opposition brief. (Exhibits C-D, I, and T.) The Court granted all applications to seal. (Exhibit J; Knight Decl., ¶ 6.)

On October 1, 2024, the Court issued a tentative ruling ordering the parties to appear for hearing and that the hearing would be closed to members of the press and public as matters under protective order would be discussed. The tentative ruling further provided that the transcript of hearing would be sealed. (Exhibit L.) The ACLU filed an objection to the orders closing the hearing and sealing any subsequent transcript. (Exhibit M.)

On October 2, 2024, the parties appeared for hearing on the pending Motions. At the closed hearing, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

The City requested that the Court stay its order for disclosure of records and unsealing the hearing transcript until expiration of the time to appeal. The Court stayed its order making public the records and transcript of the October 2, 2024 hearing until October 10, 2024 at 5:00 p.m.. (Knight Decl., ¶ 9.)

ARGUMENT

I. STANDARD OF REVIEW

A petition for extraordinary writ of mandate is the exclusive means of obtaining appellate review of a superior court's decision ordering disclosure of records under the Public Records Act. Cal. Gov't Code § 7923.500. A direct appeal is not available. *See Powers v. City of Richmond*, 10 Cal. 4th 85, 110, 112 (1995). Although appellate review by extraordinary writ is generally discretionary, in proceedings under the Public Records Act where extraordinary writ is the only avenue of appellate review, "an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." *Id.* at 114. The Legislature's purpose in replacing review by direct appeal with an extraordinary writ procedure was to expedite the process and make the appellate remedy more effective. *Id.* at 112.

The scope of review on a petition for extraordinary writ challenging an order under the Public Records Act is the same as the scope of review on

a direct appeal. *See State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1185 (1992). The Appellate Court conducts an independent review of the trial court's ruling, with factual findings upheld if supported by substantial evidence. *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1336 (1991). Questions of statutory interpretation are reviewed *de novo*. *BondGraham v. Superior Court*, 95 Cal. App. 5th 1006, 1015 (2023).

II. PENAL CODE SECTION 832.7(A) DOES NOT PERMIT DISCLOSURE OF PORTIONS OF INTERNAL AFFAIRS INVESTIGATION RECORDS, EVEN IN REDACTED FORM

The Respondent Court erred in ordering public disclosure of [REDACTED]

A. The Investigation at Issue is a Confidential Peace Officer Personnel Record Under Penal Code § 832.7(a)

Personnel and investigation records pertaining to a peace officer, as well as information contained within those records, are confidential and protected from disclosure under California law. Penal Code § 832.7(a) states in relevant part:

Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

Unlawful disclosure of peace officer personnel is a misdemeanor and may also subject the releasor to civil liability. *See Towner v. County of Ventura*, 63 Cal. App. 5th 761, 772-73 (2021); *Operating Engineers Local 3 v.*

Johnson, 110 Cal. App. 4th 180 (2003). “Because section 832.7 deems peace officer personnel records and information obtained from those records to be ‘confidential,’ they are exempt from disclosure under the [Public Records] Act.” *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 289 (2007).

Peace officer personnel records are separately defined by Penal Code § 832.8 as follows:

[A]ny file maintained under that individual’s name by his or her employing agency and containing records relating to any of the following:

(1) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(5) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.

(6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

(emphasis added). It is well established that records of investigations into allegations of peace officer misconduct are confidential peace officer personnel records, regardless of whether the investigation resulted from a

citizen complaint or was initiated internally. *See, e.g., Davis v. City of San Diego*, 106 Cal. App. 4th 893 (2003)(holding that Penal Code § 832.8 encompassed the Department's Internal Affairs reports and its attached shooting review board reports). Investigation records are also subject to confidentiality regardless of whether they are associated with disciplinary proceedings against the subject officers. *See Berkeley Police Assn. v. City of Berkeley*, 167 Cal. App. 4th 385, 401 (2008).

The investigation at issue in this case qualifies as a personnel record under Penal Code § 832.8(a)(5), as it is an investigation regarding whether any peace officers engaged in misconduct that violates Vallejo Police Department policy. The investigation was opened as an Internal Affairs investigation and assigned investigation number IA2020-13. An independent investigator was hired to conduct the investigation and made findings as to whether or not any policy was violated. (Exhibit C, ¶ 9 and Exhibit AA.) Sustained findings of policy violations may form the basis of disciplinary action and related records being associated with individual officers' personnel files. Penal Code § 832.8(a)(4).

B. As a Peace Officer Personnel Investigation, the Investigation at Issue is Categorically Exempt From Disclosure Under the Public Records Act

If a peace officer investigation qualifies as confidential under Penal Code § 832.7(a), the entire investigation report and related records are confidential and exempt from disclosure under the Public Records Act. This is evident from the plain language of Penal Code § 832.7(a) making confidential “personnel records of peace officers...or information obtained from these records”. It is also supported by the legislative analysis of SB 1436 enacting Penal Code § 832.7:

The purpose of the bill was "to give the peace officer and his or her employing agency the

right to refuse to disclose any information concerning the officer or complaints or investigations of the officer in both criminal and civil proceedings. . . Personnel files of peace officers, which include under this bill, any file maintained under the officer's name including medical records, benefits records, personal data, employee appraisals and complaint information are deemed confidential and not subject to disclosure or discovery except as provided in this bill.

County of L.A. v. Superior Court, 219 Cal. App. 3d 1605, 1609-1610 (1990); *see also Hackett v. Superior Court*, 13 Cal. App. 4th 96, 100 (1993)(“it is equally clear from its plain language that the bill, from the outset, was intended to create a privilege for all information in peace officers' personnel files.”).

The statute does not permit portions of investigation records to be publicly released, even with redaction of subjects and witnesses. Indeed, the Legislature has already considered and decided what limited anonymized information related to peace officer investigations should be publicly disclosed. Penal Code § 832.7(d) states “a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.”

Here, the Respondent Court ordered publicly disclosed [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Although the records were redacted to

remove names of subjects and witnesses, the ordered disclosures far exceed the anonymized data permitted to be publicly released under Section 832.7(d).

C. Disclosure of Records Under Protective Order Pursuant to *Pitchess* Does Not Render Them Subject to Public Disclosure

The *Pitchess* scheme provides a mechanism for discovery of confidential peace officer personnel records where those records are needed to ensure a fair trial in civil or criminal proceedings. See *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 293 (2007). Evidence Code § 1043 was enacted by the legislature in 1978 in response to the California Supreme Court’s decision in *Pitchess v. Superior Court*, 11 Cal. 3d 531 (1974). Section 1043 sets forth the exclusive means by which a party may obtain access to confidential peace officer records. Cal. Evid. Code § 1043(a); *Davis v. City of Sacramento*, 24 Cal. App. 4th 393, 401, n.2 (1994).

Evidence Code § 1043 states that “[i]n any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records”, the party seeking disclosure is required to file a noticed motion at least ten court days before the hearing. The motion must, at a minimum, identify the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place of hearing, set forth and a description of the records sought, and be supported by affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter of the pending litigation. Cal. Evid. Code § 1043(b). The governmental agency is

required to notify the officers whose records are being sought immediately upon receipt of a motion under this section. Cal. Evid. Code § 1043(c). Full compliance with these provisions is required for the motion to proceed. Cal. Evid. Code § 1043(d).

If the moving party establishes good cause for disclosure, the Court must then conduct an *in camera* review of the files to determine what information within the files is relevant to the subject matter of the underlying litigation. Cal. Evid. Code § 1045(b). If the Court orders disclosure of any information or documents, it must also issue a protective order limiting use of the records to a court proceeding. Cal. Evid. Code § 1045(e). A peace officer has an absolute right to confidentiality in their personnel records outside of the *Pitchess* process. *See Hackett v. Superior Court*, 13 Cal. App. 4th 96, 101 (1993).

In this case, after extensive meet and confer efforts regarding the discovery needed by the ACLU to support its case, the ACLU filed a *Pitchess* motion seeking discovery of the badge bending investigation and related records withheld by the City under Penal Code § 832.7(a). The ACLU indicated that the records were material and discovery needed to evaluate several factual issues related to their arguments under the Public Records Act, including 1) the purpose of the Giordano investigation, 2) whether discipline did or ever could have resulted, 3) what prompted the investigation, and 4) whether some portions of the investigation might be reasonably segregable. (Exhibit N). The City opposed the *Pitchess* motion in part on the grounds that that the ACLU did not require discovery of all of the requested records, but did not oppose an *in camera* review or disclosure in discovery of some portions of the records under protective order. (Exhibit O.) Pursuant to that process, the Respondent Court conducted an *in camera* review of the requested records and ordered a portion of those records produced to the ACLU under protective order. (Exhibit P.) The

City proposed redaction of the names of subjects and witnesses in the documents as the identities of those individuals were not material to the ACLU's arguments for disclosure under the Public Records Act, and the Court permitted those redactions. (Knight Decl., ¶ 5.)

Following production of the records under *Pitchess*, the parties met and conferred regarding the ACLU's need for discovery related to any disciplinary action resulting from the investigation to support its arguments. The parties agreed that the City would produce responses to requests for admission regarding that information subject to the existing protective order entered by the Court. The responses included information regarding whether any officer was disciplined for bending a badge as a result of the investigation, but did not identify any officer by name. (Exhibit Z.)

The *Pitchess* motion filed by the ACLU was appropriately filed to obtain to discovery needed to evaluate and make its arguments under the Public Records Act. The Respondent Court appropriately entered a protective order covering documents and information produced pursuant to that *Pitchess* motion, appropriately permitted the parties to file under seal the portions of their briefs discussing that information, and appropriately ordered the transcript of hearing discussing that information sealed. The Respondent Court's order to publicly disclose the records provided under *Pitchess*, however, is not appropriate.

D. Because the Internal Affairs Investigation and Information From That Investigation is Categorically Exempt, No Portion of it is Segregable and Subject to Public Disclosure

It is well established that otherwise non-exempt public records may not be withheld in their entirety simply because they contain some exempt material. *See, e.g., CBS, Inc. v. Block*, 42 Cal.3d 646, 653 (1986). Government Code § 7922.525(b) states “[a]ny reasonably segregable

portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.” This section does not apply, however, to records that categorically exempt from disclosure.

Peace officer personnel records and information from those records is explicitly made confidential by Penal Code § 832.7(a). Penal Code § 832.8(4)-(5) defines personnel records to include internal affairs investigations into the manner in which a peace officer performs their duties, and records related to employee advancement, appraisal, and discipline. *See Davis v. City of San Diego*, 106 Cal. App. 4th 893 (2003). The investigation at issue in this case is an internal affairs investigation into allegations of police misconduct, which may affect employee advancement, appraisal, or discipline. Thus, no portion of the investigation records at issue in this case are non-exempt.

This is consistent with prior case law finding that exempt information related to an internal affairs investigation included in a report, that did not itself qualify as a peace officer personnel record, could be segregated. In the case of *Pasadena Police Officers Association v. Superior Court*, 240 Cal. App. 4th 268 (2015), the City of Pasadena retained the OIR Group to prepare a report “(1) to analyze the McDade shooting and its aftermath for the purpose of determining what lessons could be learned from the incident and (2) to recommend institutional reforms”, which resulted in a report that did not itself qualify as a peace officer personnel investigation, but included some protected material from an internal affairs investigation. *Id.* at 289. The Court found that the OIR Group report was not exempt, and therefore the exempt material contained therein could be reasonably segregated. *Id.*

Unlike the *Pasadena Police Officers Association* case, this case deals with an internal affairs investigation into allegations of misconduct that could impact employee advancement, appraisal, or discipline. An

independent investigator was hired to conduct the investigation and make findings as to whether or not Department policy was violated, which could result in discipline, and impacts the subject officers regardless of whether discipline is imposed. The fact that the investigation report includes background information and information laying out the investigative methodology does not make that information non-exempt and subject to public disclosure.

III. THE RESPONDENT COURT CORRECTLY FOUND THAT THE INVESTIGATION REPORT AT ISSUE IS NOT SUBJECT TO PUBLIC DISCLOSURE UNDER PENAL CODE § 832.7(B)

In 2018, the California Legislature passed Senate Bill 1421, modifying Penal Code § 832.7 and making police investigations into certain types of incidents subject to public disclosure. Penal Code § 832.7(b) makes public records “relating to the report, investigation, or findings of” 1) an incident involving the discharge of a firearm at a person by a peace officer, 2) an incident in which the use of force by a peace officer against a person resulted in death or great bodily injury, 3) an incident in which a sustained finding was made that an officer engaged in sexual assault involving a member of the public, and 4) an incident in which a sustained finding was made of dishonesty by an officer “directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer”. Cal. Penal Code § 832.7(b).

In 2022, the California Legislature passed Senate Bill 16 further modifying Penal Code § 832.7 to make public records relating to additional types of incidents, including incidents involving a sustained finding of prejudice or discrimination based on a protected characteristic, unlawful arrest or search, and failure to intervene against another officer using

clearly excessive force. Importantly, the Legislature did not modify the language requiring disclosure of officer-involved shooting records, though it had an opportunity to do so.

A review of Section 832.7 on the whole shows that the Legislature was extremely careful in crafting the statutory language, making fine distinctions between different categories of incidents. For example, Section 832.7(b)(1)(C) targets records where a sustained finding was made involving dishonesty by a peace officer, but only where the dishonesty relates to the reporting, investigation, or prosecution of a crime or the reporting or investigation of misconduct by another peace officer. By contrast, Section 832.7(b)(1)(B) makes public all records related to an incident where a sustained finding was made that an officer engaged in sexual assault involving a member of the public. Section 832.7(b)(1)(A)(i), in turn, encompasses all records relating to the investigation, report, or findings of an officer-involved shooting—delineating a clear universe of what is intended to be disclosed. The badge bending investigation does not fall within any of the exceptions provided for under Section 832.7(b).

A. The Investigation Does Not Qualify as a Record Related to the Report, Investigation, or Findings of an Incident Involving the Discharge of a Firearm at a Person by a Peace Officer

The legislative amendments to Penal Code § 832.7 carved out several narrow exceptions to the confidentiality protection afforded to peace officer personnel investigation records. Rather than making public all records related to law enforcement shooting incidents, Penal Code § 832.7(b)(1)(A) makes public:

A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(emphasis added).

The investigation at issue in this case does not relate to the report of an officer-involved shooting incident, investigation of an officer-involved shooting incident, or findings of an officer-involved shooting incident. The badge bending investigation examines conduct that allegedly occurred after such an incident. The investigation does not depend on the facts of any particular officer-involved shooting incident or evaluate whether any officer's conduct during a shooting incident was within policy. It is wholly distinct from the criminal and administrative investigations actually performed in connection with each shooting incident, which have already been publicly released under this section.

Had Section 832.7(b) made public 'all records related to the discharge of a firearm at a person by a peace officer', that may have included investigations into subsequent conduct that was tangentially related to an officer-involved shooting. Instead, Section 832.7(b) makes public only records that are related to the report, investigation, or findings of an officer-involved shooting incident. This language clearly limits disclosable records to those that arise from conduct that occurred in the course of the officer-involved shooting incident or was investigated in connection with an officer-involved shooting incident.

[REDACTED]

[REDACTED]

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CONCLUSION

For the foregoing reasons, an extraordinary writ of mandate should issue commanding Respondent Superior Court to vacate the portion of its ruling ordering disclosure of records and unsealing the transcript of hearing from October 2, 2024, and to instead command Respondent Court to enter a new and different order denying the ACLU's motions in full.

Dated: October 7, 2024

Respectfully submitted,

By: /s/ Katelyn M. Knight
Katelyn M. Knight
Assistant City Attorney for
the City of Vallejo

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 6,903 words. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: October 7, 2024

/s/ Katelyn M. Knight

Katelyn M. Knight
Assistant City Attorney for the
City of Vallejo

DECLARATION OF KATELYN M. KNIGHT

I, Katelyn M. Knight, declare:

1. I am an attorney at law duly licensed to practice law before the courts in the state of California, and I am an Assistant City Attorney with Petitioner City of Vallejo. I have personal knowledge of the facts and circumstances surrounding this matter and could, if called, competently testify thereto.

2. Due to the Respondent Court's stay of its disclosure order only until October 10, 2024, the City of Vallejo was not able the transcripts prior to the filing of this Petition. The City of Vallejo ordered transcripts of the relevant proceedings on October 7, 2024 and will provide those to the Court as soon as they are available. Because many the transcripts are not currently available, a summary of the relevant proceedings is set forth below pursuant to Rule 8.486(b)(3) of the California Rules of Court:

3. On November 3, 2023, the ACLU filed a Pitchess Motion under Evidence Code § 1043 seeking copies of the badge bending investigation report and related records. The purpose of the Motion was to allow the ACLU to obtain factual information under protective order to assist it in formulating arguments for its Writ Petition. The City opposed the Motion in part, but did not oppose the request for an *in camera* review or provision of some records with redactions and under protective order.

4. The *Pitchess* motion was heard on November 29, 2023. The Court granted the motion and set an *in camera* review to take place on December 20, 2023.

5. At the *in camera* review, the City provided the Court with an electronic copy of all requested records, which is submitted as Confidential Exhibit Z. The City and Court went through the records and the City's proposed redactions and the Court ordered production of documents with specific redaction under protective order. The records ordered produced

order are submitted as Confidential Exhibit U. The Court signed a protective order precluding disclosure of the records produced pursuant to Evidence Code § 1045 and order sealing the transcript of the *in camera* review.

6. The ACLU submitted applications to seal portions of its Motion for Judgment and Motion to Clarify the Scope of the Protective Order, and related documents. The City has not received copies of the Court's order, but the Court's docket reflects that orders were issued granting those applications on July 2, 2024, August 8, 2024 and September 13, 2024.

7. The Court held a closed hearing on October 2, 2024 on the ACLU's Motion for Judgment and Motion to Clarify the Scope of the Protective Order. At the hearing, [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. The Court granted the Motion for Judgment in part and

Motion to Clarify the Scope of the Protective Order in full, ordering that the documents previously produced under *Pitchess* and the confidential discovery responses related to discipline were not confidential peace officer personnel records and should be made public. [REDACTED]

[REDACTED]

9. The Court adopted the tentative ruling as the ruling of the Court and directed the ACLU to prepare a final order and judgment. The Court stated that the protective order covering the records previously produced under *Pitchess* and the City's written responses to requests for admission would be lifted and the records immediately able to be publicly disclosed. The Court also stated that the order sealing the transcript of October 2, 2024 hearing would also be lifted. The City requested that the Court stay its order for disclosure of records and unsealing the hearing transcript until expiration of the time to appeal. The Court stayed its order making public the records and transcript of the October 2, 2024 hearing until October 10, 2024 at 5:00 p.m..

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

Executed this 7th day of October 2024 at Vallejo, California.

/s/ Katelyn M. Knight

KATELYN M. KNIGHT

EXHIBITS

Exhibit A

ACLU's Verified Complaint and Petition for Writ of Mandate

Exhibit B

Notice of Motion and Motion for Judgment

Exhibit C

Decl. of Knight ISO Opp. to Motion for Judgment

Exhibit D

Opp. to Motion to Clarify Scope of Protective Order

Exhibit E

ACLU Application to File Documents Under Seal

Exhibit F

ACLU MPA ISO Application to File Documents Under Seal

Exhibit G

Decl. of Young ISO Application to File Documents Under Seal

Exhibit H

[Prop] Order Granting Application to File Documents Under Seal

Exhibit I

City Application to File Documents Under Seal

Exhibit J

Order Granting Application to File Documents Under Seal

Exhibit K

ACLU Application to File Documents Under Seal

Exhibit L

Tentative Ruling Closing Hearing October 2, 2024

Exhibit M

Objection to Proposed Closure and Sealing Orders

Exhibit N
Motion to Compel Discovery Pursuant to Evidence Code § 1043

Exhibit O
Opposition to Motion to Compel Discovery

Exhibit P
Protective Order

Exhibit Q
Order Sealing Transcripts

Exhibit R (CONFIDENTIAL)
MPA in Support of Motion for Judgment

Exhibit S (CONFIDENTIAL)
Decl. of Young ISO Motion for Judgment

Exhibit T (CONFIDENTIAL)
Opposition to Motion for Judgment

Exhibit U (CONFIDENTIAL)
Reply ISO Motion for Judgment

Exhibit V (CONFIDENTIAL)
Motion to Clarify Scope of Protective Order

Exhibit W (CONFIDENTIAL)
Decl. of Young ISO Mtn to Clarify Scope of P.O.

Exhibit X (CONFIDENTIAL)
Reply ISO Mtn to Clarify Scope of Protective Order

Exhibit Y (CONFIDENTIAL)
Ruling on Motions October 2, 2024

Exhibit Z (CONFIDENTIAL)
Records Ordered Publicly Disclosed

Exhibit AA (CONFIDENTIAL)
Records Reviewed *in Camera*

Exhibit BB (CONFIDENTIAL)
Transcript of Hearing December 20, 2023

Exhibit CC (CONFIDENTIAL)
Transcript of Hearing October 2, 2024

DECLARATION OF SERVICE

My business address is City of Vallejo, City Hall, Attorney's Office, 555 Santa Clara Street, Third Floor, Vallejo, California 94590 and my email address is marie.streveler@cityofvallejo.net.

On the date set forth below, I served the Petition for Writ of Mandate on the following parties by the method listed.

By electronic service:

Counsel for Plaintiff/Petitioner

ACLU FOUNDATION OF NORTHERN CALIFORNIA

Avram Frey

Emi Young

39 Drumm Street

San Francisco, CA 94111

(415) 621-2493

afrey@aclunc.org

eyoung@aclunc.org

By drop box at Vallejo branch: I sealed the envelope and deposited it in the drop box at the Solano County Superior Court, Vallejo Branch located at 321 Tuolumne Street, Vallejo, California 94590. The envelope was addressed as follows.

Hon. Stephen Gizzi, Dept. 3

SOLANO COUNTY SUPERIOR COURT

Old Solano Courthouse

580 Texas Street

Fairfield, CA 94533

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

Executed on this 8th day of October, 2024, at Vallejo, California.

/s/ Marie Streveler
MARIE STREVELER