

JUN 26 2024

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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

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JUDGMENT

[Public – Redacts Material from
Conditionally Sealed Record]

Judge: Hon. Stephen Gizzi
Department: 3
Hearing date: September 24, 2024
Action filed: November 22, 2022

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INTRODUCTION & SUMMARY OF ARGUMENT

This case concerns the Vallejo Police Department's withholding of public records relating to allegations of serious officer misconduct: bending the tips of service badges to commemorate firing at civilians. These allegations are of particular public concern given the Department's history of violence. In July of 2020, after the badge-bending scandal was exposed, the Department announced an independent investigation into badge-bending, including allegations that the practice was intended to commemorate participation in shootings. Since then, the Department has resisted all transparency about badge-bending, the investigation, and any resulting accountability, including the request at issue in this case.

Petitioner American Civil Liberties Union of Northern California ("Petitioner" or "ACLU") submitted a request under the California Public Records Act ("CPRA") for records related to the badge-bending scandal and third-party investigation. The Department asserted blanket exemptions for nearly all records, alleging in pertinent part that they are "personnel records" under Penal Code section 832.7, subdivision (a),¹ but also belatedly claiming protection under the attorney-client and deliberative process privileges. This response misconstrues the law.

First, whether or not the withheld records are all properly categorized as "personnel records," the requested records are public under Senate Bill 1421 ("SB 1421") as records relating to the report, investigation, or findings of: 1) incidents involving the discharge of a firearm at a person by a peace officer; and 2) an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty directly relating to the reporting of, or investigation of, misconduct.

Second, the withheld records are *not* all "personnel records," and the Department has failed to disclose reasonably segregable, non-exempt information.

Third, this Court has already rebuffed the Department's characterization of many records as "attorney-client privileged," and the Department's deliberative process claim is conclusory and unsubstantiated.

¹ Unless otherwise noted, all statutory references are to the Penal Code.

1 The Department's unjustified withholding of records violates Government Code section
2 6250 et seq., Penal Code section 832.7, and article I, section 3 of the California Constitution.
3 Petitioner respectfully seeks a writ of mandate.

4 **FACTUAL BACKGROUND**

5 **I. Police Violence in Vallejo.**

6 This case is preceded by decades of wanton and extreme Department violence without
7 accountability. Vallejo is a small city, but its 100-member police force has killed 19 residents
8 since 2010 alone—a rate of police killings per capita that exceeds all but one of the 100 biggest
9 cities nationwide.² From April 2001 to June 2020, Vallejo officers shot 56 civilians, killing 30.
10 (See Declaration of Emi Young (“Young Decl.”), Ex. 1.³) One study determined that the
11 Department uses more force per arrest than any other law enforcement agency in California.⁴

12 This violence has left a yawning chasm between the community and the Department. One
13 measure of this divide is the volume of litigation brought against the Department. Between 2014
14 and 2019, the Department was sued 147 times for damages, 60 alleging excessive force.⁵ From
15 2010 to 2020, Vallejo paid out nearly \$16 million to settle such suits, the highest per-officer cost
16 in California.⁶ In 2020 alone, Vallejo was a defendant in 24 suits alleging excessive force; the
17 City estimated these would cost \$50 million to defend.⁷

18 There has been little public accountability. In 2021, Officer Jarrett Tonn was terminated
19 for an on-duty killing of a civilian, Sean Monterrosa—the first firing in decades⁸—but it was

20 ² Shane Bauer, *How A Deadly Police Force Ruled a City*, The New Yorker (Nov. 16, 2020)
21 <<https://www.newyorker.com/magazine/2020/11/23/how-a-deadly-police-force-ruled-a-city>> (as
22 of June 24, 2024).

23 ³ All exhibit references are to the exhibits to the Declaration of Emi Young in Support of Motion
24 for Judgment, filed herewith. Unless otherwise noted, exhibit page numbers cited are to the page
25 number of the entire volume of declaration and exhibits.

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

27 ⁵ Otis R. Taylor, Jr., *In Vallejo, Police Encounters Often Turn Violent*, S.F. Chronicle (Sept. 13,
28 2020) <<https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Litany-of-complaints-describes-how-police-15559987.php>> (as of June 24, 2024).

⁶ Bauer, *Deadly Police Force*, *supra*.

⁷ *Id.*

⁸ Geoffrey King, *Termination Overturned for Vallejo Detective who Killed Sean Monterrosa*,
Open Vallejo (Aug. 26, 2023) <<https://openvallejo.org/2023/08/26/termination-overturned-for->

1 overturned in arbitration; Tonn returned with backpay in September 2023.⁹ In 2020, to mitigate
2 heightened insurance premiums, the City Council commissioned an external review of the
3 Department by the OIR Group.¹⁰ The resulting report noted an “‘us against the world’ mindset”
4 within the Department, cautioning that “[t]he perception of being embattled public servants in a
5 hostile environment can be self-perpetuating as well as deleterious,” and recommended some 40-
6 plus reforms.¹¹ The California Department of Justice (“DOJ”) has investigated the Department’s
7 use of force, and destruction of evidence in the Monterrosa killing, since 2020; in April 2024,
8 DOJ announced a settlement with the Department intended to, in relevant part, “[a]ddress
9 unreasonable force by holding officers and supervisors accountable,” including by implementing
10 the OIR’s suggested reforms.¹² To date, many such reforms remain unimplemented, no officers
11 have been held accountable, and Department violence and community mistrust continue
12 unabated.

13 II. Public Disclosure of Badge-bending.

14 Revelation of the Department’s badge-bending added grievous insult to injury. Local
15 news outlet Open Vallejo broke the badge-bending story in an article published July 28, 2020.
16 (Ex. 2.) Based on interviews, including of unnamed senior Department officers, Open Vallejo
17 reported that a secret cohort of officers bent the tips of their badges to commemorate firing their
18 guns at civilians. (*Ibid.*) The article reported that badge-bending in the Department was

19
20 [vallejo-detective-who-killed-sean-monterrosa/](#)> (as of June 24, 2024).

21 ⁹ *Ibid.*; Daniel Egitto & Thomas Gase, *Vallejo Hands Six-figure Payout to Officer who Killed*
22 *Monterrosa*, Vallejo Times-Herald (Oct. 13, 2023)

23 <[https://www.timesheraldonline.com/2023/10/13/vallejo-hands-six-figure-payout-to-officer-who-](https://www.timesheraldonline.com/2023/10/13/vallejo-hands-six-figure-payout-to-officer-who-killed-monterrosa/)
24 [killed-monterrosa/](https://www.timesheraldonline.com/2023/10/13/vallejo-hands-six-figure-payout-to-officer-who-killed-monterrosa/)> (as of June 24, 2024).

25 ¹⁰ OIR Group, *Vallejo Police Department: Independent Assessment of Operations, Internal*
26 *Review Systems, and Agency Culture* (May 2020)

27 <https://www.oirgroup.com/_files/ugd/d85a96_9acef98ea30e4a98b97e119a7d44fbab.pdf> (as of
28 June 24, 2024).

¹¹ *Ibid.*

26 ¹² Office of Attorney General, *Attorney General Bonta Secures Settlement Agreement with*
27 *Vallejo Police Department and City of Vallejo to Expediently Institute Reforms, and Strengthen*
28 *Accountability, Police Policies and Practices* (Apr. 11, 2024) <[https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-settlement-agreement-vallejo-police-department)
[releases/attorney-general-bonta-secures-settlement-agreement-vallejo-police-department](https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-settlement-agreement-vallejo-police-department)> (as of
June 24, 2024).

1 longstanding and known to Department leadership. (*Ibid.*) In 2019, for instance, while the
2 Department was facing public scrutiny for the killing of Willie McCoy, then-Chief of Police
3 Andrew Bidou learned that officers had bent badges. (*Ibid.*) Concerned with the political
4 ramifications of disclosure, Bidou responded only by ordering the officers to bend them back.
5 (*Ibid.*)

6 **III. VPD's Knowledge of and Inaction Regarding Badge-bending.**

7 The City and Department were thus aware of badge-bending years before it came into
8 public view. In September 2021, the Vallejo Sun published an email exchange between former
9 Interim Assistant Department Chief Joseph Allio and a public relations firm, confirming former
10 Chief Bidou's knowledge of badge-bending and decision not to initiate a formal investigation, as
11 well as Allio's own knowledge in late 2019. (Exs. 3-1, 3-2.) The City has since admitted that
12 unnamed personnel authorized to initiate an investigation learned of badge-bending between 2016
13 and 2018 and again in 2019, and that then-City Manager Greg Nyhoff was aware of alleged
14 badge-bending at least as of April 2019. (Ex. 4 at p. 33 [Def's. Second Am. Resp. to Special
15 Interrog. ("SROG") 5]; Ex. 5 at p. 45 [Def's. Am. Resp. to Request for Admissions ("RFA") 3].)
16 Former Sergeant Kent Tribble, who was subpoenaed to testify about badge-bending in a separate
17 matter in 2022, testified that he bent his badge and others while employed by the Department and
18 was twice informally told to stop the practice by his superior, in both 2017 and 2018. (Ex. 6 at
19 136:28-138:6, 140:23-141:27.)

20 Despite such repeated notice over several years, the Department did not initiate any
21 formal investigation until Open Vallejo published its exposé in July 2020. (Ex. 5 at p. 47 [Def's.
22 Am. Resp. to RFA 12]; Ex. 4 at p. 34 [Def's. Second Am. Resp. to SROG 7].)

23 **IV. Launch of the Giordano Investigation.**

24 On July 31, 2020, three days after the Open Vallejo story, the Department issued a press
25 release announcing an independent investigation into badge-bending "after an officer-involved
26 shooting occurs." (Ex. 7.) The Department selected Robert Giordano and Christine Maloney for
27 this purpose, Ex. 4 at p. 35 (Def's. Second Am. Resp. to SROG 8), and their contract began on
28 August 14, 2020. (Ex. 8.)

1 **V. Investigation and Findings.**

2 The investigation lasted approximately one year, with a final report produced in
3 September 2021. (Ex. 4 at p. 37 [Def's. Second Am. Resp. to SROG 13].) [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] Policy 300 outlines when the use of deadly force is
17 permissible. (Ex. 16.)

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 _____
28 ¹³ This discussion is limited to disclosed materials and does not address redacted information or
information unavailable to Petitioner, *e.g.*, interview questions or responses.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 No information regarding Giordano's investigation or findings has been publicly released.

9 **PROCEDURAL HISTORY**

10 On January 18, 2022, ACLU submitted a PRA request seeking:

- 11 1. All records related to an internal investigation by Robert Giordano, regarding
12 allegations of Vallejo police officers bending their police badges in response to
13 their involvement in officer-involved shootings and deaths. This request
14 includes but is not limited to:
- 15 i. All reports (including supplemental reports) and findings regarding
16 the badge bending allegations;
 - 17 ii. All records of interviews conducted as part of this investigation,
18 including but not limited to audio recordings and existing
19 transcripts of these interviews;
 - 20 iii. All photographs relating to the badge bending investigation;
 - 21 iv. All records pertaining to agreements, background materials, and
22 instructions given to Giordano regarding the scope and purpose of
23 his investigation;
 - 24 v. All records documenting the potential witnesses who were
25 interviewed as part of Giordano's investigation.
- 26 2. All records of internal *or* public complaints alleging a practice of badge
27 bending amongst Vallejo Police Department officers in response to police-
28 involved shootings. This request applies to the time period of January 1, 2010,
to the present.
3. All communications by Department employees regarding allegations of badge
bending, from January 1, 2010, to the present. "Communications" includes but
is not limited to electronic mail, written letters, press releases, text messages,
and social media messages or posts. We specifically request records pertaining
to badge bending 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.

(Ex. 19.)

On January 28, 2022, the Department responded that it considered records responsive to request 1, subdivisions (i), (ii), (iii), and (v) to be exempt as peace officer personnel records (Pen. Code, § 832.7(a)), and requested clarification of the meaning of “complaint” in request 2. (Ex. 20.)

ACLU responded on February 1, 2022, objecting to the Department’s asserted exemption under section 832.7(a) because the records were not “personnel records” and fell within the scope of SB 1421 in any event. (Ex. 21.) ACLU also defined “complaint” for purposes of request 2 as “citizen complaints, complaints made to the internal affairs department, and any complaints or reports made by department employees or former department employees to the Chief of Police, his deputies, or other supervisory staff in the department.” (*Ibid.*)

On February 28, 2022, Respondent wrote that in light of the definition of “complaint,” it had no records responsive to request 2. (Ex. 22.) Also on February 28th, in response to request 1, subsection (iv), the Department provided Giordano’s contract but asserted that all other records responsive to that request were exempt under section 832.7(a). (Ex. 23.)

Between March 18 through July 29, 2022, the parties exchanged communications regarding the Department’s assertion of confidentiality under section 832.7(a). (Exs. 24, 25.) During that time, the Department provided records responsive to request 5 and a single record (the Department’s press release concerning the investigation) in response to request 3. (Exs. 26, 27, 28, 29.)

On July 29, 2022, the Department produced a final set of records responsive to request 5, as well as a single redacted 21-page email document in response to request 3. (Exs. 30, 31.) The Department stated that it considered ACLU’s request closed and reiterated its position that the

1 remaining responsive records are confidential under section 832.7(a). (Ex. 30.) Additionally, for
2 the first time, the Department alleged that withheld records were shielded by the attorney-client
3 and/or deliberative process privileges. (*Ibid.*)

4 ACLU filed a Verified Petition for Writ of Mandate in the present matter on November
5 22, 2022. In discovery, the Department was asked to identify all documents and communications
6 it considered responsive to ACLU's request but had not disclosed. (Ex. 32 at pp. 329-30 [Def's.
7 Am. Resp. to SROG 1].) The Department responded that it has:

8 [G]enerally withheld the underlying investigation report with attachments,
9 supplemental report, witness and subject notices and interviews, photographs,
10 resolution documents, communications between the investigators and their liaison
11 at the police department regarding requests for information or assistance,
communications between the investigators and legal counsel, and communications
between City staff and legal counsel regarding selection of the investigators and
contract preparation.

12 (*Ibid.*) It also produced a privilege log identifying specific documents withheld. (Ex. 33.) At a
13 *Pitchess* motion hearing heard on November 29 and December 20, 2023, this Court ordered
14 partial disclosure of records identified in the privilege log, including redacted excerpts of the
15 Giordano report discussed herein, which were released to Petitioner under a protective order.
16 (Young Decl. at ¶ 36.)

17 **LEGAL STANDARD**

18 The CPRA requires public agencies to disclose all public records in their possession
19 absent statutory exemption. (Gov. Code, § 7922.530; *see generally*, *Am. Civil Liberties Union of*
20 *N. California v. Super. Ct.* (2011) 202 Cal.App.4th 55, 66 (“*ACLU-NC*”).) Longstanding
21 precedent and the California Constitution both require that the law “shall be broadly construed if
22 it furthers the people’s right of access,” while laws that limit the right of access shall be
23 “narrowly construed.” (Cal. Const., art. I, § 3, subd. (b); *ACLU-NC*, 202 Cal.App.4th at 67 n.2.)
24 Consistent with these principles, exemptions to disclosure are narrowly construed, and a
25 withholding agency bears the burden of proving an exemption “or that on the facts of the
26 particular case the public interest served by not disclosing the record clearly outweighs the public
27 interest served by disclosure of the record.” (Gov. Code, § 7922.000; *see also Long Beach Police*
28

1 *Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 70.) This reflects that “access to
2 information concerning the conduct of the people’s business is a fundamental and necessary right
3 of every person in this state.” (Gov. Code, § 7921.000.) That is particularly so where the
4 legitimacy of peace officers’ use of serious force or discharge of a firearm is at issue. (*Long*
5 *Beach, supra*, 59 Cal.4th at 74; *see also Commission on Peace Officer Standards & Training v.*
6 *Super. Ct.* (2007) 42 Cal.4th 278, 297-98 (“*POST*”).)

7 Where it appears that records are being improperly withheld, the “court shall order the
8 officer or other person charged with withholding the records to disclose those records or show
9 cause why that person should not do so.” (Gov. Code, § 7923.100.)

10 ARGUMENT

11 **I. The Requested Records are Public Under SB 1421.**

12 In 2018, the California Legislature amended section 832.7 to guarantee the public’s “right
13 to know all about serious police misconduct, as well as officer-involved shootings.” (Stats. 2018,
14 ch. 988, § 1.) Pertinent here, SB 1421 provided that “[a] record relating to the report,
15 investigation, or findings of . . . [a]n incident involving the discharge of a firearm at a person by a
16 peace officer” “shall not be confidential and shall be made available for public inspection
17 pursuant to the [CPRA].” (Pen. Code, § 832.7, subd. (b)(1)(A)(i).) There is no dispute that
18 Vallejo police officers bent the tips of their service badges for firing their service weapons at
19 civilians. The only question is whether records of investigation into badge-bending are records
20 “relating to” law enforcement shootings. In view of the facts and established principles of
21 statutory construction, they are.

22 (A) [REDACTED] badge-bending related to officer shootings.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 [REDACTED] As the City has since admitted, there are no first-person accounts of officers

1 bending a badge for any other reason. (Ex. 34 at p. 354 [Def’s. Resp. to RFA 25].)

2 Giordano’s badge-bending investigation was thus also an investigation of officer-involved
3 shootings. This is evident from the Department’s own framing in public communications. (Ex. 7
4 [announcing investigation of allegations of “taking part in [badge-bending] after an officer-
5 involved shooting occurs”].) [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Investigation of badge-bending is particularly relevant to officer shootings because badge-
11 bending is probative of officers’ state of mind during and after such incidents. It is well
12 established that “subsequent conduct may constitute circumstantial evidence of intent.” (*See*
13 *People v. Rivera* (2019) 7 Cal.5th 306, 332.) And intent may likewise be inferred from past
14 conduct. (Evid. Code, § 1101, subd. (b); *see, e.g., Andrews v. Cty. and Cnty. of San Francisco*
15 (1988) 205 Cal.App.3d 938, 945 [holding officer’s prior misconduct spoke to intent in later
16 incident and noting, “there is no logical reason to discriminate between prior and subsequent
17 incidents”].) On its face, badge-bending suggests extreme callousness to public welfare and
18 celebration of officer violence—attitudes that in turn support an inference of reckless or even
19 intentional conduct in shootings.¹⁴ (*See, e.g., People v. Scott* (2011) 52 Cal.4th 452, 472 [that
20 defendant “kept ‘trophy’ of his exploits” supported “a reasonable conclusion that defendant
21 acted out a predetermined plan or scheme”].) This inference is supported by the publicly available

22
23 ¹⁴ The connection between artifacts of police violence and violent police practices received
24 national attention in the recent case of the so-called “Goon Squad” of the Rankin County,
25 Mississippi, Sheriff’s Department. A group of white deputies inflicted countless, horrific abuses
26 on vulnerable populations over many years—six were ultimately convicted of torturing, falsely
27 arresting, and framing two Black men of crimes. As widely reported, all members possessed a
28 commemorative coin marked “Goon Squad” with a cartoon image of gangsters on one side and
the Department’s name and logo on the other. (Brian Howe & Nate Rosenfeld, *How a ‘Goon
Squad’ of Deputies Got Away with Years of Brutality*, N.Y. Times (Nov. 30, 2023)
<<https://www.nytimes.com/2023/11/30/us/rankin-county-mississippi-sheriff.html>> (as of June 24,
2024).)

1 information regarding the practice: badge-bending was a secret, but an open one. It was
2 characterized by subtle yet noticeable manipulation of perhaps the most eye-catching, public-
3 facing piece of officer equipment; it occurred immediately after shooting incidents; its
4 practitioners kept the practice secret and yet many officers, including supervisors, came to know
5 of its existence and turned a blind eye. Badge-bending in Vallejo thus suggested both knowledge
6 of scandal—hence the secrecy—and proud defiance.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Giordano’s report and the underlying materials generated for his investigation are therefore
16 directly related to the investigation and findings of incidents involving discharge of a firearm and
17 must be disclosed under SB 1421.

18 (B) SB 1421 must be interpreted expansively to include the requested records.

19 Even if the Court views the badge-bending investigation as only indirectly related to
20 officer-involved shootings, it should interpret the phrase “relating to” in SB 1421 as sufficiently
21 broad to require disclosure. In construing the statute, the Court’s “fundamental task [] is to
22 determine the Legislature’s intent so as to effectuate the law’s purpose.” (*People v. Gonzalez*
23 (2017) 2 Cal.5th 1138, 1141 [citation and quotation marks omitted].) This analysis “begin[s] by
24 examining the statute’s words, giving them a plain and commonsense meaning.” (*People v.*
25 *Scott* (2014) 58 Cal.4th 1415, 1421.) The Court “construe[s] the words in question in context,
26 keeping in mind the statutes’ nature and obvious purposes.” (*Skidgel v. California Unempl. Ins.*
27 *Appeals Bd.* (2021) 12 Cal.5th 1, 14.) If the plain text is ambiguous, the Court “may look to
28 extrinsic aids, including the ostensible objects to be achieved and the legislative history.” (*Ibid.*)

1 The plain text “relating to” means “to be connected with” (Merriam-Webster), or
2 “connected in some way” (Black’s Law Dict. (11th ed. 2019)). This “choice of words suggests . .
3 . some breadth.” (*Celotex Corp. v. Edwards* (1995) 514 U.S. 300, 307-08.) As the California
4 Supreme Court has said, “the fact that ‘related’ can encompass a wide variety of relationships” is
5 itself significant to deciphering legislative purpose, because “a word with a broad meaning or
6 multiple meanings may be used for that very reason—its breadth—to achieve a broad purpose.”
7 (*Bay Cities Paving & Grading, Inc. v. Lawyers’ Mutual Ins. Co.* (1993) 5 Cal.4th 854, 868.)
8 Accordingly, courts interpret the phrase “relating to” broadly, to encompass both direct and
9 indirect relationships. (*See Dan’s City Used Cars, Inc. v. Pelkey* (2013) 569 U.S. 251, 260-61
10 [“The phrase ‘related to’ . . . embraces [connections] whether directly or indirectly.”]; *City of*
11 *Cerritos v. State of California* (2015) 239 Cal.App.4th 1020, 1054 [“broad common-sense
12 meaning” of “relate to” encompasses “indirect” relationships]; *Barnick v. Longs Drug Stores, Inc.*
13 (1988) 203 Cal.App.3d 377, 382 [“It is clear that the phrase ‘relate to’ has a broad meaning,” *i.e.*
14 “a connection with or reference to”] [citation omitted].) Connections not encompassed by this
15 broad language are limited to those which are “tenuous, remote, or peripheral.” (*Rowe v. New*
16 *Hampshire Motor Transp. Assn.* (2008) 552 U.S. 364, 371.)

17 The Court must also examine the text in the context of the statute as a whole. (*See Smith v.*
18 *LoanMe, Inc.* (2021) 11 Cal.5th 183, 190.) The Legislature demonstrated elsewhere in SB 1421
19 that it knew precisely how to narrow the scope of the “relating to” language but *chose not to* for
20 shooting incidents. With respect to officer dishonesty, SB 1421 required release of:

21 [a]ny record relating to an incident in which a sustained finding was made by any
22 law enforcement agency or oversight agency involving dishonesty by a peace
23 officer or custodial officer *directly relating* to the reporting, investigation, or
24 prosecution of a crime, or *directly relating* to the reporting of, or investigation of
25 misconduct by, another peace officer or custodial officer, including, but not
26 limited to, any false statements, filing false reports, destruction, falsifying, or
27 concealing of evidence, or perjury.

28 (Pen. Code § 832.7(b)(1)(C) [emphasis added].) By using the modifier “directly” before the
phrase “relating to” in this section, the Legislature signaled that not just any sustained findings of
dishonesty by officers are sufficiently serious to remove the confidentiality designation—only

1 those concerning crime-solving and police misconduct. Its decision not to use the same modifier
2 with respect to shooting incidents signals that no narrowing in that context was intended. Rather,
3 because officer-involved shootings are necessarily serious, the Legislature intended broad
4 disclosure in this context.

5 Accordingly, the only case to construe the “relating to” language in SB 1421 did so
6 expansively. In *Collondrez v. City of Rio Vista*, a police officer was determined, in the course of
7 one incident, to have falsified a report, used excessive force, made an arrest without probable
8 cause, and denied medical care to a suspect. ((2021) 61 Cal.App.5th 1039, 1044-45.) In response
9 to requests for records related to investigation and discipline of the officer, the police department
10 disclosed all responsive records under section 832.7, subdivision (b)(1)(C) as records “relating to
11 an incident in which a sustained finding” of officer dishonesty was made. (*Id.* at p. 1054.) The
12 subject officer sued, alleging that “summaries of his statements to investigators and information
13 related to his warrantless entry and arrest, inappropriate use of force, and failure to secure medical
14 care for the suspect” were wrongfully disclosed because they “did not *directly* pertain to the
15 dishonest finding.” (*Ibid.* [emphasis added].) The court disagreed, holding that SB 1421 “broadly
16 requires the disclosure of any qualifying record ‘*relating to an incident* in which a sustained
17 finding’ of officer dishonesty was made.” (*Ibid.* [underline added].) Because investigative records
18 pertinent to other misconduct sprung from the same incident, they were properly disclosed, even
19 though only indirectly related to the officer’s falsification of records. (*Ibid.*) Thus, under the only
20 Court of Appeal decision on point, “relating to” encompasses any event or conduct resulting from
21 a common incident, whether directly related to the statutory basis for disclosure or not.

22 The “nature and obvious purposes” of SB 1421 support this expansive interpretation.
23 (*Skidgel, supra*, 12 Cal.5th at p. 14.) The purpose of SB 1421 was “to afford the public ‘the right
24 to know all about serious police misconduct,’ to stop concealing incidents where an officer
25 violated civilian rights, and to ‘address and prevent abuses and to weed out the bad actors.’”
26 (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 921 [citations omitted].)¹⁵ Because SB

27 ¹⁵ In *Becerra*, the Court accordingly interpreted the statute broadly, holding that agencies are
28 required to produce all responsive records in their possession whether they employed the subject

1 1421 is designed to increase the public’s access to information under the CPRA, it must be
2 “broadly construed” to “further[] the people’s right of access.” (Cal. Const., art. 1, § 3, subd.
3 (b)(2); *Becerra, supra*, 44 Cal.App.5th at 922.) Moreover, because SB 1421 achieves that purpose
4 by amending section 832.7 to remove confidentiality protection from records and information
5 relating to serious misconduct, the statute is remedial in nature and must be “liberally construed
6 to the end of fostering its objectives.” (See *People ex rel Dep’t of Trans. V. Muller* (1984) 36
7 Cal.3d 263, 269.)

8 The plain text of SB 1421, in view of its purpose and that of the CPRA, is thus
9 unambiguous: the Legislature intended a broad interpretation of “relating to,” meaning that
10 records of investigation connected to officer-involved shootings, whether directly or indirectly,
11 must be available to the public so that they may know “*all* about serious police misconduct.”
12 (Stats. 2018, ch. 988, § 1.)

13 Against this backdrop, there can be no question that the requested records must be
14 produced as “relating to” officer-involved shootings. Vallejo faces a crisis of confidence in its
15 police department. Decades of use of force incidents, including dozens of shooting deaths, have
16 left a grave impact on residents of the city. Yet despite increasing media attention, numerous
17 lawsuits, and community advocacy, there has been scant transparency or accountability. The
18 badge-bending scandal adds insult to this longstanding injury. The public is aware of what has
19 been published in news reports, *i.e.*, that a clandestine group of officers was commemorating
20 firing at civilians by engaging in ritualistic defacement of their duty badges. For the people of
21 Vallejo to have any trust in their police force, they must know what the Department did about
22 this—specifically, how the Giordano investigation was conducted, what it uncovered, and what
23 action the Department took in response. Without that information, the community has no recourse
24 but to presume that the Department tolerates the sort of predatory behavior that badge-bending
25 connotes. Records of investigation into badge-bending are at least closely tied to shootings and fit
26 within the statute’s broad language, and disclosure will further the purposes of both SB 1421 and
27

28 _____
officer or generated the records. (44 Cal.App.5th at pp. 921-22.)

1 the CPRA. In sum, SB 1421 requires release of the requested records.

2 (C) Portions of the Giordano report and investigative materials are independently disclosable

3 [REDACTED]
4 In addition to requiring release of records relating to police shooting incidents, SB 1421
5 amended Penal Code section 832.7 to require public disclosure of:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **II. The Requested Records Are Not Uniformly Classifiable as Personnel Records.**

19 If the Court agrees that the requested records fall within the scope of SB 1421 then it need
20 not parse the Department's assertion of personnel record confidentiality. However, *if* the Court
21 finds it necessary to reach this issue, the Department's sweeping assertion that all requested
22 records are confidential under section 832.7(a) is not supported by law.

23 Two categories of records are presumptively confidential under section 832.7(a):
24 "personnel records," as defined by section 832.8, and records maintained in relation to civilian
25 complaints under section 832.5. The Department has cited only the former in its claim of
26 exemption. (Young Decl. at ¶ 32.) Section 832.8 defines "personnel records" as "any file
27 maintained under that individual's name by his or her employing agency" that contains:
28

- (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.

(Pen. Code, § 832.8, subd. (a).) Only a record falling within one of these six categories is exempt from disclosure; mere placement of records in a file maintained under an officer's name does not render them "personnel records." (*POST, supra*, 42 Cal.4th at pp. 290-93; *Ibarra v. Super. Ct.* (2013) 217 Cal.App.4th 695, 703.)

The Department relies on section 832.8, subdivisions (a)(4) and (a)(5) as the basis for its withholding. (Ex. 35 at p. 361 [Def's. Resp. to SROG 3].) Each of these provisions is clearly inapplicable to certain categories of records.

(A) Records and communications about badge-bending generated prior to or outside of the Giordano investigation are not "personnel records."

Records that were generated outside of the Giordano investigation and relay information known to the Department before his investigation do not fall within section 832.8, subdivisions (a)(4) and (a)(5). Under section 832.8, subd. (a)(4), only "records *generated* in connection with [] appraisal or discipline would come within the statutory definition of personnel records." (*Long Beach, supra*, 59 Cal.4th at p. 71.) As *Long Beach* held:

We do not read the phrase 'records relating to ... [e]mployee ... appraisal[] or discipline' so broadly as to include every record that might be *considered* for purposes of an officer's appraisal or discipline, for such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'

(*Id.* at pp. 71-72; *accord Pasadena Police Officers Assn. v. Super. Ct.* (2015) 240 Cal.App.4th 268, 292 ["information that 'could be used' for such purposes" is not exempt from disclosure].)

1 Here, the Department and City personnel were aware of badge-bending long before Open
2 Vallejo released its article exposing the practice. (Ex. 4 at p. 33 [Def's. Second Am. Resp. to
3 SROG 5]; Ex. 5 at p. 45 [Def's. Am. Resp. to RFA 3].) Notwithstanding this prior knowledge, the
4 Department did not [REDACTED] initiate a formal inquiry into any officer for the practice, or take
5 any steps to do so, until the Open Vallejo story. (Ex. 5 at p. 47 [Def's. Am. Resp. to RFA 12]; Ex.
6 4 at p. 34 [Def's. Second Am. Resp. to SROG 7]; [REDACTED].) The
7 Department now appears to contend that because Giordano was brought in to conduct a formal
8 investigation, including of specific officer conduct, this has the effect of subsuming all the City's
9 prior communications about and documentation of badge-bending within a cone of
10 confidentiality, regardless of the actual purpose of the communication or record. This is directly
11 contrary to the limiting principles adopted in *Long Beach* and *Pasadena Police Officers Assn.*

12 Similarly, there is no basis for construing such records as records of "[c]omplaints, or
13 investigations of complaints." (Pen. Code, § 832.8, subd. (a)(5).) In shielding "[c]omplaints, or
14 investigations of complaints" from disclosure under section 832.8, subd. (a)(5), the Legislature
15 was concerned "primarily [with] protecting the confidentiality of records pertaining to citizen
16 complaints against police officers[.]" (*Berkeley Police Assn. v. City of Berkeley* (2008) 167
17 Cal.App.4th 385, 405.) Thus at least one California court has found that this subdivision applies
18 only to records prepared in response to a citizen complaint, rather than an investigation triggered
19 by generalized concerns within a Department. (*See Pasadena Police Officers Assn., supra*, 240
20 Cal.App.4th at p. 289 [interpreting the same language formerly codified as section 832.8, subd.
21 (e)].) There is simply no evidence that the Department has ever received or undertaken an
22 investigation in response to a civilian complaint regarding badge-bending. (Ex. 5 at pp. 47-48
23 [Def's. Am. Resp. to RFA 18].) Accordingly, there is no basis for construing all records
24 documenting the Department's awareness of badge-bending as records of complaints or
25 investigations generated in response to complaints.

26 While Petitioner necessarily has limited knowledge about withheld records, it is aware of
27 at least one pertinent record: as previously noted, local press published an email between then-
28 Interim Assistant Chief Joseph Allio and an outside public relations firm, dated July 31, 2020,

1 discussing prior Department knowledge of badge-bending. (Ex. 3-1.) Although the City has not
2 authenticated or publicly released a copy of this communication, a record with the same parties
3 and date of communication appears on the City's privilege log and has been disclosed in redacted
4 form through discovery. (Exs. 3-2, 33.) If the unredacted form published by the Vallejo Sun is
5 authentic, it is an example of communications regarding badge-bending that are entirely unrelated
6 to Giordano's subsequent investigation and concern information relayed for public relations
7 purposes rather than any officer appraisal or discipline.¹⁶ The Department should be ordered to
8 publicly disclose this and any other such communications relating to badge-bending that were not
9 generated by the Giordano investigation.

10 (B) Portions of the Giordano report are reasonably segregable [REDACTED]
11 [REDACTED].

12 The CPRA requires public agencies to disclose all reasonably segregable portions of a
13 record after removing portions exempted by law. (Gov. Code, § 7922.525, subd. (b).) "The fact
14 that parts of a requested document fall within the terms of an exemption does not justify
15 withholding the entire document." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 653.) The duty to
16 redact exempt information applies so long as "exempt and non-exempt materials are not
17 inextricably intertwined." (*Becerra, supra*, 44 Cal.App.5th at p. 929 [citation omitted].)

18 In *Pasadena Police Officers Assn.*, the Second District Court of Appeal required
19 disclosure of a report generated by outside investigators in the aftermath of a high-profile officer-
20 involved shooting, subject to redactions for personnel information. (240 Cal.App.4th at p. 288.)
21 While the report contained information from an IA investigation relating to specific officer
22 conduct, the court reasoned the "mere fact that the Report contain[ed] privileged information does
23 not bestow protected status on the entire document." (*Id.* at pp. 288-290.) Because the report also
24 contained analysis of the department administration and how it responded to a serious use of force
25 incident, its disclosure would "promote public scrutiny of and agency accountability for specific
26 uses of deadly force" and release with redactions was appropriate. (*Ibid.*)

27 _____
28 ¹⁶ To the extent this communication included information about one officer's past disciplinary
file, that limited information may be redacted.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] Given the importance of this
9 information to the public, the Court should find portions of Giordano's report reasonably
10 segregable.

11 **III. The Department Has Not Demonstrated that Badge-Bending Communications**
12 **Are Privileged under the Attorney-Client or Deliberative Process Doctrines.**

13 Finally, the Department has alleged that communications by or between Vallejo
14 employees and consultants regarding badge-bending are exempt under the attorney-client and
15 deliberative process privileges. (Exs. 30, 33.) Neither of these privileges provide blanket cause for
16 non-disclosure of all communications withheld on this basis.

17 The attorney-client privilege, codified at Evidence Code section 950 et seq., is "narrowly
18 construed." (*Behunin v. Super. Ct.* (2017) 9 Cal.App.5th 833, 850.) Only communications
19 between a lawyer and client, made to facilitate the provision of legal advice, are confidential.
20 (Evid. Code, § 952; *see also Caldecott v. Super. Ct.* (2015) 243 Cal.App.4th 212, 227.) In ruling
21 on the *Pitchess* motion in this case, this Court has already determined that a number of
22 communications the Department categorized as attorney-client are non-privileged and
23 disclosable. (*Cf.* Ex. 33 at p. 339 *with, e.g.,* [REDACTED].) At minimum, the
24 Court should find that the communications it has already found disclosable are not properly
25 withheld pursuant to the attorney-client privilege.

26 The deliberative process privilege, "a qualified, limited privilege" to suppress information
27 about deliberations by which government policy is processed and formulated, is even narrower.
28 (*Caldecott, supra*, 243 Cal.App.4th at p. 225.) The agency asserting the privilege bears the burden

1 of establishing a specific public interest in nondisclosure of the records. (*Citizens for Open Gov't*
2 *v. City of Lodi* (2012) 205 Cal.App.4th 296, 307 [conclusory assertion that nondisclosure was
3 necessary to “foster candid dialogue” insufficient to invoke privilege].) If it meets this initial
4 burden, it must then show that the public’s interest in nondisclosure “clearly outweighs” the
5 public’s interest in transparency. (*Lodi, supra*, 205 Cal.App.4th at pp. 306-07.)

6 Here, the Department appears to be asserting “deliberative process privilege” as the basis
7 for withholding email communications regarding the outside investigator selection process, as
8 well as the previously cited exchange between Joe Allio and PR consultant Cole Pro Media. (Ex.
9 33 at pp. 336-37.) It has not demonstrated any public interest in nondisclosure, much less that
10 such interest *clearly outweighs* the public interest in transparency. Nor can it. “In order to
11 maintain trust in its police department, the public must be kept fully informed of the activities of
12 its peace officers.” (*POST*, 42 Cal.4th at p. 297 [citation omitted].) The public has every right to
13 know how the Department responds to serious allegations of misconduct and polices its own.

14 CONCLUSION

15 For the foregoing reasons, the Court should grant relief as requested in Plaintiff’s Verified
16 Petition for Writ of Mandate and Complaint for Declaratory Relief, and order Defendant to
17 produce the requested records.

18
19 Dated: June 26, 2024

Respectfully submitted,

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