

Case No. H049552

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CITY OF GILROY
Petitioner/Plaintiff

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
SANTA CLARA
Respondent

LAW FOUNDATION OF SILICON VALLEY
Real Party in Interest

In the Original Proceedings Challenging a Judgment of the Superior Court
of California, County of Santa Clara

Superior Court Case No. 20-CV-362347
The Honorable Nahil Iravani-Sani, Judge Presiding

**APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF
LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA
SPECIAL DISTRICTS ASSOCIATION AS AMICI CURIAE IN
SUPPORT OF THE CITY OF GILROY**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed under California Rules of Court, rule 8.208.

Dated: October 18, 2022

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APPLICATION TO FILE

Pursuant to Rule 8.487, subdivision (e) of the California Rules of Court, the League of California Cities (Cal Cities) and the California Special Districts Association (CSDA) respectfully request leave to file the accompanying brief in support of the City of Gilroy.

This brief was entirely drafted by counsel for the Amici and no part of counsel for a party in the pending case authored the proposed amicus brief in whole or in part or made any monetary contribution intended to fund its preparation. See Cal. Rules of Court, rule 8.200, subd. (c).

INTEREST OF APPLICANTS

Our interest in this proceeding is ensuring that California public agencies are not required to absorb additional burdens associated with responding to requests for public records that were not intended by the legislature. Because California cities and special districts are subject to the California Public Records Act (CPRA, Gov. Code § 6251 et seq.) and must regularly ensure compliance with the CPRA, any decision affecting application of the CPRA has a significant impact on the workload and budgets of California public agencies.

The Amici believe that this brief will provide additional background and context regarding the importance of this matter and its potential impact on government resources and effectiveness.

The League of California Cities (Cal Cities) is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide

significance. The Committee has identified this case as having such significance.

California Special Districts Association (CSDA) is a non-profit corporation with a membership of more than 900 special districts throughout California that was formed to promote good governance and to improve core local services through professional development, advocacy, and membership services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities, including irrigation, water, recreation and parks, cemetery, fire protection, police protection, library, utilities, harbor and port, healthcare, and community-service districts. CSDA is advised by its Legal Advisory Working Group, comprised of 25 attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA monitors litigation of concern to special districts and identifies those cases that are of statewide significance. CSDA has identified this case as having statewide significance for special districts.

**AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER CITY OF
GILROY**

I. INTRODUCTION

While the California Public Records Act (CPRA) was enacted to support the essential goal of governmental transparency, the already significant cost of compliance is continuing to increase year over year. The City of Gilroy is not unique in receiving hundreds of CPRA requests each month. As acknowledged by the California Supreme Court, public agencies throughout the state receive “thousands and thousands of public records requests each year with the number of requests increasing each year to staggering proportions.” (*Ardon v. City of Los Angeles*, (2016) 62 Cal.4th 1176, 1189.)

While most CPRA requests result in the production of public records, the CPRA contains dozens of exemptions from disclosure. This means that records often must be reviewed for exemption prior to a CPRA response. Some records may only be partly exempt, some may require a balancing of privacy factors, and others are fully exempt on their face. Here, the question is whether agencies must review facially exempt records—such as police video recordings—that are not contained within the four corners of the CPRA request nor clarified as part of the request during numerous discussions between the local government and requesting party. Such a review is not contemplated in the CPRA. And because the police videos at issue in this case were exempt from disclosure under subdivision (f) of Government Code section 6254, the review would not have resulted in any additional disclosures.

Even if review of exempt video was required by the CPRA, declaratory relief was not an appropriate remedy in this case. Declaratory relief is available “in cases of actual controversy relating to the legal rights and duties of the respective parties....” (*SJJC Aviation Services, LLC v. City*

of *San Jose* (2017) 12 Cal.App.5th 1043, 1061.) Declaratory relief is not punishment. “Declaratory relief operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.” (*Ibid* at p. 1062.) In this case, there were no remaining rights or obligations between the parties, so there was no basis for declaratory relief.

II. A REQUIREMENT TO REVIEW FACIALLY EXEMPT VIDEO WOULD BE OVERLY BURDENSOME AND WOULD NOT FURTHER THE GOALS OF TRANSPARENCY

A. In general body camera videos are exempt from disclosure under subdivision (f) of Government Code section 6254.

As a general rule, body-worn camera footage retained by local police agencies is exempt from disclosure under subdivision (f) of Government Code section 6254. Under most agency policies, including those adopted by Gilroy, body-worn cameras are only to be activated for the purpose of law enforcement investigation or security. “Subdivision (f) does not require the disclosure of ‘investigatory or security *files* compiled by ... [a] state or local police agency’ or of ‘investigatory or security *files* compiled by any other state or local agency for correctional, law enforcement, or licensing purposes....” (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 354 (emphasis in original).) Further, “[t]his statutory language protects materials that, while not on their face exempt from disclosure, nevertheless become exempt through inclusion in an investigatory file.” (*Ibid.*)

Amici recognize that an agency cannot shield unrelated records just by placing them in an investigative file. (*Williams, supra* at p. 356.) However, that is not the issue here. The Law Foundation’s CPRA requests were for records related to the City’s enforcement of so-called “Quality of

Life” crimes. Any responsive body-worn camera footage recorded during the context of the enforcement activities at issue in this case—even if that footage captured activity that was not directly related to the investigation or enforcement activity—was properly included in the investigative file for the subject police activity. As such, those body-worn camera recordings fall squarely within the exemption for law enforcement records.

The CPRA exemption for law enforcement records is not dependent on whether the investigation is currently active, or if there was actual prosecution. The Supreme Court, in *Williams* concluded that “the exemption for law enforcement investigatory files does not end when the investigation ends. While there may be reasons of policy that would support a time limitation on the exemption for investigatory files, such a limitation is virtually impossible to reconcile with the language and history of subdivision (f).” (*Williams, supra* at p. 355.)

Some exemptions from disclosure in the CPRA are conditional (see e.g. Gov. Code § 6254 subd. (c), which requires a determination that disclosure of certain records would constitute “an unwarranted invasion of personal privacy.”) Subdivision (f) of section 6254 is not one of those conditional exemptions. The law enforcement exemption does not require any balancing. Records are either exempt under the subdivision, or they are not. In this case, any responsive videos would have been exempt on their face. The trial court was mistaken to suggest an additional burdensome requirement that is outside the CPRA.

B. The legislature has identified exceptions to the CPRA exemption. The routine body camera footage at issue in this case does not fall within the category of videos that must be disclosed.

The legislature has clarified when video footage must be released to the public. Effective in 2019, the legislature created an exception to the Government Code section 6254(f) exemption for law enforcement records, but only for those videos that depict critical incidents. (Gov. Code § 6254

subd. (f)(4).) For purposes of audio/video disclosure, a critical incident is “[a]n incident involving the discharge of a firearm at a person by a peace officer or custodial officer,” or “[a]n incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.” (Gov. Code §§6254 subd. (f)(4)(C)(i)-(ii).)

Had the legislature intended broader disclosure of law enforcement video recordings, legislators could have expanded the types of incidents for which recordings must be disclosed. The legislature limiting disclosure to critical incidents indicates their intention that other recordings remain exempt. The recordings at issue in this case did not involve critical incidents, and thus were not covered by any disclosure requirement.

C. The review of facially exempt videos to determine whether there was non-exempt footage is overly burdensome, and not required by statute.

Police agencies throughout the state capture hours and hours of body-worn camera, dashboard camera, and other audio/video footage every day. The primary purpose of those recordings is to capture police investigatory activity. Even if videos occasionally inadvertently capture activity that is not related to law enforcement purposes, extraneous footage is not typically retained by the agency in any form.

Under the trial court’s orders in this case, the City of Gilroy should have reviewed all potentially responsive body-worn camera footage to determine whether some amount of non-exempt activity was captured, even though it was unclear on the face of the requests—and after numerous discussions between the City and the requester—that the requester even sought this footage. The CPRA does not contemplate an agency’s need to review fully exempt records, and a requirement to do so even when these records are not understood to be within the scope of the request would be unduly burdensome and inefficient.

An agency must be able to reasonably rely upon the request as presented without being required to divine the unstated intent of the requester. Moreover, the agency should be able to rely upon a final disposition for the request after conferring with the requester in an attempt to narrow and define the request.

Further, it is not unusual for agencies to withhold records without reviewing them in detail when the exemption is unconditional. For example, if a member of the public requested medical records, an agency would not need to review every page of the record to determine that medical records are exempt from disclosure under subdivision (c) of Government Code section 6254. This is true even if the medical records contain information that might not be confidential if it were not in a medical file. Similarly, except under certain circumstances, police officer personnel records are confidential under Penal Code section 832.7. Agencies are not required to review every page of an officer's personnel file to locate information that may not be confidential outside of the personnel file.¹

A rule requiring review of police videos would be even more burdensome than a review of written files. In fact, if video review was required for every response to a CPRA request for records involving police activity, the task would be quickly become overwhelming. The requests at issue in this case arguably involve a broad set of video recordings that would take hours to review.² A judicial requirement to review *all* exempt video recordings for the inadvertent inclusion of non-exempt material

¹ Similarly, courts may decline to hold an *in camera* review when the records in dispute are exempt on their face. (See e.g. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 174.)

² The City of Gilroy disputes whether the CPRA requests at issue included a request body-worn camera footage.

would result in more, and likely even broader requests. At best, agencies would need to spend significant resources to review footage in response to numerous requests. At worst, agencies would mitigate their costs by reducing the use of video. In light of the already significant costs of complying with the CPRA, courts should not adopt additional burdensome requirements not set forth in the statute.

III. DECLARATORY RELIEF SHOULD BE GRANTED ONLY FOR THE PURPOSE OF DETERMINING THE RIGHTS AND RESPONSIBILITIES OF THE PARTIES, NOT FOR THE PURPOSE OF PUNISHMENT

Even if the law required review of facially exempt video recordings, amici are concerned about the improper issuance of declaratory relief when the parties have no remaining legal rights or duties towards each other. A declaratory relief judgment is not intended to redress past grievances, or for punishment.

Government Code section 6258 authorizes declaratory relief in CPRA litigation, but it does not expand the scope of the CPRA to allow relief where there is no current controversy. Declaratory relief is limited to “cases of actual controversy relating to the legal rights and duties of the respective parties....” (*SJJC Aviation Services, supra*, 12 Cal.App.5th at 1061).

“Declaratory relief operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.” (*SJJC Aviation Services, Supra* at p. 1062). Even when “the question addressed was at one time a live issue in the case” declaratory relief is not appropriate when, as here, the question “has been deprived of life because of events occurring after the judicial

process was initiated.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 [citing *Younger v. Superior Court* (1978) 21 Cal.3d 102, 120].)

Here, there was no current controversy. The City engaged in multiple discussions with the requester to determine the scope of the request, and they believed they satisfied the request after producing all of the non-exempt records identified. The video recordings later sought by the requester—but not understood to be the subject of the original request—had been destroyed in accordance with the City’s published retention schedule at the time the underlying action was commenced. Therefore, the issue of whether the City should have reviewed the video recordings in response to the original CPRA request was moot, and not the proper subject of declaratory relief.

IV. CONCLUSION

Because most body-worn camera videos are exempt from disclosure under the CPRA, the creation of a duty to review police video recordings—which by their nature are exempt from disclosure—before responding to a CPRA request, would only serve to increase costs without providing any additional benefit to the public. This relief sought by the City of Gilroy is appropriate. Courts should not impose additional burdensome procedural requirements outside of the requirements of the CPRA.

Dated: October 18, 2022

Respectfully submitted,

By: /s/
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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204 (c)(1), counsel for Amici Curiae exclusive of this certification, the cover, and the tables, this Application to File Amicus Curiae Brief and Amicus Curiae Brief of League of California Cities and California Special Districts Association in Support of Respondent contains 2,491 words, as determined by the word count of the computer program used to prepare the brief.

Dated: October 18, 2022

Respectfully submitted,

By: /s/

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LEAGUE OF CALIFORNIA CITIES

CALIFORNIA SPECIAL DISTRICTS

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PROOF OF SERVICE

Re: *City of Gilroy v. Superior Court (Law Foundation of Silicon Valley)*,
Sixth District Court of Appeal, Case No. H049552.

I hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above entitled action, I am employed in Santa Clara County and my business address is 17575 Peak Avenue, Morgan Hill, CA 95037.

On October 18, 2022, I served the attached document(s) described as:

- **APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA SPECIAL DISTRICTS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF THE CITY OF GILROY**

On the parties in the above named case.

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[X] BY UNITED STATES MAIL: I served the attached documents by enclosing true and correct copies in a sealed envelope with postage fully prepaid thereon. I then placed the envelopes in a U.S. Postal Service mailbox in Morgan Hill, CA addressed as follows:

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

Executed on October 18, 2022, at Morgan Hill, California.

Donald A. Larkin

/s/
Donald A. Larkin

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