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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/26/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN FRANCISCO**

9 AMERICAN FRIENDS SERVICE) Case No.: **CPF-23-517948**
COMMITTEE,)
10) **VERIFIED PETITION FOR WRIT OF**
Petitioner and Plaintiff,) **MANDATE AND COMPLAINT FOR**
11) **DECLARATORY RELIEF**
vs.)
12) **[California Constitution Article I § 3; Gov't**
CITY AND COUNTY OF SAN FRANCISCO,) **Code § 7920.000, et seq.; Civ. Proc. Code §§**
13) **1060, 1085]**
Respondent and Defendant.)
14)
15)
16)

17
18 **INTRODUCTION**

19 1. This is an action to obtain public records under the California Public Records Act
20 (“CPRA”). The CITY AND COUNTY OF SAN FRANCISCO (“Respondent”) Police Department
21 (“SFPD”) is illegally withholding public records in their entirety without justification and in
22 violation of the CPRA. On October 1, 2021, Petitioner AMERICAN FRIENDS SERVICE
23 COMMITTEE (“Petitioner”) submitted a request for public records to Respondent for records
24 reflecting SFPD’s purchase and use of several weapons, chemical agents, and military-grade
25 protective vehicles. Despite frequent and consistent follow up by Petitioner, more than a year has
26 passed and Respondent has yet to meaningfully respond to Petitioner’s request or produce any
27 records. The CPRA requires that an agency produce records responsive to a request made by a
28

1 11. Respondent acknowledged that it received Petitioner’s request on October 5, 2021. A
2 true and correct copy of that correspondence is attached to this petition in **Exhibit A**.

3 12. The ten-day statutory deadline for the determination of disclosability for this request
4 was due on or about October 14, 2021. Respondent did not provide a determination of disclosability
5 or any other response by that date.

6 **Petitioner’s Attempts to Follow Up on its Public Record Request**
7 **and Respondent’s Failure to Produce Records**

8 13. After Respondent failed to timely respond to Petitioner’s request, Petitioner sent a
9 follow-up email to inquire about the status of the request on November 19, 2021. After Respondent
10 failed to respond to that email, on December 2, 2021, Petitioner had a phone call with Respondent
11 and re-sent the public records request. True and correct copies of these correspondence are attached
12 to this petition in **Exhibit B**.

13 14. Over the next week, Petitioner made four phone calls and sent numerous additional
14 emails regarding the status of this request. Respondent sent one reply on December 8, 2021, after a
15 phone call with Petitioner. Respondent replied that there was miscommunication about who was
16 handling the request, and that the “Media Relations Unit” would follow up with Petitioner. True and
17 correct copies of these correspondence are attached to this petition in **Exhibit B**.

18 15. For nearly a year, Petitioner has continued to follow up with Respondent regarding
19 the status of its request. Since December 16, 2021, Petitioner has sent nearly 20 emails seeking a
20 status update on the request. True and correct copies of these correspondence are attached to this
21 petition in **Exhibit B**.

22 16. Respondent failed to provide a response to any of these emails, nor has it produced
23 any records responsive to the request. It is unclear whether Respondent even conducted a search for
24 records responsive to Petitioner’s request. By this unlawful and ongoing delay, Respondent has
25 violated the California Public Records Act.

26 **Respondent is in Possession of Records Responsive to Petitioner’s Request**

27 17. While Respondent did not outright deny it was in possession of records responsive to
28 Petitioner’s request, by its unlawful delay Respondent has effectively withheld responsive records

1 without justification under the CPRA. Below is evidence that implies the existence of records
2 reflecting the information sought in Petitioner’s request.

3 18. Firstly, in accordance with Assembly Bill 481 (“A.B. 481”)⁴, **Exhibit C** includes a
4 draft summary of SFPD’s policies regarding the funding, acquisition, or use of “military
5 equipment” as defined by Gov. Code § 7070 (c). These policies are for weapons acquired prior to
6 January 2022. This document includes SFPD’s military equipment inventory, which includes a
7 Bearcat, Long-Range Acoustic Device, and projectile launch platforms, among others.

8 19. **Exhibit C** also includes Respondent’s policies for use of force including reporting
9 and documentation procedures for the deployment of, for example, chemical agents.

10 20. Lastly, **Exhibit C** includes excerpts of Respondent’s police policy manuals for
11 firearms as well as policy for recording (in a writing) the deployment of such weapons—evidence
12 that such records exist and are in Respondent’s possession as well.

13 **Other Law Enforcement Agencies Are Producing Records in Response to Identical Requests**

14 21. Petitioner submitted requests identical to the one at issue in this litigation to several
15 law enforcement agencies in California. Most of those jurisdictions produced records in response to
16 those requests.

17 22. The Oakland Police Department released records related to, among others, the
18 deployment of chemical agents responsive to a public record request identical to the one at issue
19 here. A true and correct copy of that request and an excerpt of the records released by Oakland P.D.
20 is included in **Exhibit D**.

21 23. The Santa Clara Sherriff’s Office also released records related to the deployment of
22 weapons in response to protests in May and June 2020. A true and correct copy of that request and
23 excerpt of the records produced by the Santa Clara Sherriff’s Office are included in **Exhibit D**.

24
25
26 _____
27 ⁴ A.B. 481 requires all California law enforcement agencies to “obtain approval of the applicable
28 governing body, by adoption of a military equipment use policy, as specified, by ordinance at a
regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating
to the funding, acquisition, or use of military equipment, as defined.”

1 24. Similarly, the Sonoma County Sherriff’s Office produced many records responsive
2 to Petitioner’s identical request without issue. A true and correct copy of the request to the Sonoma
3 County Sherriff’s Office, the agency’s response, and an excerpt of its production reflecting purchase
4 records are included in **Exhibit D**.

5 25. With various California law enforcement agencies promptly producing records in
6 response to Petitioner’s request, Respondent’s ongoing violation of the CPRA becomes especially
7 clear.

8 **VIOLATION OF THE CALIFORNIA CONSTITUTION ARTICLE 1, § 3(b)**

9 26. Petitioner incorporates herein by reference the allegations of paragraphs 1 through 25
10 above, as if set forth in full.

11 27. The California Constitution provides an independent right of access to government
12 records: “The people have the right of access to information concerning the conduct of the people’s
13 business, and, therefore, the meetings of public bodies and the writings of public officials and
14 agencies shall be open to public scrutiny.” Cal. Constitution, Art. 1 § 3(b)(1). This provision was
15 adopted by the voters in 2004 because, as the ballot argument supporting the measure states, when
16 Californians asked questions of their government, they increasingly found “that answers are hard to
17 get.” The constitutional provision is intended to reverse that trend.

18 28. Respondent’s failure to provide all disclosable records in response to Petitioner’s
19 public records request violated Article 1, Section 3(b) of the California Constitution.

20 **PETITION FOR WRIT OF MANDATE AND DECLARATORY RELIEF PURSUANT TO**
21 **THE CALIFORNIA PUBLIC RECORDS ACT, GOV’T CODE § 7921.000, et seq.**

22 29. Petitioner incorporates herein by reference the allegations of paragraphs 1 through 28
23 above, as if set forth in full.

24 **General Principles of the California Public Records Act**

25 30. The CPRA expressly provides that “access to information concerning the conduct of
26 the people’s business is a fundamental and necessary right of every person in this state.” Gov. Code
27 § 7921.000. The purpose is to “give the public access to information that enables them to monitor
28 the functioning of their government.” *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651; *Times Mirror*

1 *Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1350.

2 31. Under the CPRA, all records that are prepared, owned, used, or retained by any
3 public agency and that are not subject to the CPRA’s statutory exemptions to disclosure must be
4 made publicly available for inspection and copying upon request. §§ 7922.525(a)-(b). There is a
5 “statutory presumption that all governmental records are available to any person” unless the agency
6 demonstrates that nondisclosure is statutorily warranted. *ACLU v. Superior Court* (2011) 202
7 Cal.App.4th 55, 85; § 7922.000(a).

8 32. A requester is not required to “precisely identify” the documents sought. In enacting
9 the CPRA, the legislature recognized that writings may be described by their content. *California*
10 *First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 165-66 (1998); *see* §
11 7922.530(a). It is the agency’s responsibility to determine whether it has such writings under its
12 control and the applicability of any exemption. *Id.* An agency is thus obliged to search for records
13 based on criteria set forth in the search request and, further, is required to assist requesters who are
14 having difficulty making a focused and effective request. § 7922.600; *Comm. Youth Athletic Ctr. v.*
15 *City of Nat’l City* (2013) 220 Cal.App.4th 1385, 1417 (“*National City*”).

16 33. The law requires that agencies make non-exempt public records available to
17 requestors “promptly.” § 7922.530(a). It is unlawful for an agency “to delay or obstruct the
18 inspection of public records.” § 7922.500.

19 34. Where an agency withholds responsive records on the basis of a statutory exemption,
20 “the agency . . . must disclose that fact.” *Haynie v. Super. Ct.* 26 Cal.4th 1061, 1072 (2001) (citing
21 § 7922.000) (previously § 6255). Importantly, the agency bears the burden of justifying
22 nondisclosure. § 7922.000. In determining whether exemptions apply, courts must follow the
23 constitutional imperative that the applicability of exemptions must be construed narrowly and that
24 the people’s right of access to public information must be construed broadly. Cal. Constitution, Art.
25 I, § 3(b)(2).

26 35. Even if portions of a document are exempt from disclosure, the agency must disclose
27 the remainder of the document. § 7922.525. The California Supreme Court has found that agencies
28 must use “the equivalent of a surgical scalpel to separate” those reasonable segregable “portions of

1 a record subject to disclosure from privileged portions.” *Los Angeles County Board of Supervisors*
2 *v. Superior Court* (2016) 2 Cal.5th 282, 292 (“LACBOS”).

3 36. Whenever it is made to appear by verified petition to the Superior Court of the
4 county where the records or some part thereof are situated that certain public records are being
5 improperly withheld from a member of the public, the Court shall order the officer or person
6 charged with withholding the records to disclose the public record or show cause why he or she
7 should not do so. § 7923.100. If the Court finds that the agency has not justified its failure to
8 disclose under one of the statutory exemptions, the Court shall order the public official to make the
9 record public. § 7923.110.

10 37. A petitioner prevails under the CPRA where the petitioner shows that an agency
11 unlawfully denied access to records. *National City*, 220 Cal.App.4th at 1446-1447.

12 38. An agency is not protected from liability merely because the denial of access was
13 due to the agency’s internal logistical problems or general neglect of its duties. *Id.* In determining
14 whether a violation occurred, “bad faith” is not the test—it is the effect of the agency’s inability or
15 unwillingness to produce records that is determinative. *Sukumar v. City of San Diego* (2017) 14
16 Cal.App.5th 451, 466.

17 39. Public policy favors judicial enforcement of the CPRA. The CPRA contains a
18 mandatory attorney’s fee provision for the prevailing plaintiff. § 7923.115(a)-(c). The purpose of
19 the provision is to provide “protections and incentives for members of the public to seek judicial
20 enforcement of their right to inspect public records subject to disclosure.” *Filarsky v. Super. Ct.*, 28
21 Cal.4th 419, 427 (2002).

22 **Respondent Must Conduct a Search for Records**

23 40. Respondent failed to conduct a reasonable search for information and records
24 responsive to Petitioner’s request. Conducting a proper search is imperative to uphold the
25 fundamental purpose of the CPRA, which is to “provide access to information.” § 7922.500. Failure
26 to do so results in a violation of the statute. *National City, supra*, Cal.App.4th at 1424 (citing
27 *California First Amendment Coalition*, 67 Cal.App.4th 159, 165-166). Respondent failed to conduct
28 a reasonable search and, thus, violated Petitioner’s right to public records.

1 41. Here, Respondent made promises to search for records and instructed Petitioner to
2 resend its request to a separate department. Despite consistent follow up by Petitioner for over a
3 year, it is not clear whether Respondent ever conducted a search for records.

4 42. Even where an agency is not “intentionally obstructionist” it is a violation of the
5 statute to fail to be “sufficiently proactive or diligent in making a reasonable effort to identify and
6 locate” records. *Community Youth Athletic Center v. City of National City, supra*, 220 Cal.App.4th
7 at 1430. In short, Respondent “had the obligation to interpret the request, as made by a member of
8 the public . . . and to facilitate a reasonable effort to locate and release the information.” Gov. Code,
9 § 7922.600; *Community Youth Athletic Center v. City of National City, supra*, 220 Cal.App.4th at
10 1430 (affirming the trial court’s ruling that the City’s response to the [Petitioner’s] requests violated
11 the PRA because the City did not ‘diligently search for and produce’ the requested documents, that
12 were known to exist”). Here, Respondent also failed to “diligently search for and produce” the
13 requested documents and opted to obstruct access to public records by its unlawful delay instead.

14 43. Respondent violated its duty under the CPRA by failing to locate and provide all
15 responsive records and information in its possession. By failing to conduct a reasonable search for
16 the records sought in Petitioner’s request, Respondent obstructs Petitioner’s right to access such
17 records. Petitioner respectfully asks that the Court issue a writ of mandate and order Respondent to
18 conduct a reasonable search for records as required under the statute.

19 **Respondent Violated the CPRA by Failing to Produce Records Promptly, and, In So Doing,**
20 **Unlawfully Denied Petitioner All Access to Public Records for Over a Year**

21 44. Respondent’s failure to promptly produce any non-exempt public records violates
22 the CPRA. From the moment an agency receives a CPRA request to its appeal of a trial court
23 decision ordering disclosure, the law requires prompt production, prohibits the use of delay to deny
24 access to public records, and protects the public’s right to prompt access. § 7923.005 (“[T]he times
25 for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court
26 with the object of securing a decision to these matters at the earliest possible time.” (emphasis
27 added)); *Times Mirror v. Superior Court* 53 Cal.3d 1325, 1334-1336 (1991) (noting trial court
28 decisions are appealable by extraordinary writ in order to prevent public agencies from delaying

1 disclosure of public records while an appeal is pending). The seriousness of transparency and
2 urgency in compliance is embedded in the statute and supported by case law.

3 45. Here, Respondent has effectively denied access to all records by ignoring
4 Petitioner’s request for an entire year. Respondent acknowledged Petitioner’s request, but it never
5 produced any records. By failing to provide records promptly, Respondent has denied Petitioner all
6 access to records.

7 46. At no time has Respondent stated that it is withholding information subject to
8 exemption. Had it done so, Petitioner would be entitled to immediately challenge the withholdings
9 with a lawsuit and would be entitled to secure a decision to the matter at the earliest possible time. §
10 7923.005. However, rather than withholding certain records by citing any exemption(s), Respondent
11 has withheld all responsive records without reference to any statutory justification.

12 47. By its conduct, Respondent obstructs public access to vital information and
13 withholds from the public any opportunity to either promptly verify government accountability or to
14 promptly check against the arbitrary exercise of official power. In so doing, Respondent frustrates
15 the democratic process itself.

16 **Respondent Cannot Justify Withholding Responsive Records in Their Entirety**

17 48. Even assuming, *arguendo*, that Respondent were able to meet its burden to establish
18 that some portions of the withheld records were statutorily exempt from disclosure, Respondent
19 would still be obligated to disclose the non-exempt portions of responsive records and information.
20 Pursuant to § 7922.525(b), any non-exempt (public) part of a record must be made available after
21 any exempt information has been redacted. Again, the California Supreme Court has stated that
22 agencies must use “the equivalent of a surgical scalpel to separate” those reasonably segregable
23 “portions of a record subject to disclosure from privileged portions.” *LACBOS*, 2 Cal.5th at 292.

24 49. Even then, exemptions must be construed narrowly when restricting the people’s
25 right of access to public information and construed broadly when furthering the people’s right of
26 access. Cal. Constitution, Art. I, § 3(b)(2). Moreover, if records pertain to the conduct of the
27 people's business, there is a public interest in disclosure. *County of Santa Clara v. Superior Court of*
28 *Santa Clara County* (2009) 170 Cal. App. 4th 1301, 1324. The “*weight* of that interest is

1 proportionate to the gravity of governmental tasks sought to be illuminated and the directness with
2 which the disclosure will serve to illuminate.” *Id.*

3 50. Here, the gravity of governmental tasks Petitioner seeks to illuminate is significant—
4 procurement and use of weapons by a militarized police force that will ultimately be used against
5 the civilian population —and the disclosure of the withheld records will serve to directly illuminate
6 these matters. Thus, the public’s interest in disclosure is extraordinarily weighty.

7 51. The public’s interest in disclosure is even weightier here *because* the withheld
8 records relate to law enforcement. The Supreme Court has recognized that the public policy in favor
9 of disclosure is especially salient when the subject is law enforcement, stating, “[i]n order to
10 maintain trust in its police department, the public must be kept fully informed of the activities of its
11 peace officers.” *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42
12 Cal.4th 278, 297. Given the extraordinary authority with which police officers are entrusted, the
13 need for transparency, accountability, and public access to information is particularly acute when
14 the information sought involves the conduct of police officers. *Pasadena Police Officers*
15 *Association v. Superior Court* (2015) 240 Cal.App.4th 268, 283.

16 52. As noted above, numerous other California law enforcement agencies have produced
17 records in response to Petitioner’s identical request without issue. Major Bay Area law enforcement
18 jurisdictions such as the Oakland Police Department and Santa Clara Sherriff’s Office have
19 produced either partial records or records in their entirety in response to Petitioner’s identical public
20 records request. *See Exhibit D.* These records range from purchase records to records reflecting use
21 of chemical weapons and post-incident reports. Where personal information or other statutory
22 exemptions applied, other jurisdictions made redactions but otherwise produced the public records,
23 pursuant to the CPRA. In comparison, Respondent has seemingly failed to even conduct a search
24 for responsive records.

25 53. At a time when the people’s relationship with law enforcement is especially strained,
26 transparency and truthfulness is of the utmost importance. Respondent’s police department is
27 purchasing and deploying military-grade weapons against its residents. Records that reflect how
28 Respondent utilizes public funds to that end align completely with the legislative purpose of the

1 CPRA, which is to “give the public access to information that enables them to monitor the
2 functioning of their government.” *CBS, Inc. v. Block, supra*, at 651.

3 54. In conclusion, Respondent is defying transparency and accountability by insisting
4 that its police department should be permitted to operate under the cover of secrecy. Respondent’s
5 failure to search for and produce records violates not only the letter of the CPRA, but also its spirit.
6 The CPRA is predicated on the principle that:

7 Openness in government is essential to the functioning of democracy. Implicit in
8 the democratic process is the notion that government should be accountable for its
9 actions. In order to verify accountability, individuals must have access to
10 government files. Such access permits checks against the arbitrary exercise of
11 official power and secrecy in the political process.

12 *Int’l Fed. Of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court*
13 (2007) 42 Cal.4th 319, 328-39 (internal quotations omitted). By failing to produce public records
14 without justification, Respondent obstructs public access to vital information and, in so doing,
15 violates the CPRA.

16 55. Lastly, declaratory relief is warranted to address Respondent’s violations of its
17 statutory duties under the CPRA, including the duty to provide a determination of disclosability and
18 estimated date of production within statutory time limits, and the duty to provide prompt access
19 without obstruction or delay. Declaratory relief as to these violations is important to protect the
20 public’s ability to promptly access public records in Respondent’s possession and its ability to seek
21 judicial relief as to the disclosability of those public records.

22 **A Writ of Mandate and Declaratory Relief Are Appropriate**

23 56. Petitioner incorporates herein by reference the allegations of paragraphs 1 through
24 55 above, as if set forth in full.

25 57. Petitioner is entitled to seek a writ of mandate and declaratory relief in response to
26 violation of the CPRA. § 7923.000. Petitioner has no plain, speedy, adequate remedy in the
27 ordinary course of law other than the relief sought in this petition. *See* Code of Civil Procedure §
28 1086.

58. Respondent has a clear, present, ministerial duty to comply with the California
Constitution and § 7921.000, *et seq.* Respondent has acted and continues to act in violation of the

1 CPRA by denying access to public information through its refusal to release disclosable records to
2 the public. § 7922.530(a), 7922.500.

3 59. Petitioner has performed all conditions precedent to filing this petition. There are no
4 administrative exhaustion requirements under Government Code § 7921.000, *et seq.*

5 60. An actual controversy exists between the parties concerning whether Respondent
6 engaged in conduct that violates the statutory requirements of the CPRA and the California
7 Constitution. A judicial determination to resolve this actual controversy is necessary and
8 appropriate as soon as possible.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays for judgment as follows:

- 11 1. For issuance of a writ of mandate directing Respondent to
12 immediately search for and provide Petitioner with all non-exempt
13 records responsive to Petitioner's request for records;
- 14 2. For a declaration that Petitioner's request sought records subject to
15 mandatory disclosure; that Petitioner's request imposed a duty upon
16 Respondent to promptly provide public, non-exempt records in
17 response; that Respondent failed that duty by withholding non-
18 exempt records; and that Respondent's conduct denying access to
19 disclosable public records violates the CPRA;
- 20 3. For Petitioner to be awarded reasonable attorneys' fees and costs;
21 and
- 22 4. For such other and further relief as the Court deems proper and just.

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24 Dated: January 24, 2023 2

Respectfully submitted,

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28 SARA B. KOHGADAI
Attorney for Petitioner and Plaintiff

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VERIFICATION

I, Sonia Tuma, am the director of AMERICAN FRIENDS SERVICE COMMITTEE, the Petitioner and Plaintiff in this action. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory Relief, and I know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I also believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this the __24__ day of January, 2023 in Los Angeles, California.

_____  _____

SONIA TUMA
On Behalf of AMERICAN FRIENDS
SERVICE COMMITTEE.