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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA

26 COUNTY OF SOLANO

27 INFORMED CALIFORNIA FOUNDATION,
 28 INC., D/B/A OPEN VALLEJO,

Plaintiff/Petitioner,

v.

CITY OF VALLEJO,

Defendant/Respondent.

FILED/ENDORSED
 Clerk of the Superior Court

SEP 13 2021

By J. Aduag
 DEPUTY CLERK

ASSIGNED TO
JUDGE Wendy G. Getty
FOR ALL PURPOSES

Case No.

ECS057109

**VERIFIED PETITION FOR WRIT OF
 MANDATE TO ENFORCE CALIFORNIA
 PUBLIC RECORDS ACT**

DAVIS WRIGHT TREMAINE LLP

FAXED
COPY

1 Plaintiff Informed California Foundation, d/b/a Open Vallejo (“OV”) petitions this
2 Court for a writ of mandate requiring Defendant City of Vallejo (“the City”) to promptly and
3 fully comply with California’s landmark legislation, Senate Bill 1421 (the “Right To Know
4 Act”), which, starting on January 1, 2019, required state and local agencies to disclose new
5 categories of records related to peace-officer conduct under the California Public Records Act
6 (“CPRA”). Since 2019, The City has repeatedly failed to produce responsive records in its
7 possession while repeatedly failing to provide the documents identified by Open Vallejo in
8 CPRA requests, regardless of how Open Vallejo has delineated the requests, choosing only to
9 provide a paucity of what is responsive to the request, constructively denying Open Vallejo’s
10 CPRA requests, and leaving it with no choice but to file this action.

11 SUMMARY OF ALLEGATIONS

12 1. On January 1, 2019, the Right To Know Act took effect, requiring disclosure of
13 certain peace-officer personnel files relating to officers’ discharge of a firearm, use of force
14 resulting in death or serious injury, sexual misconduct, or dishonesty in certain contexts. These
15 records “shall be made available for public inspection pursuant to the California Public Records
16 Act,” “notwithstanding ... any other law.” Penal Code § 832.7(b)(1), as amended by Stats.
17 2018, ch. 988 § 2 (Sen. Bill 1421).

18 2. Two months after the law went into effect, on March 14, 2019, OV made its
19 first request for these newly available records from Defendant the City, which has since been
20 followed by twenty-seven additional requests, the most recent of which was made on April 28,
21 2021 (the “Requests”).

22 3. The CPRA requires an agency that receives a CPRA request to determine
23 whether the requested records are exempt from disclosure within strict deadlines and to promptly
24 release all non-exempt records. It does not allow an agency to deny access while purporting to
25 comply by using the pretext of replying with non-responsive or inadequate documents as a
26 means of thwarting the law’s purpose, as the City has repeatedly done here.

27 4. Although this landmark transparency legislation has been in place since January
28 1, 2019, for the past two years, the City has repeatedly delayed or failed to produce responsive

1 records, which Open Vallejo has been able to confirm are in its possession, depriving Open
2 Vallejo and the public from scrutinizing records related to categories of “serious police
3 misconduct” that the Legislature found, when passing the Right To Know Act, that the public
4 has the right to know “all about.” Stats. 2018, ch. 988, § 1 (Sen. Bill No. 1421).

5 5. Many of the Requests have been delayed or ignored by the City, through
6 misuse and overuse of a variety of lawful exemptions and exceptions, including but not limited
7 to Attorney Client Privilege and Work Product, and claims of needing to protect an ongoing
8 investigation under Government Code § 6254(f), and Penal Code § 832.7(b)(7)(A)(i), and
9 protecting privacy under Civil Code § 1798.24. Indeed, while claiming these exemptions, the
10 City has failed to fire a single officer for any of the 33 fatalities believed to have occurred
11 between 2000 and the present and yet has disclosed only a fraction of the information related
12 to any of the Requests made for records concerning these incidents. The City has persisted in
13 a consistent pattern of ignoring, and seemingly thwarting, the clear purpose of SB 1421,
14 regardless of how Open Vallejo has framed its requests.

15 6. In enacting the Right To Know Act, the Legislature found that the “public has a
16 strong, compelling interest in law enforcement transparency because it is essential to having a
17 just and democratic society.” S.B. 1421 § 4. And already, the release of records under this
18 new law has revealed serious peace-officer misconduct that had long been hidden. See ¶ 26,
19 infra.

20 PARTIES

21 7. Plaintiff Open Vallejo is a community-supported media organization founded in
22 February 2019 that provides news coverage of the activities and impact of local government,
23 notably that of the Vallejo Police Department (“VPD”), via its website, <https://openvallejo.org>.
24 To fulfill its mission to inform the public, Open Vallejo depends on access to public records. As
25 such, Open Vallejo is within the class of persons beneficially interested in the City’s
26 performance of its legal duties under the CPRA.

27 8. The impact of Open Vallejo’s investigative journalism on behalf of the citizens of
28 Vallejo was recognized, specifically for exposing the secret ritual of VPD officers bending the

1 tips of their badges to commemorate on-the-job killings, by the Annenberg School of Journalism
2 at the University of Southern California, which awarded OV in February 2021 the Selden Ring
3 Special Citation for Investigative Reporting, and by the Society of Professional Journalists,
4 which in March 2021 awarded OV its James Madison Freedom of Information Award for
5 Community Media.¹

6 9. Open Vallejo's work in revealing former Vallejo Councilmember Hakeem
7 Brown's history of domestic violence was recognized for its impact by Harvard's Shorenstein
8 Center on Media, Politics and Public Policy, which listed it as a semi-finalist for its prestigious
9 *Goldsmith Prize for Investigative Reporting*.²

10 10. Open Vallejo's founder, Geoffrey King, has also been recognized individually for
11 his contributions, as the *Citizen* category winner of the *James Madison Freedom of Information*
12 *Award*, awarded in February 2020 by the Society of Professional Journalists, which referred to
13 King as a "beacon of hope" for his "relentless use of the California Public Records Act to shine a
14 light on a troubled local government," and as a Finalist for Sacramento Press Club's *Impact in*
15 *Journalism* award, which referred to King's work as "revelatory."³

16 11. Defendant the City is a California charter city organized and existing under its
17 own charter and Article XI §3 of the California Constitution. (See
18 <https://www.cityofvallejo.net/>.)

19 12. The City maintains, uses, and possesses the records sought by this Petition.

20 JURISDICTION AND VENUE

21 13. This Court has jurisdiction under Government Code §§ 6258, 6259, Code of
22 Civil Procedure §§ 1060 and 1085, and Article VI section 10 of the California Constitution.

23
24 ¹ Available at <https://annenberg.usc.edu/news/spotlight/associated-press-team-wins-2021-selden-ring-award-series-exploitation-and-abuse-palm>; <https://spjnorcal.org/2021/03/16/spj-norcal-36th-annual-james-madison-freedom-of-information-awards/>.

25
26 <https://openvallejo.org/2021/02/10/open-vallejo-wins-national-journalism-honor-for-exposing-badge-bending-ritual/>.

27 ² Available at <https://goldsmithawards.org/2021-goldsmith-prize-semi-finalists/>.

28 ³ Available at <https://spjnorcal.org/2020/02/06/society-of-professional-journalists-norcal-chapter-honors-freedom-of-information-and-first-amendment-champions/>;
<https://sacpressclub.org/awards/winners/#aaa48e740064e4e43>.

1 14. Venue is proper in this Court because the City is headquartered in the County of
2 Solano. The records in question, or some portion of them, are situated in the County of Solano,
3 meaning that suit may be brought in that County. Gov't Code § 6259(a); Code Civ. Pro. §
4 401(1).

5 **THE CALIFORNIA PUBLIC RECORDS ACT AND**
6 **S.B. 1421'S NEW DISCLOSURE REQUIREMENTS**

7 15. Under the California Public Records Act, Government Code §§ 6250 et seq., all
8 records "containing information relating to the conduct of the public's business prepared,
9 owned, used, or retained by any state or local agency" must be made publicly available for
10 inspection and copying upon request, unless they are exempt from disclosure. Gov't. Code §§
11 6253(a)-(b); 6252(e). If documents contain both exempt and non-exempt material, the
12 government must disclose all non-exempt material. *Id.* § 6253(a).

13 16. The CPRA contains strict deadlines for the government's responses to a request
14 for records. An agency that receives a request "shall, within 10 days from receipt of the
15 request, determine whether the request, in whole or in part, seeks copies of disclosable public
16 records in the possession of the agency and shall promptly notify the person making the
17 request of the determination and the reasons therefor." Gov't Code § 6253(c).

18 17. "In unusual circumstances," as defined by the statute, the agency may extend
19 this time limit "by written notice ... to the person making the request, setting forth the reasons
20 for the extension and the date on which a determination is expected to be dispatched. No
21 notice shall specify a date that would result in an extension for more than 14 days." *Id.*; *see id.*
22 § 6253(c)(1)-(4) (defining "unusual circumstances").

23 18. The CPRA also requires an agency to reasonably assist a member of the public
24 in making a focused request, including, to the extent reasonable under the circumstances:
25 "assist[ing] the member of the public to identify records and information that are responsive to
26 the request or to the purpose of the request, if stated" and "[p]rovid[ing] suggestions for
27 overcoming any practical basis for denying access to the records or information sought." Gov't
28 Code § 6253.1

1 19. Before the Right To Know Act was enacted, CPRA requests for peace officer
2 personnel records — defined as all records related to the “advancement, appraisal and
3 discipline” of peace officers — were exempt from disclosure. Penal Code §§ 832.7, 832.8;
4 Gov’t Code § 6254(k). This exemption included personnel records regarding investigations
5 into police shootings and other serious uses of force, or allegations of serious misconduct,
6 even when the agency had concluded that the officer had engaged in misconduct. City of
7 Hemet v. Super. Court, 37 Cal. App. 4th 1411, 1431 (1995). Until the Right To Know Act
8 was enacted, Californians were unable to obtain the vast majority of records relating to the
9 most egregious forms of police misconduct.

10 20. In 2018, reacting to public outcry concerning specific past events of police
11 misconduct, the Legislature enacted Senate Bill No. 1421 to address this situation,
12 emphasizing that “[t]he public has a right to know all about serious police misconduct, as well
13 as about officer-involved shootings and other serious uses of force.” Stats. 2018
14 Chapt. 988 § 1 (declarations and findings).

15 21. This new law, effective January 1, 2019, provides broad public access to
16 records that were previously released only in limited circumstances.

17 22. Specifically, the law amended Penal Code § 832.7(b)(1) to require that
18 “[n]otwithstanding ... any other law, the following peace officer or custodial officer personnel
19 records and records maintained by any state or local agency shall not be confidential and shall
20 be made available for public inspection pursuant to the California Public Records Act ...:

21 (A) A record relating to the report, investigation, or findings of any
22 of the following:

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

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

27 (B) (i) Any record relating to an incident in which a sustained
28 finding was made by any law enforcement agency or oversight agency that a

1 peace officer or custodial officer engaged in sexual assault involving a
2 member of the public.

3 (C) Any record relating to an incident in which a sustained finding
4 was made by any law enforcement agency or oversight agency of dishonesty
5 by a peace officer or custodial officer directly relating to the reporting,
6 investigation, or prosecution of a crime, or directly relating to the reporting of,
7 or investigation of misconduct by, another peace officer or custodial officer,
8 including, but not limited to, any sustained finding of perjury, false
9 statements, filing false reports, destruction, falsifying, or concealing of
10 evidence.”

11 23. The new law specifies that agencies must release a broad range of records
12 relating to these incidents. See Penal Code § 832.7(b)(2).

13 24. At the same time, the Right To Know Act allows, and in some cases requires,
14 agencies to redact — but not withhold — records when necessary to protect personal privacy
15 or when the public interest in non-disclosure clearly outweighs the public interest in
16 disclosure. See Penal Code § 832.7(b)(5)(7).

17 25. The law additionally allows the government to withhold records in order to
18 protect the integrity of pending investigations and prohibits the release of complaints that are
19 frivolous or unfounded. Penal Code § 832.7(b)(7), (8).

20 26. The new law has led to much-needed scrutiny of misconduct by peace officers.
21 For example:

- 22 a. Records released by the City of Vallejo in response to a similar request under the
23 Right To Know Act confirmed that the Vallejo Police Department had a long-
24 standing secret ritual of officers bending the tips of their badges to commemorate
25 the killing of civilians. Geoffrey King, *Vallejo Police Bend Badges to Mark Fatal*
26 *Shootings*, Open Vallejo, July 28, 2020⁴;

27
28 ⁴ Available at <https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/>.

- 1 b. Using the above records and others, Open Vallejo over the course of several
2 months constructed a database of shootings and fatal incidents that included the
3 name of the decedent, their date of death, and the name of each officer who used
4 lethal force. Geoffrey King, *Open Vallejo Releases Critical Incident Database to*
5 *Public*, Open Vallejo, Aug. 7, 2020⁵;
- 6 c. This information was then compared against other evidence to identify which
7 officers bent their badges. Days after Open Vallejo’s inaugural story ran, the
8 Vallejo Police Department launched an investigation into the practice which is
9 ongoing. Dan Simon, *Police Chief in California Launches Inquiry Into Alleged*
10 *Badge Bending Rite to Indicate Fatal Shootings*, CNN, July 31, 2020⁶;
- 11 d. Records released by the cities of Mendota, Guadalupe and Greenfield in response
12 to a similar request under the Right To Know Act confirmed that Chief Assistant
13 City Attorney Randy Risner was removed or encouraged to resign from his role as
14 city attorney for those municipalities before being hired by the City of Vallejo.
15 Geoffrey King, *Vallejo Appoints Interim City Attorney Court Sanctioned for*
16 *Fraud*, Open Vallejo, Jan. 27, 2020⁷;
- 17 e. Records released by the City of Vallejo under the Right To Know Act confirmed
18 that Vallejo Police Department investigators seized a private drone in connection
19 with the fatal shooting of Sean Monterrosa last June, and indicated that the drone
20 files became “corrupted and unreadable,” even by forensics experts. Laurence Du
21 Sault and Geoffrey King, *Detective on Leave Over Sean Monterrosa Shooting*,
22 Open Vallejo, July 22, 2021⁸. Open Vallejo also obtained the corrupted files under

24 _____
25 ⁵ Available at [https://openvallejo.org/2020/08/07/open-vallejo-launches-critical-incident-](https://openvallejo.org/2020/08/07/open-vallejo-launches-critical-incident-database/)
26 [database/](https://openvallejo.org/2020/08/07/open-vallejo-launches-critical-incident-database/).

26 ⁶ Available at [https://www.cnn.com/2020/07/31/us/vallejo-california-badge-bending-](https://www.cnn.com/2020/07/31/us/vallejo-california-badge-bending-scandal/index.html)
27 [scandal/index.html](https://www.cnn.com/2020/07/31/us/vallejo-california-badge-bending-scandal/index.html).

27 ⁷ Available at [https://openvallejo.org/2020/01/27/vallejo-to-appoint-city-attorney-previously-](https://openvallejo.org/2020/01/27/vallejo-to-appoint-city-attorney-previously-sanctioned-fired/)
28 [sanctioned-fired/](https://openvallejo.org/2020/01/27/vallejo-to-appoint-city-attorney-previously-sanctioned-fired/).

28 ⁸ Available at [https://openvallejo.org/2021/07/11/detective-on-leave-over-sean-monterrosa-](https://openvallejo.org/2021/07/11/detective-on-leave-over-sean-monterrosa-shooting/)
[shooting/](https://openvallejo.org/2021/07/11/detective-on-leave-over-sean-monterrosa-shooting/).

- 1 the Right To Know Act, and recovered some data from the files, notwithstanding
2 the City's claim that the drone contained no recoverable information;
- 3 f. Records released by the City of Richmond in response to a similar request under
4 the Right To Know Act revealed that police officers who exchanged sexually
5 explicit text messages with a teenager kept their jobs. Julie Small and Sukey
6 Lewis, *High-Ranking Richmond Police Kept Their Jobs After SEXTS With Teen*,
7 KQED, Sept. 30, 2020⁹;
- 8 g. Records released by the California Highway Patrol ("CHP") in response to a
9 similar request under the Right To Know Act show that an officer sexually
10 harassed 21 women before being dismissed from his role, but the CHP did not refer
11 his case to the D.A. for prosecution. Sukey Lewis, *A CHP Officer Harassed 21*
12 *Women, Agency Fired 'Bad Apple' But Didn't Pursue Criminal Charges*, KQED,
13 July 17, 2020¹⁰;
- 14 h. Records released by Mendocino County under the Right To Know Act show that a
15 county correctional officer who tased a handcuffed, mentally-ill inmate, causing
16 the man to stop breathing, kept his job and was not charged with a crime. Katey
17 Rusch and Edward Booth, *Mendocino County Correctional Sergeant Demoted*
18 *After Tasing Handcuffed Inmate*, KQED, Jan. 11, 2020¹¹;
- 19 i. Records released have led to dismissals of prosecutions reliant on a dishonest
20 detective. Alex Emslie and Sukey Lewis, *Contra Costa County DA to Dismiss*
21 *Three Cases Involving Fired Antioch Detective*, KQED, Dec. 19, 2019¹²;
- 22 j. Records released under the Right To Know Act have revealed that a significant
23 number of law enforcement agencies in California failed to conduct internal

24 _____
25 ⁹ Available at <https://www.kqed.org/news/11840500/high-ranking-richmond-police-kept-their-jobs-after-sexes-with-teen>.

26 ¹⁰ Available at <https://www.kqed.org/news/11828774/a-chp-officer-harassed-21-women-agency-fired-bad-apple-but-didnt-pursue-criminal-charges>.

27 ¹¹ Available at <https://www.kqed.org/news/11795539/mendocino-county-correctional-sergeant-demoted-after-tasing-handcuffed-inmate>.

28 ¹² Available at <https://www.kqed.org/news/11792317/contra-costa-county-da-to-dismiss-three-cases-involving-fired-antioch-detective>.

1 investigations following deadly uses of force. Sukey Lewis and Thomas Peele,
2 *Some California Police Departments Don't Review Deadly Uses of Force*, KQED,
3 Nov. 17, 2019¹³;

4 k. Hundreds of case files released by the California Department of Corrections, in
5 response to a similar request under the Right To Know Act, revealed multiple cases
6 of correctional officers sexually assaulting women in state prisons, some of whom
7 were never charged with crimes. Julie Small, *#MeToo Behind Bars: Records Shed*
8 *Light on Sexual Abuse Inside State Women's Prisons*, KQED, Nov. 14, 2019¹⁴;

9 l. Records released under the Right To Know Act showed a former San Jose State
10 University police officer was found to have used excessive force, won his job back
11 on appeal, resigned, and was hired by a neighboring police department. Reporting
12 on the case preceded the officer's resignation. Robert Salonga and Sukey Lewis,
13 *Los Gatos Cop Resigns Amid Outcry Over Beating at San Jose State*, Bay Area
14 News Group and KQED, July 22, 2019¹⁵;

15 m. Records released by the Daly City Police Department in response to a Right To
16 Know Act request showed an officer was reprimanded in secret for a shooting that
17 the department publicly commended. Julie Small and Sukey Lewis, *From*
18 *Commendation to Reprimand: Discipline in Daly City Police Shooting Revealed*,
19 KQED, July 2, 2019¹⁶;

20 n. Right To Know Act records released by the Clovis Police Department revealed
21 apparent special treatment for a former officer suspected of abusing his girlfriend.
22
23

24
25 ¹³ Available at <https://www.kqed.org/news/11786770/some-california-police-departments-dont-review-deadly-uses-of-force>.

26 ¹⁴ Available at <https://www.kqed.org/news/11786495/metoo-behind-bars-new-records-shed-light-on-sexual-abuse-inside-state-womens-prisons>.

27 ¹⁵ Available at <https://www.kqed.org/news/11762733/los-gatos-cop-resigns-amid-outcry-over-beating-at-san-jose-state>.

28 ¹⁶ Available at <https://www.kqed.org/news/11758809/from-commendation-to-reprimand-discipline-in-daly-city-police-shooting-revealed>.

1 Sukey Lewis, *Who Do You Call for Help When Your Abuser Is a Cop?*, KQED,
2 May 24, 2019¹⁷;

3 o. Records released by the Menlo Park Police Department showed how officers were
4 able to respond to a mentally ill man charging them with a kitchen knife without
5 using deadly force. Alex Emslie, *Mentally Ill Man Charged Menlo Park Police
6 With a Knife But Officers Didn't Shoot Him*, KQED, April 23, 2019¹⁸;

7 p. Records released after KQED intervened in a lawsuit to keep them hidden revealed
8 that a Walnut Creek police officer avoided termination despite an internal
9 investigation finding the officer had engaged in “careless evidence handling” and
10 had “misrepresent[ed] his actions in police reports.” Alex Emslie and Thomas
11 Peele, *Records That Police Unions Sued to Keep Secret Show East Bay Cop
12 Disciplined for False Reports*, KQED, March 19, 2019¹⁹;

13 q. “Three Fairfield police officers engaged in sexual misconduct with members of
14 the public. Four others had sustained findings of dishonesty — they withheld
15 evidence, committed forgery or falsified reports.” Megan Cassidy, *Multiple
16 Fairfield Police Officers Disciplined for Sexual Advances, Records Show*, San
17 Francisco Chronicle, Jan. 31, 2019²⁰;

18 r. The San Mateo District Attorney specifically credited S.B. 1421’s disclosure
19 requirement as a vehicle for bringing attention to hidden officer misconduct,
20 stating that KQED’s reporting about information released under the new law
21 prompted the District Attorney’s Office to reopen an inquiry into a former
22 Burlingame officer and “[i]f there are police agencies around this state that have
23 not been turning over potentially criminal conduct and just kept it behind closed
24

25 ¹⁷ Available at <https://www.kqed.org/news/11749447/who-do-you-call-for-help-when-your-abuser-is-a-cop>.

26 ¹⁸ Available at <https://www.kqed.org/news/11741918/mentally-ill-man-charged-menlo-park-police-with-a-knife-but-officers-didnt-shoot-him>.

27 ¹⁹ Available at <https://www.kqed.org/news/11734079/records-union-sued-to-keep-secret-show-walnut-creek-police-officer-disciplined-for-false-reports>.

28 ²⁰ Available at <https://www.sfchronicle.com/crime/article/Multiple-Fairfield-police-officers-disciplined-13578919.php>

1 doors, then this law is going to be a very good sunlight provision.” Alex Emslie,
 2 Sukey Lewis, and Thomas Peele, *San Mateo County DA Renews Criminal Inquiry*
 3 *After Release of Police Misconduct Records*, KQED, Jan. 8, 2019²¹;

4 s. Documents released under the Right To Know Act also have shined light onto
 5 excessive force and potential perjury by officers in Rio Vista,²² and embezzlement
 6 of tens of thousands of rounds of police ammunition by a San Bernardino Sheriff’s
 7 deputy²³;

8 t. More broadly, S.B. 1421 has provided a means for ongoing visibility to and
 9 understanding of police conduct and process, exemplified through partnerships
 10 such as that between National Public Radio (“NPR”) and KQED, which together
 11 produce the recurring acclaimed podcast “On Our Watch.” See e.g., Sukey Lewis,
 12 *On Our Watch: In Good Faith*, NPR, Season 12, Episode 5, May 28, 2021²⁴;

13 27. Additionally, and in the same spirit of SB 1421, Vallejo, California Code of
 14 Ordinances § 2.08.010 et seq., which was passed by Vallejo’s City Council in 1999 (“Vallejo
 15 Ordinance”), underscores the City’s duty to “to serve the public and in reaching its decisions
 16 to accommodate those who wish to obtain information about or participate in the process.”
 17 The passage of the Vallejo Ordinance was meant “to assure that the people of the city of
 18 Vallejo can be fully informed and thereby retain control over the instruments of local
 19 government in their city.” Vallejo Code § 2.08.010 (A), (C).

20
 21 ²¹ Available at [https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-](https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-inquiry-following-release-of-police-misconduct-records)
 22 [inquiry-following-release-of-police-misconduct-records](https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-inquiry-following-release-of-police-misconduct-records).

23 ²² Sukey Lewis, Nadine Sebai, Alex Emslie, and Thomas Peele, *Excessive Force, False Reports*
 24 *Detailed in Rio Vista Police Misconduct Files*, KQED, Jan. 29, 2019 (available as of February 9,
 25 2021 at [https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-](https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-detailed-in-release-of-rio-vista-police-misconduct-files)
 26 [detailed-in-release-of-rio-vista-police-misconduct-files](https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-detailed-in-release-of-rio-vista-police-misconduct-files)); Sukey Lewis and Thomas Peele,
 27 *Impact: DA Dismisses Charges Against Woman Mauled by Rio Vista Police Dog*, March 4, 2019
 28 (available as of February 9, 2021 at [https://www.kqed.org/news/11730477/impact-da-dismisses-](https://www.kqed.org/news/11730477/impact-da-dismisses-charges-against-woman-mauled-by-rio-vista-police-dog)
[charges-against-woman-mauled-by-rio-vista-police-dog](https://www.kqed.org/news/11730477/impact-da-dismisses-charges-against-woman-mauled-by-rio-vista-police-dog)).

²³ Thomas Peele and Sukey Lewis, *California Cop Admits Stealing Thousands of Bullets Over 30*
 27 *Years, Escapes Theft Charges*, KQED, Feb. 14, 2019 (available as of February 9, 2021 at
 28 [https://www.kqed.org/news/11726097/california-cop-admits-stealing-thousands-of-bullets-over-](https://www.kqed.org/news/11726097/california-cop-admits-stealing-thousands-of-bullets-over-30-years-escapes-theft-charges)
[30-years-escapes-theft-charges](https://www.kqed.org/news/11726097/california-cop-admits-stealing-thousands-of-bullets-over-30-years-escapes-theft-charges)).

²⁴ Available at <https://www.npr.org/2021/5/27/1001011351/on-our-watch/in-good-faith>.

1 28. Notwithstanding the City’s disregard for the purpose and intent of SB 1421, as
2 well as Vallejo Code § 2.08.010 et seq., Open Vallejo has been able to ascertain, through
3 citizen tips and independent sourcing, at least 33 instances of deadly use of force by the VPD
4 since the year 2000, which has helped form the basis for the continued requests for disclosure
5 of records. Laurence Du Sault, *Help Us Investigate the Vallejo Police Department*, Open
6 Vallejo, May 14, 2021.²⁵

7 **OPEN VALLEJO’S REQUESTS AND THE CITY’S NON-COMPLIANCE**

8 29. On March 14, 2019, Open Vallejo submitted a request for records to the City,
9 No. 19-130, which pursuant to CPRA § 6250 et seq. sought “All video, audio and images of
10 the February 9, 2019 critical incident shown to members of the public on or around March 13,
11 2019.” The “critical incident” in question was the death of Willie McCoy, who was known to
12 have been killed by one or more officers of the VPD. Later that day, VPD Acting Captain
13 Steve Cheatham denied the request, stating in part that “[t]he video you are referencing is
14 exempt from public disclosure pursuant to Penal Code section 832.7(b)(7)(A)(i). The matter
15 still remains under investigation and has not been submitted to the District Attorney’s office
16 yet for review of criminal charges. Public release of this information at this time would
17 jeopardize our ability to conduct a fair, thorough and unbiased investigation. The estimated
18 date of public disclosure is April 15, 2019.” Cheatham further disputed the assertion that the
19 video had been made public, stating that it had only been shown to authorized representatives
20 pursuant to Civil Code section 1798.24(c). Neither addressing the request for audio or images,
21 nor providing insight as to what could be disclosed, the matter was closed. Attached hereto as
22 **Exhibit A** are true and correct copies of Open Vallejo’s March 14, 2019 request and the City’s
23 reply, referenced above.

24 30. On March 18, 2019, following publication in the *San Francisco Chronicle*²⁶
25 that same day of a story that revealed the existence of a PowerPoint in VPD’s possession

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27 ²⁵ Available at <https://openvallejo.org/2021/5/14/help-us-investigate-the-vallejo-police-department/>.

28 ²⁶ Available at <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Relatives-quiet-rage-at-video-of-police-13695505.php>.

1 related to Willie McCoy's death, Open Vallejo submitted a request for records to the City, No.
2 19-147, which, pursuant to CPRA § 6250 et seq., sought the PowerPoint. The request noted,
3 in part, that as an identifiable, non-exempt public record that had been previously shown to
4 members of the public, the City needed to disclose the document by the end of that day.

5 31. On March 20, 2019, Lt. Steve Cheatham denied Open Vallejo's request No.
6 147, stating in relevant part, "these items will be released with the case when it becomes
7 public; however, we will not be releasing it at this time due to the pending investigation. The
8 materials you are referencing are exempt from public disclosure pursuant to Penal Code
9 section 832.7(b)(7)(A)(i). The matter still remains under investigation and has not been
10 submitted to the District Attorney's office yet for review of criminal charges. Public release of
11 this information at this time would jeopardize our ability to conduct a fair, thorough and
12 unbiased investigation." Attached hereto as **Exhibit B** is a true and correct copy of Open
13 Vallejo's March 18, 2019 request, and the City's March 20, 2019 reply, referenced above.

14 32. On March 25, 2019, Open Vallejo filed another request, No. 19-169, in which
15 the following documents were requested:

- 16 (a) All unedited footage of the February 9, 2019 critical incident
17 that resulted in the death of Willie McCoy;
- 18 (b) All unedited footages of the February 13, 2018 critical incident
19 that resulted in the death of Ronell Foster;
- 20 (c) Any other record, including but not limited to any PowerPoint
21 presentation, slide deck, notes or similar, that was reviewed
22 during, or prepared in connection with, the March 28, 2018
23 meeting described above;
- 24 (d) Any other record, including but not limited to any PowerPoint
25 presentation, slide deck, notes or similar, that was reviewed
26 during, or prepared in connection with, the March 21, 2019
27 meeting described above;

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- (e) A record, records or index of records listing all individuals who were present at the March 21, 2019 meeting described above;
- (f) A record, records or index of records listing all individuals who have viewed any portion of the body camera footage involving the February 9, 2019 critical incident, whether at the March 21, 2019 meeting or any other meeting;
- (g) All communications between Vallejo City Councilmember Hakeem Brown and any other person regarding the March 21, 2019 meeting. The scope of this request includes all communications possessed by Mr. Brown or any other person on or in a public system, or private device and/or account. See San Jose v. Superior Court, 2 Cal.5th 608 (2017) (holding that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act);
- (h) All records reflecting the planning or coordination of the March 21, 2019 meeting. This includes, but is not limited to, voicemails, telephone message slips, instant messages, text messages, emails, calendar entries, and electronic metadata (e.g., telephony metadata, including timestamps and any information regarding the identity of the parties to each communication);
- (i) All records that would reflect whether any city official or employee was aware that Mr. Brown planned to, or did, review footage of the February 9, 2019 critical incident;
- (j) All communications possessed by the City of Vallejo that shed light on the capacity in which Mr. Brown or any other person attended this meeting.

1 33. The request also explained that, because VPD had allowed a member of the
2 public to review the video, “[i]t appears VPD voluntarily permanently waived all exemptions
3 that would allow it to withhold the record.”

4 34. On March 29, 2019, the City posted the footage of February 9, 2019 shooting of
5 Willie McCoy by VPD via NextRequest, which the City referenced in its April 4, 2019 reply,
6 wherein the City stated that it was declining to provide the requested video footage of the
7 shooting death of Ronell Foster on February 13, 2018, citing Calif. Penal Code §§
8 832.7(b)(7)(A)(ii) and 832.7(b)(C), and that it would make an assessment by August 13, 2019,
9 and wherein the City additionally stated that as to the remaining eight requests made in Open
10 Vallejo request No. 19-169, “due to the voluminous amount of separate and distinct records
11 here, we will provide you a further response on or by April 18, 2019, pursuant to Government
12 Code § 6253(c).” Attached hereto as **Exhibit C** is a true and correct copy of Open Vallejo’s
13 March 25, 2019 request and the City’s April 4, 2019 reply.

14 35. On April 18, 2019, the City, through Lt. Steve Cheatham, replied to the
15 remainder of the requests made in No. 19-169. Regarding the request for any records relating
16 to Ronell Foster, the City simply stated that “no powerpoint exists” but did not address what
17 other records exist regarding the shooting death of Ronell Foster. Regarding the shooting
18 death of Willie McCoy, the City provided a link to the video footage from multiple body
19 cameras and cell phones but never provided Open Vallejo with other records responsive to the
20 request, including surveillance footage from the Taco Bell or any other business. Moreover,
21 numerous supplemental reports are missing from the McCoy investigative file that the City
22 partially disclosed. Regarding the request for records of who attended the March 21, 2019
23 meeting relating to the death of Willie McCoy, the City stated that “No records exists.”
24 Regarding the request for a record, records, or index of persons who may have watched the
25 body camera footage related to the February 9, 2019 death of Willie McCoy, the City does not
26 appear to have disclosed any records, despite directing Open Vallejo to, “Please see the
27 document attached.” For the remaining four requests, relating to Hakeem Brown and/or the
28 March 21, 2019, the City claimed that each and every request is “attorney-client privileged and

1 attorney work product. Therefore, the information is exempt from public disclosure pursuant
2 Government Code §6254(k).” Notably, the City failed to provide an explanation as to why
3 records related to who was in attendance at a meeting, which are inherently factual, would be
4 protected by either the doctrines of Attorney Client Privilege or Work Product. A true and
5 correct copy of the City’s April 18, 2019 reply is attached hereto in **Exhibit C**.

6 36. The requests described above outline only a portion of the repeated good-faith
7 public records requests made by Open Vallejo over the course of two years and are indicative
8 of the non-responsive approach taken by the City with respect to Open Vallejo’s public
9 records requests. Rather than provide timely, complete, and transparent disclosure of records,
10 or provide reasonable assistance to help identify and locate responsive documents as
11 envisioned by SB 1421, the City fails to provide clear or complete responses, and at times
12 engages in what appears to be bureaucratic gamesmanship. Notably, regardless of how Open
13 Vallejo has framed its requests — whether broad or narrow — the City has often appeared to
14 provide a timely reply, but in parallel made spurious exemptions or cited a need for additional
15 time, without the required explanation. Moreover, even after multiple and repeated requests
16 — such as were made regarding Willie McCoy, Ronell Foster, and Hakeem Brown — the City
17 has ultimately held back the most crucial and responsive records, only disclosing what appears
18 to be a fraction of the evidence that would reasonably exist in a city that has experienced
19 approximately 30 fatal police shootings in just 20 years. For example:

20 (a) On July 1, 2019, Open Vallejo made a request, No. 19-395, for “[a]ny video
21 or audio recording that relates to a critical incident, including: an incident
22 involving the discharge of a firearm at a person by a peace officer or
23 custodial officer; and/or an incident in which the use of force by a peace
24 officer or custodial officer against a person resulted in death or in great
25 bodily injury.” On July 15, 2019, the City replied, in part, that “The City is
26 searching for, collecting, and reviewing records responsive to this request.
27 The City will provide an update on disclosable records, if any, by August 2,
28 2019.” On August 6, 2019, Open Vallejo specifically inquired about

1 records related to the 2017 fatal shooting of Angel Ramos by Vallejo police.
2 Thereafter, on August 15, 2019, the City replied that it had “released a
3 video presentation, along with the raw footage, of the officer involved
4 shooting that occurred on January 6, 2019” but had “blurred portions of the
5 video that are exempt from public disclosure on the basis of the privacy of
6 the involved individual pursuant to Government Code section
7 6254(f)(4)(B).” After follow-up by Open Vallejo, on September 7, 2019,
8 the City added that it “does not have video or audio recordings for older
9 incidents, including the one mentioned in your August 6, 2019
10 correspondence. As the City has produced all records responsive to this
11 production, it deems this request complete.” Attached hereto as **Exhibit D**
12 are true and correct copies of Open Vallejo’s July 1, 2019 request and its
13 August 6, 2019 follow up, and the City’s replies on July 15, 2019, August
14 15, 2019, and September 7, 2019, as referenced above.

15 (b) On July 11, 2019, in No. 19-421, Open Vallejo made a request for “[a]ll
16 records, disclosable pursuant to SB 1421, including but not limited to the
17 findings regarding a covered incident.” The City appeared to respond at
18 various points to this request with record disclosures, but as with other
19 responses, the City did so in a manner that does not provide clarity as to
20 what is being disclosed, what is not being disclosed and why, nor what
21 remains to be disclosed and when the requesting party can expect to receive
22 it. Moreover, the City has withheld records claiming spurious exemptions
23 based on inaccurate facts, such as not providing records related to the fatal
24 police killing of Guy Jarreau on December 11, 2010, claiming that the
25 records are not disclosable because the decedent, Jarreau, was a minor at the
26 time of his death; Open Vallejo confirmed he was 34. Despite having
27 requested the records again, such as in No. 21-508, on April 28, 2021, when
28 a request was made for “[a]ll records not already disclosed that are

1 disclosable pursuant to SB 1421 and/or AB 748, from 2000 to present,” no
 2 records relating to Jarreau’s killing nor the investigative records related to at
 3 least eight shootings by VPD have been disclosed as required. Attached
 4 hereto as **Exhibit E** are true and correct copies of Open Vallejo’s July 11,
 5 2019 request and the City’s July 29, 2019 reply, referenced above;
 6 additionally attached as **Exhibit F** are copies of Open Vallejo’s request on
 7 April 28, 2021, and the City’s response, on May 3, 2021.

8 **FIRST CAUSE OF ACTION**

9 **For Violations of the California Public Records Act, Penal Code § 832.7(b), and** 10 **Article I, § 3 of the California Constitution**

11 37. Open Vallejo incorporates herein by reference the above allegations, as if set
 12 forth in full.

13 38. The CPRA, Penal Code § 832.7(b), and the California Constitution require the
 14 disclosure of the records requested by Open Vallejo.

15 39. The City’s repeated and steadfast failure to provide the requested records
 16 violates the CPRA, Penal Code § 832.7(b), and Article I, § 3 of the California Constitution.

17 **Open Vallejo therefore requests the following relief:**

18 1. That the Court issue a writ of mandate directing the City to promptly provide
 19 Open Vallejo with all requested records except those records or parts thereof that the Court
 20 determines may lawfully be withheld;

21 2. That in the event that the Court determines that the City lacks the resources to
 22 comply immediately with all requests made by Open Vallejo to date, that the Court
 23 alternatively issue a writ of mandate directing the City to provide the information requested
 24 in the reasonable stages that follow, which reflect the urgency and public need for these
 25 disclosures: (a) a summary or index of all critical incidents involving the VPD since 2000,
 26 including but not limited to incidents involving a VPD officer where a citizen was critically
 27 injured or killed, or incidents to which the VPD responded that resulted or related to a
 28 fatality, with such information provided within seven days of the Court’s writ of mandate; (b)

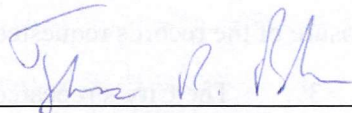
1 the complete case files for all fatalities caused by or occurring following contact with one or
2 more members of the VPD, with such information provided within 15 days of the Court's
3 writ of mandate; (c) the complete case files for all non-fatal critical incidents caused by or
4 occurring following contact with one or more members of the VPD, with such information
5 provided within 30 days of the Court's writ of mandate; and (d) all remaining information
6 otherwise responsive to Open Vallejo's requests to date provided not later than 60 days of the
7 Court's writ of mandate.

8 3. That the Court award Open Vallejo its attorney's fees and costs under Gov't Code
9 § 6259 and any other applicable statutes or basis;

10 4. For all other and further relief that the Court deems proper and just.

11
12 DATED: September 13, 2021

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
SARAH BURNS

13
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15 By: 
16 Thomas R. Burke

17 Attorneys for Plaintiff/Petitioner Informed
18 California Foundation, d/b/a Open Vallejo

DAVIS WRIGHT TREMAINE LLP

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VERIFICATION

I, Geoffrey King, am the Founder, President and Chief Executive Officer of INFORMED CALIFORNIA FOUNDATION, INC., d/b/a/ Open Vallejo and am authorized to verify this Petition as an officer. I have read this Verified Petition for Writ of Mandate and am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true.

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

Date: 09/10/2021



Geoffrey King

EXHIBIT A

EXHIBIT A

Request #19-130

CLOSED

As of September 10, 2021, 2:38pm

Details

IMMEDIATE DISCLOSURE REQUEST

March 14, 2019

To Whom It May Concern:

This is an immediate disclosure request. Please publish it to Vallejo's NextRequest site upon receipt. It is being concurrently and independently submitted to the Police Department and the City Attorney's Office.

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please disclose the following records.

- **All video, audio and images of the February 9, 2019 critical incident shown to members of the public on or around March 13, 2019.**

Pursuant to Cal. Gov. Code § 6254.5, on information and belief, all exemptions have been waived pursuant to Cal. Gov. Code § 6254.5, which reads in pertinent part:

>Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.

See also Black Panther Party v. Kehoe, 42 Cal.App.3d 645 (1974) (holding that exempt documents cannot be selectively released).

This record is immediately disclosable pursuant to Section 2.08.100 of the Vallejo Sunshine Ordinance, which reads in pertinent part:

> Notwithstanding the ten-day period for response to a request permitted in Government Code, Section 6253(c), a written request for an identifiable, nonexempt public record which is received by a departmental director or designee shall be satisfied no later than the close of business on the day of receipt of such request if the request is received before noon, or by the close of business on the business day following receipt of the request if the request is made during the afternoon. This deadline shall apply only if the words "Immediate Disclosure Request" are written across the top of the request and the envelope in which the request is transmitted. The statutory deadlines are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

These records are readily and easily obtainable. As reported by *The Guardian* newspaper, the video was shown to members of the victim's family yesterday afternoon. See Sam Levin, Video suggests Willie McCoy was not awake when police shot him, family says, *The Guardian*, Mar. 14, 2019, <https://www.theguardian.com/us-news/2019/mar/14/willie-mccoy-police-shooting-taco-bell-video>. Thus it is in the immediate possession of at least one city agency, and possibly more.

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2).

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests since 2014 for which a fee waiver was denied, and the reason therefor.

Please note that the unlawful withholding of this record may constitute official misconduct pursuant to Vallejo Sunshine Ordinance section 2.08.140, which reads:

>The knowing, willful and deliberate failure of any elected official, departmental director, or other managerial city employee to discharge any duties imposed by the Ralph M. Brown Act, the California Public Records Act, or this chapter shall be deemed official misconduct. An elected official found guilty of such misconduct shall be removed from office in the manner prescribed by law. Any departmental director, or other managerial city employee found guilty of such misconduct shall be subject to disciplinary action, up to and including termination of employment, in the manner prescribed by law.

Please provide the requested records by end of business today. **If you determine that any or all of the information is exempt and will not be disclosed, please provide a signed representation by an attorney for the city explaining what facts and law allow the city**

to do so, e.g., which specific provision of Cal. Gov. Code. § 6254.5 justifies selective disclosure, and why.

Please disclose the records via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

[— Read less](#)

Received

March 14, 2019 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

(none)

Requester

(none)

Staff

Point of Contact

Joni Brown

Timeline

External Message

Requester + Staff

We have not yet received a signed response from an attorney for the city regarding its reliance on Civil Code section 1798.24(c) to deny disclosure of the requested records. We urge the city to reconsider its position and release the records. If it will not, please provide the signed representation from counsel, as is customary and as requested. Please also set all of our correspondence relating to this request as public on NextRequest. Thank you.

March 18, 2019, 1:08pm by the requester via email

External Message

Requester + Staff

Dear Acting Captain Cheatham: Congratulations on the promotion, and thank you for the prompt response. We look forward to receiving a signed representation to this effect from an attorney for the city by close of business today.

March 14, 2019, 1:07pm by the requester via email

Request Closed

Public

Hello Open Vallejo:

Thank you for your request. The video you are referencing is exempt from public disclosure pursuant to Penal Code section 832.7(b)(7)(A)(i). The matter still remains under investigation and has not been submitted to the District Attorney's office yet for review of criminal charges. Public release of this information at this time would jeopardize our ability to conduct a fair, thorough and unbiased investigation. The estimated date of public disclosure is April 15, 2019.

Please note that the video was not shown to members of the public. At the request of Mr. McCoy's family, the Vallejo Police Department met with the siblings of Mr. McCoy, and showed them the video in their capacity as the decedent's legal heirs. Based on the correspondence and representations from Mr. McCoy's attorney, the City considered these individuals as his authorized representatives pursuant to Civil Code section 1798.24(c). Mr. McCoy's attorney represented to the City that Mr. McCoy's parents had pre-deceased him, he had no spouse, and no children. As such, Mr. McCoy's attorney advised the City that his legal heirs were McCoy's six siblings: Marc McCoy, David Harrison, Kori McCoy, Louis McCoy, Barbara Dorsey, Sharmell Mitchell. Three of the named siblings attended the

meeting yesterday, and their identity was confirmed via picture ID. Another relative attempted to join the meeting, however, because he was not Mr. McCoy's legal heir, he was not allowed to attend.

Regards,
Acting Captain Steve Cheatham
Professional Standards Division
Vallejo Police Department
Vallejopd@CityofVallejo.net (mailto:Vallejopd@CityofVallejo.net)

March 14, 2019, 12:30pm by Joni Brown, Administrative Analyst I

Request Published

Public

March 14, 2019, 11:02am by Joni Brown, Administrative Analyst I

External Message

Public

Officially Receiving PRA Request

Correction:

We will respond pursuant to the immediate disclosure request.

March 14, 2019, 10:59am by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

Officially Receiving PRA Request

I have received your request for a public record.

The California Public Records Act, Government Code §6250, et seq., gives you the right to obtain a copy of identifiable public records. Government Code §6256 provides that the City has up to 10 days after receipt of your request to determine whether to comply with your request and shall immediately notify you of this determination and the reasons therefore. I will notify you in writing of the City's determination. Please do not hesitate to contact me if you have any questions.

March 14, 2019, 10:58am by Joni Brown, Administrative Analyst II (Staff)

Department Assignment

Public

Police Department

March 14, 2019, 10:15am

Request Opened

Public

Request received via web

March 14, 2019, 10:15am

EXHIBIT B

Request #19-147

CLOSED

As of September 10, 2021, 2:39pm

Details

IMMEDIATE DISCLOSURE REQUEST

March 18, 2019

To Whom It May Concern:

This is an immediate disclosure request. Please publish it to Vallejo's NextRequest site upon receipt. It is being concurrently and independently submitted to the Police Department and the City Attorney's Office, which has constructive possession of the requested records.

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please disclose the following records.

- The PowerPoint, slide deck or similar presentation regarding the February 9, 2019 critical incident shown to members of the public on or around March 13, 2019 (*see* Otis R. Taylor Jr., Relatives' quiet rage at video of police shooting, Mar. 18, 2019, San Francisco Chronicle, available at <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Relatives-quiet-rage-at-video-of-police-13695505.php>).

Pursuant to Cal. Gov. Code § 6254.5, on information and belief, all exemptions have been waived pursuant to Cal. Gov. Code § 6254.5, which reads in pertinent part:

>Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.

See also Black Panther Party v. Kehoe, 42 Cal.App.3d 645 (1974) (holding that exempt documents cannot be selectively released).

We note the city has previously invoked Civil Code section 1798.24(c) to justify withholding other records from the above-mentioned meeting on March 13. The city has provided no case law to support this position, and a plain reading of these statutes suggests the city's reliance on section 1798.24(c) is misplaced. The March 13 meeting was not conducted pursuant to formal discovery. Regardless of their status as claimants, the individuals who viewed the February 9 body camera footage are nonetheless members of the public; barring the lawful application of Cal. Gov. Code § 6254.5, which has yet to be explained, waiver of all exceptions to disclosure was complete on March 13.

This record is immediately disclosable pursuant to Section 2.08.100 of the Vallejo Sunshine Ordinance, which reads in pertinent part:

>Notwithstanding the ten-day period for response to a request permitted in Government Code, Section 6253(c), a written request for an identifiable, nonexempt public record which is received by a departmental director or designee shall be satisfied no later than the close of business on the day of receipt of such request if the request is received before noon, or by the close of business on the business day following receipt of the request if the request is made during the afternoon. This deadline shall apply only if the words "Immediate Disclosure Request" are written across the top of the request and the envelope in which the request is transmitted. The statutory deadlines are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2).

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests since 2014 for which a fee waiver was denied, and the reason therefor.

Please provide the requested records by end of business today. **If you determine that any or all of the information is exempt and will not be disclosed, please provide a signed representation by an attorney for the city explaining what facts and law allow the city to do so, e.g., which specific provision of Cal. Gov. Code. § 6254.5 justifies selective disclosure, and why.**

Please also ensure the city does not destroy the requested public records, as it appears to have done in at least one other shooting incident. Cf. Cal. Gov. Code § 6200-6201.

Please disclose the records via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

Public

Request Closed

[— Read less](#)

Received

March 18, 2019 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

(none)

Requester

(none)

Staff

Point of Contact

Joni Brown

Timeline

Request Closed

Public

Dear Open Vallejo:

Here is an update to your request received on March 18, 2019, via NextRequest. Here is your request, and our response is as follows:

The PowerPoint, slide deck or similar presentation regarding the February 9, 2019 critical incident shown to members of the public on or around March 13, 2019 (see Otis R. Taylor Jr., Relatives' quiet rage at video of police shooting, Mar. 18, 2019, San Francisco Chronicle, available at <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Relatives-quiet-rage-at-video-of-police-13695505.php>)

As we have previously advised, we met with the legal heirs of the decedent about this case prior to public release. The meeting was conducted pursuant to Evidence Code section 1152 and Civil Code section 1798.24. However, we have since publicly released the video related to this matter. As such, we are also releasing the Powerpoint presentation shared with the decedent's legal heirs on March 13, 2019. You may find it here: <http://bit.ly/CriticalIncident020919>

Regards,

Lieutenant Steve Cheatham
Professional Standards Division
Vallejo Police Department
Vallejopd@CityofVallejo.net (mailto:Vallejopd@CityofVallejo.net)

April 4, 2019, 4:01pm by Joni Brown, Administrative Analyst I

External Message

Public

You are receiving this message because you have requested (at least in part) video footage related to the Officer Involved Shooting that occurred on February 9, 2019.

Today, the City has released an informational video, as well as the raw video, from the six officers involved body worn cameras.

All of the information can be accessed here: <http://bit.ly/CriticalIncident020919>

Please note that we have withheld the portions of the video that depict Mr. McCoy's body and the rendering of medical aid pursuant to Government Code 6255(a) and Penal Code section 832.7(b)(6). This portion of the video does not further the public interest into the actions that led to the use of force, or the use of force itself and therefore the privacy of the decedent outweighs the public interest in those portions.

March 29, 2019, 11:52am by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

Dear Open Vallejo:

On March 18, 2019, we received your request via NextRequest. Here is your request, and our response are as follows:

The PowerPoint, slide deck or similar presentation regarding the February 9, 2019 critical incident shown to members of the public on or around March 13, 2019 (see Otis R. Taylor Jr., Relatives' quiet rage at video of police shooting, Mar. 18, 2019, San Francisco Chronicle, available at <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Relatives-quiet-rage-at-video-of-police-13695505.php>)

- *This request is similar to the request submitted in PRA 19-130. As you know, these items will be released with the case when it becomes public; however, we will not be releasing it at this time due to the pending investigation. The materials you are referencing are exempt from public disclosure pursuant to Penal Code section 832.7(b)(7)(A)(i). The matter still remains under investigation and has not been submitted to the District Attorney's office yet for review of criminal charges. Public release of this information at this time would jeopardize our ability to conduct a fair, thorough and unbiased investigation. The estimated date of public disclosure is April 9, 2019.*
- *Please note that the video was not shown to members of the public. At the request of Mr. McCoy's family, the Vallejo Police Department met with the siblings of Mr. McCoy and showed them the video in their capacity as the decedent's legal heirs. Based on the correspondence and representations from Mr. McCoy's attorney, the City considered these individuals as his authorized representatives pursuant to Civil Code section 1798.24(c). Mr. McCoy's attorney represented to the City that Mr. McCoy's parents had pre-deceased him, he had no spouse, and no children. As such, Mr. McCoy's attorney advised the City that his legal heirs were McCoy's six siblings: Marc McCoy, David Harrison, Kori McCoy, Louis McCoy, Barbara Dorsey, Sharmell Mitchell. Three of the named siblings attended the meeting, and their identity was confirmed via picture ID. Another relative attempted to join the meeting, however, because he was not Mr. McCoy's legal heir, he was not allowed to attend.*
- *For the public information on this case, please go to our webpage at <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=15286049&portletInstanceId=349184>.*

Regards,

Lieutenant Steve Cheatham
Professional Standards Division
Vallejo Police Department
Vallejopd@CityofVallejo.net

March 20, 2019, 7:35am by Joni Brown, Administrative Analyst II (Staff)

Request Published

Public

March 18, 2019, 1:52pm by Joni Brown, Administrative Analyst I

External Message

Public

Please make this request and all correspondence associated therewith public on NextRequest. Thank you.

March 18, 2019, 1:10pm by the requester via email

Department Assignment

Public

Police Department

March 18, 2019, 11:59am

Request Opened

Public

Request received via web

March 18, 2019, 11:59am

Request #19-169

Closed

As of September 10, 2019, 2:10am

Details

IMMEDIATE PUBLIC REQUEST

March 22, 2019

To: William B. May, Clerk

EXHIBIT C

Request #19-169

CLOSED

As of September 10, 2021, 2:40pm

Details

IMMEDIATE DISCLOSURE REQUEST

March 25, 2019

To Whom It May Concern:

This submission contains both an immediate disclosure request and a request that may be processed pursuant to the 10-day timeline set forth by the California Public Records Act. We have indicated where each timeline applies. Please publish this request to Vallejo's NextRequest site upon receipt.

We have become aware of a [video](#) recorded at Vallejo City Councilmember Hakeem Brown's March 23, 2019 public town hall. In this video, a partial transcript of which is appended hereto, Mr. Brown says he asked the Vallejo Police Department (hereinafter, "VPD") to allow him to review footage of the February 9 officer-involved shooting of Willie McCoy. Mr. Brown further states that he reviewed this footage on March 21.

It appears VPD voluntarily and permanently waived all exemptions that would allow it to withhold the record, whether in whole or in part. See *Black Panther Party v. Kehoe*, 42 Cal.App.3d 645 (1974) (holding that exempt documents cannot be selectively released). If this is the case, any record Mr. Brown reviewed must immediately be released. If not, it is the city's burden to justify this selective disclosure pursuant to state law and the city Sunshine Ordinance.

The available facts show Mr. Brown sought access to this footage of his own volition, and gained it by way of consent from VPD. As Mr. Brown stated at the March 23 town hall, "Uh, I made sure, once I saw some of the reports, I asked the police department if I could watch the video. I got to wa— chance to see the video for myself so I didn't have to take their word for it."

The March 21 disclosure is not the first time VPD has selectively disclosed visual records of an officer-involved shooting to some members of the public, then denied them to the public at large.

On March 28, 2018 — prior to his election to the Vallejo City Council — Mr. Brown viewed still images depicting the fatal February 13, 2018 shooting of Ronell Foster pulled from VPD body camera footage of the incident. These stills were shown in the same meeting to other members of the public including Morgan Hannigan and Rachel Raskin-Zrihen of the *Vallejo Times-Herald*. The *Daily Republic* reported the meeting took place as Mr. Foster's attorneys concluded a press conference announcing a federal civil rights lawsuit against the officer who killed him. (That officer was also involved in the killing of Willie McCoy.)

The *Times-Herald* reported on the VPD event later that day. Based on that reporting, it is clear the disclosed stills formed a distinct argumentative record intended to support VPD's version of events. In a press release, Vallejo Police Chief Andrew Bidou commented on the merits of the lawsuit and the substance of the events in the partially-disclosed video.

Despite the fact that the body camera stills were disclosable public records, and although they might also have become evidence in federal court, last month VPD posted an official response to a public records request stating these records were "not retained." It is unclear when these records were discarded. The city's response suggests they cannot be reproduced.

Thus in addition to the waiver issues discussed above, the public interest overwhelmingly favors disclosure of all footage from each of these two incidents. The city has abused the trust placed in it by the public by selectively showing critical incident records to specific individuals, arguing for a specific interpretation of those records, then making the records unavailable to other members of the public. We request that city officials reflect on what has been allowed to occur, the city's obligations under the law, and the equities of denying these records to the community. We ask that you do the right thing.

In other words, we request the following records, and renew all previous requests for same.

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please immediately disclose the following records.

IMMEDIATE DISCLOSURE REQUEST

- All unedited footage of the February 9, 2019 critical incident that resulted in the death of Willie McCoy.
- All unedited footage of the February 13, 2018 critical incident that resulted in the death of Ronell Foster.
- Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 28, 2018 meeting described above.

- Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 21, 2019 meeting described above.

Other than in limited circumstances specified by law, public agencies cannot choose to make records available to some individuals and not others:

>The term public inspection necessarily implies general, nonselective disclosure. It implies that public officials may not favor one citizen with disclosures denied to another. When a record loses its exempt status and becomes available for public inspection, section 6253, subdivision (a), endows every citizen with a right to inspect it. By force of these provisions, records are completely public or completely confidential. The Public Records Act denies public officials any power to pick and choose the recipients of disclosure.

Black Panther Party v. Kehoe, supra, 42 Cal.App.3d at 656–657; *see also* Cal. Gov. Code § 6254.5.

Moreover, these records are immediately disclosable pursuant to Section 2.08.100 of the Vallejo Sunshine Ordinance, which reads in pertinent part:

>Notwithstanding the ten-day period for response to a request permitted in Government Code, Section 6253(c), a written request for an identifiable, nonexempt public record which is received by a departmental director or designee shall be satisfied no later than the close of business on the day of receipt of such request if the request is received before noon, or by the close of business on the business day following receipt of the request if the request is made during the afternoon. This deadline shall apply only if the words "Immediate Disclosure Request" are written across the top of the request and the envelope in which the request is transmitted. The statutory deadlines are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

CALIFORNIA PUBLIC RECORDS ACT REQUEST

- A record, records or index of records listing all individuals who were present at the March 21, 2019 meeting described above.
- A record, records or index of records listing all individuals who have viewed any portion of the body camera footage involving the February 9, 2019 critical incident, whether at the March 21, 2019 meeting or any other meeting.
- All communications between Vallejo City Councilmember Hakeem Brown and any other person regarding the March 21, 2019 meeting. The scope of this request includes all communications possessed by Mr. Brown or any other person on or in a public system, or private device and/or account. *See San Jose v. Superior Court*, 2 Cal.5th 608 (2017) (holding

that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act).

- All records reflecting the planning or coordination of the March 21, 2019 meeting. This includes, but is not limited to, voicemails, telephone message slips, instant messages, text messages, emails, calendar entries, and electronic metadata (e.g., telephony metadata, including timestamps and any information regarding the identity of the parties to each communication).
- All records that would reflect whether any city official or employee was aware that Mr. Brown planned to, or did, review footage of the February 9, 2019 critical incident.
- All communications possessed by the City of Vallejo that shed light on the capacity in which Mr. Brown or any other person attended this meeting.

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2).

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests since 2014 for which a fee waiver was denied, and the reason therefor.

Please provide the immediately-disclosable records no later than close of business on Tuesday, March 26, 2019, as required by the Vallejo Sunshine Ordinance. The city may follow the traditional disclosure timelines set forth by the CPRA and the Vallejo Sunshine Ordinance for the balance of requested records.

If you determine that any or all of the information is exempt and will not be disclosed, please provide a signed representation by an attorney for the city explaining what facts and law allow the city to do so.

Please also ensure that city officials preserve all potentially-responsive public records, including those stored on private devices. See Cal. Gov. Code § 6200–6201.

Please disclose the records via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

APPENDIX A

TRANSCRIPT OF PUBLIC REMARKS BY VALLEJO CITY COUNCILMEMBER HAKEEM BROWN, MARCH 23, 2019

EXCERPT 1

Audience member 1: I would like for you to comment on the murder of Willie McCoy by six Vallejo police officers.

Mr. Brown (hereinafter, "HB"): Okay, ah, basically, for me, um, if you want me to comment on it, it was a tragedy, number one. Uh, I made sure, once I saw some of the reports, I asked the police department if I could watch the video. I got to wa— chance to see the video for myself so I didn't have to take their word for it. Uh, and that's for me—

Audience member 1: W— what was the date for that, that you watched the video?

HB: I watched the video, uh, Thursday [March 21, 2019].

Audience member 1: Does his family know?

HB: Does his family know that I watched the video? [Crosstalk] I'm not sure.

Audience member 1: How many videos did you watch?

HB: I watched one video.

Audience member 1: Just one?

[Crosstalk]

HB: Okay.

Audience member 2: Hakeem, uh-uh, come on, uh-uh. [Inaudible] Come on. W— we're here —

HB: Exactly.

Audience member 2: —to address [inaudible] of school and things like that. I think we need to stick with performance— [crosstalk] what needs to — I have a loud voice — that needs to be, Karen, that needs to be addressed as it was stated.

HB: And I agree with you, sister, now, I will say this. I know that these— this sister right here has dealt with a tragedy, [gesturing back to original questioner] so I'm gonna show her some patience. I wish she had gotten here a couple of minutes ago because I answered a lot of your questions as far as what am I doing about the issues, which is making sure that they're doing implicit bias training. Which is making sure that we're investing in putting good police officers on the street, because if we can do all this training, and not pay them, we won't be able to retain good officers. Uh, it's also holding officers accountable. So I, I, I already answered your question. That's why I asked you guys to come in, so that you guys could ask it and hear everything that was said. But I at least wanted to show you patience.

Audience member 3: Okay, so I just have two questions then—

HB: [Gesturing with index finger raised at Audience member 3] But we gotta keep it going, so I apologize but I tried to give you an opportunity to speak, but— hopefully we'll come back to you. Yes [inaudible].

EXCERPT TWO

HB: You know, I've heard people say, "We need a citizens' oversight committee. Well that would be cool, but it would just be a citizens' oversight committee that's very busy. What we need is to address these underlying issues to hopefully have less incidents so that more kids are doing well. And as well as, the— but we also need to address the fact that city council has never invested in training for police officers. Implicit bias training, uh, you know, know your rights. They need to go through the same training that a lot of Bay Area departments do. And if I'm going to be honest, I think all of city hall needs to go through ci— uh, implicit bias training, because that affects everybody. And gender bias training. Those are two things that I've been championing, and those are things that you're going to see. I don't put 'em on Facebook because talk is cheap. I don't live in Facebook world. I want to see results.

[— Read less](#)

Received

March 25, 2019 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

(none)

Requester

(none)

Staff

Point of Contact

Joni Brown

Timeline

External Message

Public

You are receiving this message because you have requested (at least in part) video footage related to the Officer Involved Shooting that occurred on February 13, 2018.

Today, the City has released an informational video, as well as the raw video, from the officer's body-worn camera.

All of the information can be accessed here: <http://bit.ly/criticalincident021318>

May 6, 2019, 3:25pm by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

Dear Ms. Quintana, The Vallejo Police Department has made representations that appear incongruent with Councilmember Brown's public, videotaped account of how he came to view body camera footage of Willie McCoy's death. You can read a transcript of Councilmember Brown's account at <https://vallejo.nextrequest.com/requests/19-169>. Specifically, we are skeptical of the department's invocation of the attorney-client privilege and the attorney work product doctrine. If these representations are true, we ask that you please commit to them in a signed writing in your official capacity as City Attorney. Otherwise, we hope you will ensure a prompt and lawful disclosure of the requested records. We also hope you will counsel department personnel on the scope of the attorney-client privilege, the attorney work product doctrine, and their obligations pursuant to the CPRA and the Vallejo Sunshine Ordinance. Ultimately, these representations are yours to stand behind, or not. Please let us know how you wish to proceed. Please also publish this correspondence to NextRequest in connection with request number 19-169. Thank you.

April 18, 2019, 7:11pm by the requester via email

Request Closed

Public

Dear Open Vallejo:

Here is an update to the remainder of your request received on March 25, 2019, via NextRequest. Here is your request, and our response is as follows:

1. Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 28, 2018 meeting described above.
 - *No powerpoint exists.*
2. Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 21, 2019 meeting described above.
 - *Please see <http://bit.ly/CriticalIncident020919>*
3. A record, records or index of records listing all individuals who were present at the March 21, 2019 meeting described above.
 - *No record exists.*
4. A record, records or index of records listing all individuals who have viewed any portion of the body camera footage involving the February 9, 2019 critical incident, whether at the March 21, 2019 meeting or any other meeting.
 - *Please see the document attached.*
5. All communications between Vallejo City Councilmember Hakeem Brown and any other person regarding the March 21, 2019 meeting. The scope of this request includes all communications possessed by Mr. Brown or any other person on or in a public system, or private device and/or account. See *San Jose v. Superior Court*, 2 Cal.5th 608 (2017) (holding that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act).
 - *The information you requested is attorney-client privileged and therefore exempt from public disclosure pursuant Government Code §6254(k).*
6. All records reflecting the planning or coordination of the March 21, 2019 meeting. This includes, but is not limited to, voicemails, telephone message slips, instant messages, text messages, emails, calendar entries, and electronic metadata (e.g., telephony

metadata, including timestamps and any information regarding the identity of the parties to each communication).

- *The information you requested is attorney-client privileged and attorney work product. Therefore, the information is exempt from public disclosure pursuant Government Code §6254(k).*
7. All records that would reflect whether any city official or employee was aware that Mr. Brown planned to, or did, review footage of the February 9, 2019 critical incident.
- *The information you requested is attorney-client privileged and therefore exempt from public disclosure pursuant Government Code §6254(k).*
8. All communications possessed by the City of Vallejo that shed light on the capacity in which Mr. Brown or any other person attended this meeting.
- *The information you requested is attorney-client privileged and attorney work product. Therefore, the information is exempt from public disclosure pursuant Government Code §6254(k).*

Pursuant to Government Code §§6253(d) and 6255, I am the person responsible for the information being provided to you. Should you have any further questions, please do not hesitate to contact me.

Regards,

Lieutenant Steve Cheatham
Professional Standards Division
Vallejo Police Department
Vallejopd@CityofVallejo.net (<mailto:Vallejopd@CityofVallejo.net>)

April 18, 2019, 5:38pm by Joni Brown, Administrative Analyst I

External Message

Public

Dear Open Vallejo:

Here is an update to your request received on March 25, 2019, via NextRequest. Here is your request, and our response is as follows:

1. All unedited footage of the February 9, 2019 critical incident that resulted in the death of Willie McCoy.
- *We provided the requested item to you on March 29, 2019, via NextRequest.*

2. All unedited footage of the February 13, 2018 critical incident that resulted in the death of Ronell Foster.
- *The materials requested for this officer-involved shooting are exempt from disclosure pursuant to Penal Code section 832.7(b)(7)(A)(ii), and 832.7(b)(7)(C). The incident is under investigation by the Vallejo Police Department and the Solano County District Attorney's Office. The release of the information at this time would interfere with the Department's ability to complete a fair and thorough investigation, including a determination as to whether criminal charges should be filed and the subsequent administrative investigation into whether there were any policy violations. As such, the interest in delaying disclosure clearly outweighs the public interest in disclosure. The estimated date for disclosure is August 13, 2019. At that time, the City will evaluate whether any provision of 832.7(b)(7) applies. In any event, we will provide you a further response on or before August 13, 2019.*
3. Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 28, 2018 meeting described above.
4. Any other record, including but not limited to any Powerpoint presentation, slide deck, notes or similar, that was reviewed during, or prepared in connection with, the March 21, 2019 meeting described above.
5. A record, records or index of records listing all individuals who were present at the March 21, 2019 meeting described above.
6. A record, records or index of records listing all individuals who have viewed any portion of the body camera footage involving the February 9, 2019 critical incident, whether at the March 21, 2019 meeting or any other meeting.
7. All communications between Vallejo City Councilmember Hakeem Brown and any other person regarding the March 21, 2019 meeting. The scope of this request includes all communications possessed by Mr. Brown or any other person on or in a public system, or private device and/or account. See San Jose v. Superior Court, 2 Cal.5th 608 (2017) (holding that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act).
8. All records reflecting the planning or coordination of the March 21, 2019 meeting. This includes, but is not limited to, voicemails, telephone message slips, instant messages, text messages, emails, calendar entries, and electronic metadata (e.g., telephony metadata, including timestamps and any information regarding the identity of the parties to each communication).
9. All records that would reflect whether any city official or employee was aware that Mr. Brown planned to, or did, review footage of the February 9, 2019 critical incident.
10. All communications possessed by the City of Vallejo that shed light on the capacity in which Mr. Brown or any other person attended this meeting.
- *For requests 3 – 10, we will review our records for the items requested. However, due to the voluminous amount of separate and distinct records here, we will provide you a further response on or by April 18, 2019, pursuant to Government Code § 6253(c).*

Regards,

Lieutenant Steve Cheatham
Professional Standards Division
Vallejo Police Department
Vallejopd@CityofVallejo.net

April 4, 2019, 2:51pm by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

We understand. As difficult as this record is to watch, the city did the right thing by releasing it. Please keep this request open until all of the requested records are released. Thank you.

March 29, 2019, 1:30pm by the requester via email

External Message

Public

You are receiving this message because you have requested (at least in part) video footage related to the Officer Involved Shooting that occurred on February 9, 2019.

Today, the City has released an informational video, as well as the raw video, from the six officers involved body worn cameras.

All of the information can be accessed here: <http://bit.ly/CriticalIncident020919>

Please note that we have withheld the portions of the video that depict Mr. McCoy's body and the rendering of medical aid pursuant to Government Code 6255(a) and Penal Code section 832.7(b)(6). This portion of the video does not further the public interest into the actions that led to the use of force, or the use of force itself and therefore the privacy of the decedent outweighs the public interest in those portions.

March 29, 2019, 11:53am by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

Thank you for the update. Please make all the city's responses to this request public. Please also ensure the public can access the hyperlinks that the City of Vallejo stripped out of our request. As your agency knows, these are links to news articles, other requests on NextRequest, and a YouTube video of Councilmember Hakeem Brown stating that he watched the body cam footage involving Willie McCoy. There is a strong public interest in these materials.

March 27, 2019, 11:14am by the requester via email

External Message

Public

Pursuant to Vallejo Municipal Code section 2.08.100(B), we will review our records, consult with legal counsel, and we will respond to you within 10 days.

Thank you for your patience, and please let me know if you have any questions.

March 27, 2019, 8:34am by Joni Brown, Administrative Analyst II (Staff)

Request Published

Public

March 26, 2019, 12:05pm by Dawn Abrahamson, City Clerk

Department Assignment

Public

Added: Police Department.

March 26, 2019, 12:05pm by Dawn Abrahamson, City Clerk

Request Opened

Public

Request received via web

March 25, 2019, 11:07pm

Request #19-395

CLOSED

As of September 10, 2021, 2:40pm

Details

July 1, 2019

To Whom It May Concern:

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please disclose the following records.

1. Any video or audio recording that relates to a critical incident, including: an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; and/or an 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.

As you know, the above-described records are disclosable pursuant to AB 748, which took effect today, July 1, 2019.

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2).

Please provide a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the records in question. If you determine that any or all of the information qualifies for an exemption from disclosure, please note whether, as is normally the case, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, please redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests since 2014 for which a fee waiver was denied, and the reason therefor.

Please immediately publish this request and all correspondence between the city regarding this request to Vallejo NextRequest. Please disclose the records electronically by posting them to Vallejo NextRequest and via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

Thank you.

— [Read less](#)

Received

July 1, 2019 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

[Memo - Status of Providing Records Available under SB 1421.pdf](#)

[Memo - Status of Providing Records Available under SB 1421 \(062719 Release\).pdf](#)

Requester

(none)

Staff

Point of Contact

Joni Brown

Timeline

Request Closed

Public

Dear Open Vallejo,

As we have not heard from you on your interest in additional recordings, the City deems your request complete and is closing this request. Please do not hesitate to let me know if you have any further questions or concerns. Thank you.

Samantha Chen

October 21, 2019, 4:54pm by Samantha Chen

External Message

Public

Dear Open Vallejo,

The City is releasing additional records responsive to your request today. Below are links to two videos involving the discharge of a firearm by law enforcement, and five videos involving great bodily injury to a person from use of force by law enforcement. After this production, all videos involving officer-involved shootings under AB 748 from 2017 to 2019 will have been released, and all videos involving use of force resulting in great bodily injury under AB 748 from 2018 will have been released.

These videos were reviewed and redacted to protect a reasonable expectation of privacy of involved or uninvolved parties pursuant to Government Code section 6254(f)(4). A public agency may withhold and decline to disclose an audio or video recording of a critical incident, if release of the video is not in the public interest, or it would violate an individual's reasonable expectation of privacy. Here, the City has used redaction to blur the faces of witnesses, and private conversations regarding childcare arrangements.

Each video contains a summary regarding the arrests made.

Discharge of a Firearm by Law Enforcement

- <http://bit.ly/criticalincident080217>
 - VPD CASE# 17-09795

- <http://bit.ly/criticalincident110118>
 - VPD CASE# 18-13972

Use of Force Incident Resulting in Great Bodily Injury

- <http://bit.ly/pr19-395>
 - October 8, 2019 Release
 - VPD CASE# 18-13770
 - VPD CASE# 18-10727
 - VPD CASE# 18-08745
 - VPD CASE# 18-04827
 - VPD CASE# 18-03953

The rest of the cases and videos can be located at the City's website, where the City has created indices of available material. The indices are available at the end of memo dated June 27, 2019, available at <http://www.cityofvallejo.net/common/pages/DisplayFile.aspx?itemId=15995854>. You may request any of these items by paying fees to extract exempt material.

The Public Records Act requires the City to provide a written response when a records request is denied, either in whole or in part. (Gov. Code § 6255, subd. (b).) The Public Records Act also requires that notification of denial of any request for records must include the names and titles or positions of each person responsible for the denial. (Gov. Code § 6253, subd. (d).) With the name and title provided below, in conjunction with the Vallejo Police Department and City Attorney's Office, this correspondence fulfills both of the aforementioned legal requirements.

Please feel free to contact me should you have any additional questions or concerns.
Thank you.

Samantha Chen
for BEST BEST & KRIEGER LLP
October 8, 2019, 11:04am by Samantha Chen (Staff)

External Message

Public

Dear Open Vallejo,

My apologies. This request was prematurely closed. The City may have additional recordings responsive to your request. We will update you soon. Thank you.

Samantha Chen
September 9, 2019, 7:07pm by Samantha Chen (Staff)

Request Reopened

Public

September 9, 2019, 7:05pm by Samantha Chen

Request Closed

Public

September 7, 2019, 8:39pm by Samantha Chen

External Message

Public

Dear Open Vallejo,

The City does not have video or audio recordings for older incidents, including the one mentioned in your August 6, 2019 correspondence. As the City has produced all records responsive to this production, it deems this request complete. Thank you for your cooperation.

Samantha Chen

September 7, 2019, 8:38pm by Samantha Chen (Staff)

Request Published

Public

August 16, 2019, 8:04am by Joni Brown, Administrative Analyst I

External Message

Public

Thank you very much. We note that our request remains unpublished on NextRequest. We would appreciate it being published, along with our correspondence with the city and/or counsel. Thanks again.

August 15, 2019, 5:16pm by the requester via email

External Message

Public

Dear Open Vallejo:

The City has released a video presentation, along with the raw footage, of the officer involved shooting that occurred on January 6, 2019. The City has blurred portions of the video that are exempt from public disclosure on the basis of the privacy of the involved individual pursuant to Government Code section 6254(f)(4)(B). You may access the materials here:

bit.ly/criticalincident010619

I will consult with my client on the other shooting mentioned.

Thank you,

Samantha Chen

for BEST BEST & KRIEGER LLP

August 15, 2019, 3:37pm by Samantha Chen (Staff)

External Message

Public

Dear Ms. Chen, What is the procedure for determining when critical incident disclosures will occur? For example, the Angel Ramos criminal investigation concluded months ago. The shooting occurred in 2017. Those materials, and others, should promptly be disclosed.

August 6, 2019, 2:06am by the requester via email

External Message

Public

Dear Open Vallejo:

Here is an update to your request received on July 1, 2019:

Any video or audio recording that relates to a critical incident, including: an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; and/or an 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.

The City's response is as follows:

- *The information you requested is part of the rolling production related to records available under SB 1421. Please see the attached memos for information regarding items that have been released and withheld. Documents that are currently publicly available may be accessed here: <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=15359557>*

- *Video footage related to an officer-involved shooting that took place on February 13, 2018 has been released and may be accessed here: <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=15584679>*

- *Video footage related to an officer-involved shooting that took place on February 9, 2019 may be accessed here: <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=15286049&portletInstanceId=349184>*

- *Video footage related to an officer-involved shooting that took place on January 6, 2019 has been withheld pursuant to Government Code section 6254(f)(4)(A)(ii) as disclosure would substantially interfere with an active investigation. The estimated date of disclosure is August 15, 2019.*

Samantha Chen
for BEST BEST & KRIEGER LLP

August 5, 2019, 11:17pm by Samantha Chen (Staff)

Document(s) Released

Public

Memo - Status of Providing Records Available under SB 1421.pdf

July 15, 2019, 3:43pm by Samantha Chen

Document(s) Released

Public

Memo - Status of Providing Records Available under SB 1421 (062719 Release).pdf

July 15, 2019, 3:43pm by Samantha Chen

External Message

Public

My office represents the City of Vallejo (the "City") in connection with the City's response to your PRA Request sent and received on July 1, 2019. I have been authorized by our client to provide an update on your request for records.

Below is your request, and the City's response:

Your Request:

Any video or audio recording that relates to a critical incident, including: an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; and/or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.

City's Response:

Please see the memos being disclosed today regarding the status of items requested:

- *March 8, 2019 Release*
- *June 27, 2019 Release*

The City is searching for, collecting, and reviewing records responsive to this request. The City will provide an update on disclosable records, if any, by August 2, 2019.

If any further questions or concerns arise, please feel free to contact me.

Samantha Chen

for BEST BEST & KRIEGER LLP

July 15, 2019, 3:41pm by Samantha Chen (Staff)

Department Assignment

Public

Police Department

July 1, 2019, 5:35pm

Request Opened

Public

Request received via web

July 1, 2019, 5:35pm

EXHIBIT E

EXHIBIT E

Request #19-421

CLOSED

As of September 10, 2021, 2:41pm

Details

July 11, 2019

To Whom It May Concern:

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please disclose the following records.

- All records, disclosable pursuant to SB 1421, **including but not limited to the findings** regarding a covered incident. Disclosure of said findings — including whether, *e.g.*, a shooting was within policy — is required by law.

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2).

Please provide a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the records in question. If you determine that any or all of the information qualifies for an exemption from disclosure, please note whether, as is normally the case, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, please redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests

since 2014 for which a fee waiver was denied, and the reason therefor.

Please immediately publish this request and all correspondence between the city regarding this request to Vallejo NextRequest. Please disclose the records electronically by posting them to Vallejo NextRequest and via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

Thank you.

— [Read less](#)

Received

July 11, 2019 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

(none)

Requester

(none)

Staff

Point of Contact

Joni Brown

Timeline

Request Published

Public

February 3, 2020, 11:39am by Joni Brown, Administrative Analyst II

Request Closed

Public

July 30, 2019, 10:00am by Samantha Chen

External Message

Public

My office represents the City of Vallejo (the "City") in connection with the City's response to your PRA Request sent and received on July 11, 2019. I have been authorized by our client to provide a determination on your request for records.

Below is your request, and the City's response is as follows:

All records, disclosable pursuant to SB 1421, including but not limited to the findings regarding a covered incident. Disclosure of said findings — including whether, e.g., a shooting was within policy — is required by law.

Please see the City's website for documents released under Penal Code section 832.7(b). A direct link is available here: <http://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=15359557>. The documents you seek as to whether a shooting was within policy are contained under the case numbers for the shootings released on June 27, 2019.

Thank you,
Samantha Chen
for BEST BEST & KRIEGER LLP
July 29, 2019, 6:34pm by Samantha Chen (Staff)

Department Assignment

Public

Police Department

July 11, 2019, 11:47pm

Request Opened

Public

Request received via web

July 11, 2019, 11:47pm

EXHIBIT F

Request #21-508

 OPEN

As of September 10, 2021, 2:41 pm

Details

April 28, 2021

To Whom It May Concern:

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA") and the Vallejo Sunshine Ordinance, please disclose the following records.

- All records not already disclosed that are disclosable pursuant to SB 1421 and/or AB 748, from 2000 to the present.
- An index of records regarding same.

Rolling disclosures are of course acceptable, and would be appreciated, given the volume of records to be produced. We ask that your agency prioritize records of shootings, starting with the most recent incidents and working backwards, and that you promptly disclose an index of records for the entire requested time period as soon as practicable.

This request includes communications involving private as well as public infrastructure, devices, and/or accounts. See, e.g., *San Jose v. Superior Court*, 2 Cal.5th 608 (2017) (holding that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act).

The fundamental rule of the CPRA is a presumption of public access. "In other words, [A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). This presumption finds further support in the California Constitution, as amended by Proposition 59 in 2004. "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. 1 § 3(b)(2). See *National Lawyers Guild v. City of Hayward*, S252445 at 27 (2020) ("California's constitutional directive [is] to 'broadly construe[]' a statute 'if it furthers the people's right of access.'")

If you determine that any or all of the information qualifies for an exemption from disclosure, please note whether, as is normally the case, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, please redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

Please apply a fee waiver to this request. If the request for a fee waiver is denied, please provide notification of any duplication costs exceeding \$20 before you duplicate the records. If the request for a fee waiver is denied, please further provide an index of all other requests since 2016 for which a fee waiver was denied, and the reason therefor.

Please disclose the requested record(s) electronically via email to records@openvallejo.org. If you have any questions, please do not hesitate to be in touch.

Thank you.

[— Read less](#)

Received

April 28, 2021 via web

Departments

Police Department

Requester

Open Vallejo

✉ records@openvallejo.org

Documents

Public

(none)

Requester
(none)

Staff

Point of Contact
Joni Brown

Timeline

External Message

Public

We are currently in the process of reviewing all requests seeking records subject to SB 1421 that have been part of our rolling production to determine whether any portion of the request remains outstanding. We anticipate providing an update for your request on or by October 15, 2021.

Please note that records being withheld due to the pendency of a criminal action will be provided following the conclusion of the criminal case.

If you believe you have received all requested records or are no longer interested in the remaining records, please let us know and we will close your request.

September 2, 2021, 5:09pm by Joni Brown, Administrative Analyst II (Staff)

External Message

Public

Documents related to your request have been released today and can be located in the "August 19, 2021 Release" folder at the following URL: http://vallejopd.hosted.civiclive.com/public_information/codes_policies/penal_code_83_2_7_sb1421. We will be reviewing your request in the next two weeks to determine whether any portion remains outstanding and will set a date for a status update as appropriate.

August 19, 2021, 4:52pm by Andrew Bates, Administrative Analyst II (Staff)

External Message

Public

You are receiving this message because you have requested (at least in part) available records from 2008 or before to 2019 now available under Penal Code section 832.7(b). Today, we have released additional records related to this request. Please visit the site below to review the memo and documents now available.

All of the information for today's release can be accessed here:

Officer Involved Shootings:

<https://vallejopd.net/cms/One.aspx?pageId=16866287&portalId=16397453&objectId.533905=17697542&contextId.533905=17022554&parentId.533905=17036256>

Use of Force Resulting in Death or GBI:

<https://vallejopd.net/cms/One.aspx?pageId=16866287&portalId=16397453&objectId.533905=17697523&contextId.533905=17022554&parentId.533905=17036147>

Sustained Findings Pursuant to Penal Code 832.7:

<https://vallejopd.net/cms/One.aspx?pageId=16866287&portalId=16397453&objectId.533905=17697635&contextId.533905=17022554&parentId.533905=17036112>

The City is continuing to diligently research its records to gather responsive documents and prepare them for production. We are currently working on gathering, reviewing and redacting Officer-Involved Shooting cases (Penal Code section 832.7(b)(1)(A)(i)) from 2001-2004. This production will include all publicly available information under Penal Code section 832.7(b)(2).

Due to the voluminous records requested, the need for redactions under Penal Code section 832.7(b)(5)-(6), we anticipate these items will be available by August 19, 2021. Should you have any questions, please feel free to reach out to us at VallejoPD@cityofvallejo.net.

May 12, 2021, 6:02pm by Joni Brown, Administrative Analyst II (Staff)

External Message

Requester + Staff

Dear Open Vallejo:

The records you are requesting are released on a rolling production due to the volume of records and the need to review them for exemptions. Our next release is set for May 12, 2021. We will update our website with the new records and notify you of the release. All the reports will be released here on the [Penal Code 832.7 \(SB1421\)](#) webpage.

The index of records was previously released here in [CPRA 20-124](#).

We appreciate your patience as we prepare the records for release.

May 3, 2021, 4:03pm by Joni Brown, Administrative Analyst II (Staff)

Request Published

Public

May 3, 2021, 3:18pm by Joni Brown, Administrative Analyst II

External Message

Requester + Staff

Officially Receiving PRA Request as of April 28, 2021

I have received your request for a public record. **Please note, if you a party in a case and want to request your police report or traffic collision report, please contact the Records Division at (707) 648-4491 for further instructions. You may also request your police report online at www.vallejopd.net.**

The California Public Records Act, Government Code §6250, et seq., gives you the right to obtain a copy of identifiable public records. Government Code §6253(c) provides that the City has up to 10 days after receipt of your request to determine whether to comply with your request and shall immediately notify you of this determination and the reasons therefor.

I will notify you in writing of the City's determination. Please do not hesitate to contact me if you have any questions.

May 3, 2021, 3:18pm by Joni Brown, Administrative Analyst II (Staff)

Department Assignment

Public

Police Department

April 28, 2021, 8:14pm

Request Opened

Public

Request received via web

April 28, 2021, 8:14pm
