



Northern
California

June 30, 2020

SENT VIA ELECTRONIC MAIL

Randy J. Risner
Interim Vallejo City Attorney
555 Santa Clara St.
Vallejo, CA 94590
Randy.Risner@cityofvallejo.net

Re: Vallejo's Withholding of Critical Video Footage of Police Shootings

Dear Mr. Risner:

We write to address the City of Vallejo's failure to release video footage of the fatal police shooting of Sean Monterrosa that occurred on June 2, 2020 and of Willie McCoy that occurred on February 9, 2019. As you know, the nonprofit public interest newsroom Open Vallejo filed Vallejo Sunshine Ordinance immediate disclosure requests and California Public Records Act requests for this footage. Specifically, Open Vallejo filed a request for the footage pertaining to Mr. Monterrosa's death (June 2),¹ a second, more specific request for any footage captured by a private drone that was seized by police in connection with Mr. Monterrosa's death (June 10),² and a separate request for footage concerning Mr. McCoy's death (June 10).³

Not only is the City required to release these records pursuant to the PRA, the City's delay erodes what little public trust remains with a community that has seen far too many killed and brutally assaulted by the police. In express recognition of eroding public trust in the City and its police department following police killings, the City has agreed to undergo an extensive review by the California Department of Justice.⁴ Even with this three-year investigation underway, the people of Vallejo cannot wait for transparency and genuine public safety.

Background on Policing Issues in Vallejo

Since 2011, the Vallejo Police Department has killed more people per capita than any other city in Northern California.⁵ Only two other departments in the state have higher per capita killing rates over that period.⁶ In 2012, police homicides made up one third of the City's total homicides, and fatal police

¹ <https://vallejo.nextrequest.com/requests/20-348>

² <https://vallejo.nextrequest.com/requests/20-386>

³ <https://vallejo.nextrequest.com/requests/20-387>

⁴ <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-agreement-review-and-reform-vallejo-police>

⁵ Stephen Stock et al., *Vallejo Police Have Highest Rate of Residents Shot Per Capita in Northern California*; NBC Bay Area Probes Causes, NBC Bay Area, <https://www.nbcbayarea.com/news/local/vallejo-police-highest-rate-of-residents-shot-per-capita-in-northern-california-nbc-bay-area-probes-causes/190344/> (May 19, 2019).

⁶ *Id.*

shootings in Vallejo reached 38 times the national average.⁷ The recent killings of Mr. McCoy and Mr. Monterrosa have brought to light the Department's failure to reform and have reopened the wounds of the families who have lost loved ones at the Department's hands.

We are in an unprecedented moment of uprising against police violence.⁸ Footage of the Memorial Day killing of George Floyd in Minneapolis galvanized mass protests across the globe. To the Vallejo community, these protests echo their own calls for an end to police violence, after decades of abuses have been ignored.⁹ In 2012, Jeremiah Moore, an unarmed man, was shot and killed by Vallejo Police Officer Sean Kenney. Moore was the third unarmed man to be killed by Officer Kenney in the span of five months.¹⁰ In 2017, Angel Ramos was shot to death by Vallejo Police Officer Zachary Jacobsen. The Vallejo Police Department subsequently issued a press release claiming Ramos was shot while stabbing a child, although Ramos was unarmed and engaged in a fist fight. In 2018, Vallejo Police Officer Ryan McMahan chased Ronell Foster into an alley for riding his bike unsafely and then shot him in the back and in the back of the head.¹¹ Foster was unarmed. McMahan stayed on the force and went on to participate in the killing of Mr. McCoy less than a year later.¹² The Department's refusal to remediate these harms represents a pattern of evading accountability and shattering community relations.¹³

Just after midnight on June 2nd, 22-year-old Sean Monterrosa was found outside of a Walgreens. He did not have a weapon. When confronted by police, he fell to his knees with hands raised.¹⁴ Officer Jarrett Tonn shot Monterrosa through the windshield of his police car, killing him.¹⁵ Days later, protestors gathered at the site of Monterrosa's killing and demanded the Vallejo Police Department release video footage of Monterrosa's death.¹⁶ More than three weeks later, the City has not released the footage. In

⁷ Alex Emslie, *Questions Surround Surge in Vallejo Police Shootings*, KQED, <https://www.kqed.org/news/135682/amid-a-series-of-vallejo-police-shootings-one-officers-name-stands-out> (May 20, 2014).

⁸ See, e.g., Leila Miller, *George Floyd protests have created a multicultural movement that's making history*, LA Times, <https://www.latimes.com/california/story/2020-06-07/george-floyd-protests-unite-black-activists-new-allies> (Jun. 7, 2020).

⁹ Open Vallejo has worked to collect the stories of those lost and the circumstances of their killings. See <https://www.documentcloud.org/documents/6938775-Open-Vallejo-list-of-fatal-Vallejo-police.html>.

¹⁰ After having killed three men in five months, Officer Sean Kenney voluntarily left the department, but was later rehired as a Homicide Detective, despite public outcry. He now operates a law enforcement consulting business. See <https://www.timesheraldonline.com/2019/03/28/ex-vallejo-officer-involved-with-multiple-officer-involved-shootings-starts-consulting-firm/>.

¹¹ <https://www.theguardian.com/us-news/2019/may/07/vallejo-police-shooting-bike-ronell-foster-willie-mccoy>
¹² *Id.*

¹³ The City now also faces *Monell* liability for the harms perpetrated by its officers in several civil rights lawsuits filed in federal court. See, e.g., *Graff v. City of Vallejo et al* (2:18-cv-02848-KJM-CKD); *Burrell v. City of Vallejo et al* (2:19-cv-01898-WBS-KJN); *Jenkins v. City of Vallejo et al* (2:19-cv-01896-TLN-DB); *McCoy et al v. City of Vallejo et al* (2:19-cv-01191-JAM-CKD)

¹⁴ Sam Levin, *California: Vallejo police kill unarmed 22-year-old, who was on his knees with his hands up*, The Guardian, <https://www.theguardian.com/us-news/2020/jun/04/vallejo-police-kill-unarmed-man-california> (Jun. 4, 2020).

¹⁵ Jarrett Tonn shot three people on duty prior to Sean Monterrosa, none fatal. Internal investigations cleared Tonn of responsibility each time. See David Debolt, *Vallejo cop who killed 22-year-old San Francisco man had three prior shootings as a policeman*, Mercury News, <https://www.mercurynews.com/2020/06/08/exclusive-vallejo-officer-who-killed-sf-man-had-three-prior-shootings-as-a-policeman-2/> (Jun. 8, 2020); <https://twitter.com/OpenVallejo/status/1269071225663307777>.

¹⁶ Thomas Gase, *Vallejo police shooting: Protesters march to raise awareness for Sean Monterrosa*, Mercury News, <https://www.mercurynews.com/2020/06/06/vallejo-police-shooting-protesters-march-the-streets-of-vallejo-to-raise-awareness-for-sean-monterrosa/> (Jun. 6, 2020).

response to Open Vallejo's PRA request, the City cited AB 748 as the legal basis for denying access to the records – a law designed to enhance, rather than hinder, transparency.

On February 9, 2019, officers shot 20-year-old Willie McCoy 55 times while he was asleep in his car at a Taco Bell drive through.¹⁷ Though Mr. McCoy reportedly had a gun in his lap, officers can be heard on body camera footage obtained by Open Vallejo stating that the magazine was not fully inserted into the firearm. After Open Vallejo demonstrated the City waived all exemptions to disclosure,¹⁸ the Department released body camera footage of the shooting, which confirmed officers made no effort to wake Mr. McCoy or to announce themselves prior to shooting him.¹⁹ The City has failed to release other recordings of the incident, including any lifesaving measures that may have followed. Open Vallejo filed an additional PRA request for the release of these recordings on June 10 of this year. The request was denied, without elaboration, on the grounds that disclosure would impair the objectivity of witnesses and others involved in the investigation and proceedings.

California's Expansion of Public Access to Law Enforcement Use-of-Force Information

The California State Legislature amended the Public Records Act (PRA) in 2018 to improve public access to information concerning critical incidents like the killings of Mr. Monterrosa and Mr. McCoy.²⁰ AB 748 was intended to enhance law enforcement transparency and restore trust between police and communities by granting the public greater access to police recordings of serious uses of force.²¹ Although the PRA had long exempted police records of matters under investigation,²² AB 748 recognized the need for swift public access to records when police have used significant level of violence.

AB 748 requires release of police footage of incidents involving the discharge of a firearm or the use of force resulting in death or bodily injury, unless disclosure would “substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source.”²³ While interference is not defined in the statute, its common meaning is “to interpose in a way that hinders or impedes.”²⁴ In the related context of obstruction of justice, “substantial interference” has been construed to require substantial expenditure of government resources that would not have been spent absent the obstruction.²⁵

AB 748 was signed into law on the same day as SB 1421, an amendment to the California Penal Code requiring release of records of incidents in which a police officer has: (1) fired a gun at a person or used force resulting in serious injury or death, (2) committed sexual assault, or (3) engaged in dishonesty in the

¹⁷ <https://www.theguardian.com/us-news/2019/jun/12/willie-mccoy-shooting-vallejo-police-55-shots>.

¹⁸ <https://twitter.com/OpenVallejo/status/1110652277071581185>

¹⁹ <https://www.theguardian.com/us-news/2019/jun/12/willie-mccoy-shooting-vallejo-police-55-shots>

²⁰ *2 Bills Increasing Law Enforcement Transparency Signed By Brown*, CBS News San Francisco, <https://sanfrancisco.cbslocal.com/2018/10/01/gov-jerry-brown-law-enforcement-transperancy-ab748-sb1421/> (Oct. 1, 2018).

²¹ Assem. Com. on Judiciary, Analysis of Assem. Bill No. 748 (2017-2018 Reg. Sess.) February 15, 2017 (citing “mounting civil unrest over police brutality and use of fatal force against members of the public during traffic stops and other routine interactions between law enforcement and the public”).

²² Cal. Govt. § 6254(f).

²³ Cal. Govt. § 6254(f)(4)(A)(i).

²⁴ “Interfere.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/interfere>.

²⁵ U.S.S.G. § 2J1.2(b)(2); U.S.S.G. § 2J1.3(b)(2); U.S.S.G. § 2J1.5(b)(1); Kristine Cordier Karnezis, *Construction and Application of U.S.S.G. § 2J1.2(b)(2), Providing for Enhancement for “Substantial Interference with the Administration of Justice,”* 199 A.L.R. Fed. 445 (2005).

investigation, such as false reporting.²⁶ SB 1421 allows for the withholding of such information on account of an ongoing criminal investigation only where “the disclosure could reasonably be expected to interfere with” that “criminal enforcement proceeding.”²⁷ Together, these landmark bills fundamentally strengthen the PRA’s already-strong presumption in favor of police transparency and accountability. *See National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488 (“California’s constitutional directive [is] to ‘broadly construe[]’ a statute ‘if it furthers the people’s right of access’”).

Further Withholding of the Footage Concerning the Deaths of Mr. Monterrosa and Mr. McCoy is Unjustified Under the Facts and Law

In its denial to release the recordings of Mr. Monterrosa’s death, the City cites the potential impact on witness testimony and officer privacy to support its claim that disclosure would substantially interfere with their investigation. These vague justifications are insufficient to establish “substantial interference” for the purposes of AB 748. First, if the mere possibility of impacting witness testimony or interfering with officer privacy were sufficient to withhold footage, “substantial interference” would become an exception that would swallow the rule of disclosure. To the extent any witness’s recollection of the incident is hazy, the footage would likely enhance the accuracy of that witness’s recollection, rather than taint it. Further, release of the footage would cause the City little-to-no additional expense, as the City has already obtained the information for the purposes of investigation.²⁸ Taken within the statute’s context, the substantial interference exception should be read narrowly to fulfill the policy favoring disclosure advanced by AB 748, SB 1421, the PRA, and the California Constitution.²⁹

In withholding the remaining recordings related to Mr. McCoy’s death, the City cited California Penal Code § 832.7(b)(7)(A)(ii) and Government Code § 6255. Enacted by SB 1421, Pen. Code § 832.7(b)(7)(A)(ii) provides an agency may continue to delay release of records if disclosure “could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force.” Govt. Code § 6255 provides, notwithstanding the other provisions of the PRA, an agency may withhold a record if the public interest in non-disclosure outweighs the public interest in disclosure. Nearly 18 months after the widely publicized killing of Mr. McCoy, there is no basis for the claim that release of remaining footage would interfere with the ongoing proceedings.³⁰ Further, the public interest in disclosure outweighs whatever discrete interest is served by withholding the recordings; after decades of police killings and known efforts by the Department to conceal the circumstances of these deaths,³¹ the City has a responsibility to make known the information they have about this brutal incident. Moreover,

²⁶ Cal. Pen. Code § 832.7(b)(1).

²⁷ Cal. Pen. Code § 832.7(b)(7)(A)(ii); (iii).

²⁸ *Officer Involved Shooting: June 2, 2020, City of Vallejo*, <https://www.cityofvallejo.net/cms/One.aspx?portalId=13506&pageId=16807212> (Jun. 18, 2020).

²⁹ *See, e.g., American Civil Liberties Union Foundation v. Superior Court* (2017) 400 P.3d 432, 435 (describing the state Constitution’s mandate to construe the PRA in a manner favoring disclosure); *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 73-74 (where the Court found the public interest in disclosure of officer-involved shootings outweighed the officers’ interest in personal privacy).

³⁰ The history of police impunity for use of force in Vallejo suggests that withholding based on a purported ongoing criminal investigation is likely to be pretextual. Open Vallejo research shows that no Vallejo police officer has been charged with a crime relating to a shooting in the past 20 years.

³¹ Discussed *supra*.

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courts have interpreted § 6255's "catchall exemption" narrowly and require a specific explanation of the public interest in non-disclosure.³² Such an explanation is absent here.

In view of the foregoing arguments and the urgent public interest in information about police violence in the Vallejo community, we ask that the City immediately release the footage requested by Open Vallejo related to the police killings of Mr. Monterrosa and Mr. McCoy.

Thank you for your consideration. Please do not hesitate to contact me with any questions regarding this letter at sriordan@aclunc.org or by phone at 916-620-9705.

Regards,



Sean Riordan
ACLU Foundation of Northern California



Carly Margolis
ACLU Foundation of Northern California

³² See, e.g., *Becerra v. Superior Court* (2020) Cal.App.5th 897, 917 (reasoning the "catchall" exemption of the PRA should not thwart AB1421's purpose to improve law enforcement transparency).



City Attorney's Office · 555 Santa Clara Street · Vallejo · CA · 94590 · 707.648.4545

July 6, 2020

Mr. Sean Riordan
Ms. Carly Margolis
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PO Box 189070
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RE: Your June 30, 2020 Letter

Dear Mr. Riordan and Ms. Margolis:

Thank you for your letter of June 30, 2020 in which you express concerns about the City of Vallejo withholding video footage related to the June 2, 2020 officer-involved-shooting of Sean Monterossa as well as the February 2019 officer-involved-shooting of Willie McCoy. In your letter, you refer to three California Public Records Act (PRA) requests made by Open Vallejo.

Specifically, Open Vallejo made the PRA requests on the City's NextRequest portal. Those requests are numbered by NextRequest as 20-348 (footage related to an unknown 2019 shooting), 20-386 (drone footage from Monterossa shooting) and 20-387 (previously unreleased footage related to the McCoy shooting). My response to issues you raise about each request follows.

Request 20-348

This request seeks "Any video or audio recording relating to the fatal police shooting that occurred on or around 12:30 a.m. near the Walgren's store on Broadway Street in Vallejo on *June 2, 2019.*"(emphasis added) Our outside counsel, Best Best and Krieger, mistakenly denied Request 20-348 based upon the investigatory exception set forth in Government Code §6254(f)(4). The request should have been denied because no such record exists for the dates requested by Open Vallejo. If Open Vallejo is seeking video footage from a different date, then I encourage it to make another request for those records with the correct date.

If, as stated in your letter, Open Vallejo intends to request the body-worn camera footage from the June 2, 2020 officer-involved-shooting, the City has withheld that footage from disclosure to date because several credible threats were made to kill or injure officers and their families. Several of those threats arose from the release of an officer's name by Open Vallejo as well as media outlets without official confirmation. That officer received multiple death threats over social media as well as threats that his spouse and children would be killed and that he would be "strung up." His home address was even released on social media.

Currently, the City has two bases to withhold release of the footage. First, the footage identifies an officer that is the subject of a temporary restraining order obtained by the VPOA preventing the City from releasing the identity of the shooting officer. Second, AB 748 allows the City to withhold video footage if releasing it endangers the "safety of a person involved in an investigation . . ." (Government Code §6254(f)). I think you can agree that the threats received by the City concerning officers the public merely believes are involved most certainly endangers the officers actually involved, as well as their families, if their identities are disclosed.

The City is in the process of redacting the video footage to remove the identities of the involved officers. Once that process is complete, the City intends to release the footage provided that we are satisfied that the officers are not endangered by the release. We estimate that the footage of this critical incident will be available on the City's website beginning next week if not sooner.

Request 20-386

This request seeks "All footage from any drone or unmanned aerial vehicle seized by the Vallejo Police Department at any point between June 1, 2020 and June 10, 2020 that relates to a critical incident." Best Best and Krieger responded on June 22, 2020 that records were not available at that time which is a true response. While police did recover a drone, the footage was corrupted and unreadable. Police consulted recovery experts who also were unable to retrieve any information from the drone.

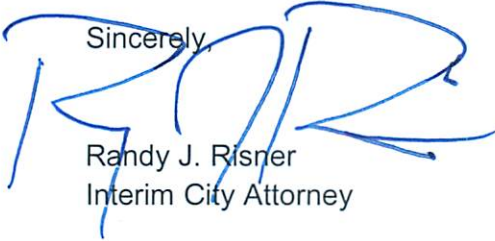
Request 20-387

This request seeks "All previously unreleased footage relating to the death of Willie McCoy on or around February 9, 2019 . . ." While I believe that the City had sufficient legal justification to withhold the video footage originally, I agree that the remaining McCoy footage should now be released. I have directed my staff to do so after we review and redact the identities of civilian witnesses as required by state law. We estimate this process will take approximately three weeks. Further, because there is a fairly large amount of remaining footage, we may have to release it on a rolling basis depending upon our vendor's schedule. The footage will be uploaded to the City's website as the redaction process is completed.

Mr. Riordan and Ms. Margolis
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I hope this addresses your concerns with the City's responses to Open Vallejo in the above Public Records Act requests. If you have any further questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RJR', is written over the word 'Sincerely,'.

Randy J. Risner
Interim City Attorney



Northern
California

July 17, 2020

SENT VIA ELECTRONIC MAIL

Randy J. Risner
Interim Vallejo City Attorney
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Dear Mr. Risner:

Thank you for your letter of July 6, 2020 regarding the status of Open Vallejo's Public Records Act ("PRA") requests for records that relate to the police killings of Willie McCoy and Sean Monterrosa.¹ While we appreciate the work that the City has done to review and produce certain records, we have concerns about the remaining gaps in public information.

On July 8, 2020, the Vallejo Police Department released a compilation of audio and video recordings related to the killing of Sean Monterrosa.² The compilation includes some police radio and body camera recordings of the critical incident but excludes private recordings seized by the Vallejo Police Department as well as additional police footage taken prior to, during, and after the critical incident. We urge the City to release all remaining footage related to the killing of Mr. Monterrosa which should be made public pursuant to AB 748.³

A. Private Recordings

According to the compilation video released by the Vallejo Police Department on July 8, "the only exterior [Walgreens] security camera that could have provided a view of the drive-thru area and incident was destroyed in a previous looting incident."⁴ However, the remaining Walgreens security cameras remained intact⁵ at the time of the shooting of Sean Monterrosa and could provide insight into the circumstances before, during, and after the critical incident.⁶ Even if the

¹ Requests #20-348, 20-386, 20-387, and 20-492. <https://vallejo.nextrequest.com/requests/20-348>;
<https://vallejo.nextrequest.com/requests/20-386>; <https://vallejo.nextrequest.com/requests/20-387>;
<https://vallejo.nextrequest.com/requests/20-492>.

² <https://vimeo.com/436510158>.

³ In a response to Open Vallejo's most recent PRA request for recordings pursuant to AB 748 (Request #20-492, correcting a prior typographical error in Request #20-348), the City denied the request for recordings on the grounds that the recordings were exempt pursuant to Penal Code 832.7(b)(7), subdivisions (A) and (C). These exemptions to SB 1421 do not apply to a request for recordings under AB 748.

⁴ *Id.*

⁵ <https://twitter.com/OpenVallejo/status/1281041570892898304>;
<https://twitter.com/OpenVallejo/status/1281032518926340096>;
<https://twitter.com/OpenVallejo/status/1281038642698280960>.

⁶ The Monterrosa family has called attention to the absence of information about the events prior to the killing of their family member; they note he does not appear in the video until after he is critically injured.

cameras were not pointed in the direction of Mr. Monterrosa at the time of his killing, they may show other relevant information, such as the positioning of police vehicles, the approach of the unmarked truck from which Mr. Monterrosa was shot, and the aftermath of the shooting. If the City has footage from any Walgreens camera, it is responsive to Open Vallejo's request and should be released as soon as possible.

On June 10, Open Vallejo requested all footage from any drone or unmanned aerial vehicle seized by the Vallejo Police between June 1, 2020 and June 10, 2020.⁷ In your July 6 letter, you report the Department seized a drone, but its footage is "corrupted and unreadable." The PRA requires the City to make available a "copy of records" that are responsive and non-exempt and, for electronic records, "[t]he agency shall make the information available in any electronic format in which it holds the information."⁸ Regardless of the condition of the file(s), the City must make the data available in response to Open Vallejo's request.

In sum, the City's response to Open Vallejo's PRA requests #20-348, #20-386, and #20-492 must include all remaining Walgreens footage, the drone footage, and any other recordings taken by nearby businesses and civilians that the City possesses relating to the shooting of Mr. Monterrosa.⁹

B. Additional Police Recordings

The City has released certain recordings related to the shooting of Mr. Monterrosa, in express recognition that the officers involved would not be "endangered" by the release.¹⁰ We agree that the footage released does not pose a substantial interference to the investigation, and therefore, the remaining police footage of the shooting would not satisfy the substantial interference exemption under Government Code Sec. 6254(f). We accordingly request that you immediately disclose any other footage captured by police-worn body cameras or any other footage captured by law enforcement that pertains to the shooting of Mr. Monterrosa.

C. The City's Position on Substantial Interference and Officer Privacy Interest

Sean Monterrosa was killed 45 days ago. The California Public Records Act provides an agency may delay the disclosure of a recording beyond 45 days from a critical incident only if the agency demonstrates the interest in preventing interference with an investigation outweighs the public interest in disclosure.¹¹ The agency must provide the requester the specific basis for this determination, an estimated date for the disclosure, and a status update every 30 days.¹² As the days and weeks pass since the killing of Mr. Monterrosa, the public interest in disclosure grows.¹³ At a protest on Saturday, hundreds marched in Vallejo alongside Mr. Monterrosa's

<https://www.kqed.org/news/11828654/sean-monterrosas-family-call-on-vallejo-police-to-release-more-officer-footage>.

⁷ <https://vallejo.nextrequest.com/requests/20-386>.

⁸ Cal. Govt. § 6253, 6253.9.

⁹ Other businesses that may have footage include the Wendy's and the Chicken Express on Redwood Street.

¹⁰ City's response to ACLU, July 6, 2020.

¹¹ Cal. Govt. Sec. 6254(f)(4)(A)(ii).

¹² *Id.*

¹³ In the weeks since Mr. Monterrosa was shot through a police truck windshield, the Department has replaced the windshield, destroying evidence in the process. <https://sanfrancisco.cbslocal.com/2020/07/15/windshield-from-vallejo-police-car-involved-in-sean-monterrosa-killing-destroyed-employee-placed-on-leave/>.

family to demand transparency from the Vallejo Police Department. Mr. Monterrosa's family and supporters called attention to inconsistencies in the Department's public statements regarding the shooting and expressed the urgent public interest in viewing the remaining recordings of the incident.¹⁴

In addition to the urgency of full disclosure of private and police recordings of the shooting, we are concerned about the City's redactions of officer identities. The City's report of credible threats to the shooting officer,¹⁵ if substantiated, involves a grave matter of public safety. Nonetheless, the concealing of involved officers' identities and the heavily excerpted footage, excluding anything beyond the initial response to Mr. Monterrosa's shooting, likely do not satisfy the PRA's exemption requirements.

The PRA provides for an exemption where the public interest in withholding a recording outweighs the public interest in disclosure because the release of a recording may violate the privacy interest of a subject depicted in the recording. In such a case, the agency may redact the recording, "including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that [privacy] interest. However, *the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.*"¹⁶

In light of Vallejo's history of police killing civilians with impunity,¹⁷ the public interest in a transparent investigation strongly outweighs the police officers' personal privacy. *See Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59 ("[T]he public's significant interest in the conduct of its peace officers 'diminishes and counterbalances' an officer's privacy interest in keeping his or her name confidential.") (citations omitted). The public's desire to understand and remediate incidents of police violence is the very essence of public safety. Public disclosure is especially urgent in this case because the oversight bodies typically charged with investigating critical incidents have refused to do so.¹⁸ The Vallejo Police Department has already destroyed evidence of the shooting and cannot be entrusted with investigating its own officers.¹⁹ In the presence of credible threats to the family of the shooting officer, the City likely can mitigate these threats without denying the public access to recordings of the latest police killing in a City that has seen far too many.

¹⁴ <https://www.kqed.org/news/11828654/sean-monterrosas-family-call-on-vallejo-police-to-release-more-officer-footage>; *See* <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/One-thing-clear-from-video-of-Sean-Monterrosa-15403013.php>. ("The public can't trust Vallejo police to be transparent, and the handling of this case is an example of why.")

¹⁵ The officer was identified by several news outlets as Jarrett Tonn. *See, e.g.,* <https://www.mercurynews.com/2020/06/23/vallejo-officer-jarrett-tonn-named-in-excessive-force-case-alleging-mistaken-identity/>; <https://www.kqed.org/news/11826613/vallejo-police-release-video-of-deadly-shooting-of-sean-monterrosa>.

¹⁶ Cal. Govt. Sec. 6254(f)(4)(B)(i) (emphasis added).

¹⁷ *See, e.g.,* <https://www.nbcbayarea.com/news/local/vallejo-police-highest-rate-of-residents-shot-per-capita-in-northern-california-nbc-bay-area-probes-causes/190344/>.

¹⁸ <https://sanfrancisco.cbslocal.com/2020/07/02/solano-county-vallejo-police-shooting-investigations-recused/>; <https://www.kqed.org/news/11826054/state-attorney-general-wont-investigate-vallejo-polices-fatal-shooting-of-sean-monterrosa>.

¹⁹ *Supra* note 13.

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Even if the officers' privacy interest exceeded the public interest in disclosure, the footage released on July 8 was excessively redacted and interferes with the public's ability to fully, completely, and accurately understand the circumstances of Mr. Monterrosa's death.²⁰ In view of the strong public response to the redacted recording and the PRA's presumption favoring disclosure, the City must release all remaining recordings related to the shooting of Sean Monterrosa.

D. Conclusion

AB 748 was passed in recognition that transparency is a precursor to trust, and public information enhances investigations of critical incidents by empowering communities to ensure local law enforcement agencies are accountable to the people they serve. For the people of Vallejo, this is a question of life or death. We urge the City to disclose all remaining footage related to the circumstances prior to, during, and after the shooting of Mr. Monterrosa on June 2.

Thank you for your consideration. Please do not hesitate to contact me with any questions regarding this letter at sriordan@aclunc.org or by phone at 916-620-9705.

Regards,



Sean Riordan
ACLU Foundation of Northern California



Carly Margolis
ACLU Foundation of Northern California

²⁰ The demands of Saturday's protesters make this clear.
<https://twitter.com/VallejoVessels/status/1281446591124041728/photo/1>



City Attorney's Office · 555 Santa Clara Street · Vallejo · CA · 94590 · 707.648.4545

July 27, 2020

VIA EMAIL

Sean Riordan
Carly Margolis
ACLU, Northern California
PO Box 189070
Sacramento, CA 95818

RE: Your letter on behalf of Open Vallejo dated July 17, 2020

Dear Mr. Riordan and Ms. Margolis:

The Vallejo Police Department (VPD), at my request, recently released all available body-worn-camera footage depicting the June 2, 2020, fatal incident involving Sean Monterrosa. The VPD has also released the available private video footage from Walgreens. All of this footage is available on VPD's website. While the released footage depicts the critical incident, there is additional footage relating to events occurring after the critical incident that is being processed and will be released as soon as possible. As you know, we are required by law to review and redact identifying information for any potential witnesses. This requires an extensive amount of time. In order to accomplish this task, VPD has dedicated an employee who is working solely on this task until all of the footage is available.

You also asked again about drone footage. As I said before, nothing useful exists on the drone memory card. The drone is not in VPD's possession at the moment. It is in the possession of a federal government agency that is confirming whether or not any footage on the drone can be recovered. Another federal agency that has a unit specializing in retrieving computer information has determined that no recoverable footage exists on the drone. VPD is seeking a second opinion to confirm that nothing is there. It is my understanding that there are currently one or more empty "files" on the drone's memory card. VPD has copies of these files and I have asked that they be uploaded to VPD's website. It is my understanding that copies of those files will likely be available on the website sometime tomorrow.

You also take exception with VPD's redaction of the identity of the shooting officer. As I previously explained to you, the VPOA sought and was granted a court order preventing the City from disclosing that officer's identity. If you or Open Vallejo desires City confirmation of the identity, you most certainly have the right to intervene in the case and ask the court to dissolve the

Mr. Sean Riordan and Ms. Carly Margolis

RE: Your letter on behalf of Open Vallejo dated July 17, 2020

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preliminary injunction. For your reference, the case is *Vallejo Police Officers' Association and Officer John Doe v. City of Vallejo*, Solano County Superior Court Case No. FCS054880. VPD has not redacted the identities of any other officers.

If you have any further questions, please contact me.

Sincerely,



Randy J. Risner
Interim City Attorney