

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

NATIONAL LAWYERS GUILD,
SAN FRANCISCO BAY AREA
CHAPTER,

Plaintiff and Respondent,

vs.

CITY OF HAYWARD, et al.,

Defendants and Appellants

Case No. A149328

Alameda County Superior Court,
Case No. RG15-785743

Hon. Evelio M. Grillo,
Presiding

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND
BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS AND SEVEN MEDIA ORGANIZATIONS IN SUPPORT
OF RESPONDENT**

*Katie Townsend (SBN 254321)

**Counsel of Record*

Bruce D. Brown**

Caitlin Vogus**

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

1156 15th Street NW, Suite 1250

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

ktownsend@rcfp.org

** *Of counsel*

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
TO THE HONORABLE PRESIDING JUSTICE OF DIVISION
THREE OF THE FIRST DISTRICT COURT OF APPEAL:

Pursuant to California Rule of Court 8.200(c), the Reporters Committee for Freedom of the Press, California News Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, Gannett Co., Inc., Los Angeles Times Communications LLC, and The McClatchy Company respectfully request leave to file the attached brief as *amici curiae* in support of Respondent, National Lawyers Guild, San Francisco Bay Area Chapter.

I. INTEREST OF *AMICI CURIAE*

Amici seek leave to file this brief because this case presents issues of significant concern to the news media. Members of the news media frequently make requests for public records under the California Public Records Act (the “CPRA” or “Act”) as a means of gathering news. This case could have broad consequences for all public records requesters in California, including members of the press.

Amici are particularly concerned about the negative consequences that a reversal of the lower court’s holding would have on the public’s right of access to electronic public records. *Amici* write to emphasize that Section 6253.9 of the CPRA, Gov. Code § 6253.9, does not permit public agencies to charge requesters more than the direct cost of duplication of

electronic records any time it must redact electronic records before releasing them. Because more and more government records are held in electronic format, interpreting Section 6253.9 to permit such charges would hinder access to public records and impair the news media's ability to keep the public informed about the activities of government. *Amici* respectfully request that this Court accept and file the attached *amici curiae* brief.

No party or counsel for any party, other than counsel for the *amici*, authored this brief in whole or in part or funded preparation of this brief.

/s/ Katie Townsend
Katie Townsend (SBN 254321)
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1250
Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org
Counsel of Record

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

NATIONAL LAWYERS GUILD,
SAN FRANCISCO BAY AREA
CHAPTER,

Plaintiff and Respondent,

vs.

CITY OF HAYWARD, et al.,

Defendants and Appellants

Case No. A149328

Alameda County Superior Court,
Case No. RG15-785743

Hon. Evelio M. Grillo,
Presiding

***AMICI CURIAE* BRIEF OF THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND SEVEN MEDIA
ORGANIZATIONS IN SUPPORT OF RESPONDENT**

*Katie Townsend (SBN 254321)

**Counsel of Record*

Bruce D. Brown**

Caitlin Vogus**

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

1156 15th Street NW, Suite 1250

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

ktownsend@rcfp.org

** *Of counsel*

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208(e)(1) and (2), *amici curiae* the Reporters Committee for Freedom of the Press, California News Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, Gannett Co., Inc., Los Angeles Times Communications LLC, and The McClatchy Company, by and through their undersigned counsel, certify that the following entities or person have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

California News Publishers Association is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California.

Californians Aware is a nonprofit organization with no parent corporation and no stock.

The Center for Investigative Reporting is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

Los Angeles Times Communications LLC and The San Diego Union-Tribune, LLC are subsidiaries of tronc, Inc., which is publicly held. Merrick Media, LLC, Nant Capital, LLC, Oaktree Capital Management, L.P., and HG Vora Capital Management, LLC each own 10 percent or more of tronc, Inc.'s stock.

The McClatchy Company is publicly traded on the New York Stock Exchange under the ticker symbol MNI. Contrarius Investment Management Limited and Royce & Associates, LLC both own 10% or more of the common stock of The McClatchy Company.

Dated: July 31, 2017

/s/ Katie Townsend
Katie Townsend (SBN 254321)
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1250

Washington, DC 20005
Telephone: (202) 795-9303
Facsimile: (202) 795-9310
Email: ktownsend@rcfp.org
Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES	6
I. INTRODUCTION	9
II. ARGUMENT	11
A. Public agencies are increasingly creating and maintaining electronic records.....	11
B. Public access to BWC videos promotes transparency and public accountability.....	13
C. Charging fees beyond the cost of duplication will preclude many journalists and members of the public from accessing electronic public records.....	17
D. Charging fees beyond the cost of duplication is contrary to the California Constitution and the purpose of the CPRA.	22
III. CONCLUSION.....	24
APPENDIX A: DESCRIPTION OF AMICI.....	28
APPENDIX B: ADDITIONAL COUNSEL.....	31

TABLE OF AUTHORITIES

Cases

<i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646	19, 22
<i>City of San Jose v. Superior Court</i> (2017) 2 Cal.5th 608	11, 13
<i>Grosjean v. American Press Co.</i> (1936) 297 U.S. 233	19
<i>Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court</i> (2007) 42 Cal.4th 319	22
<i>Kapellas v. Kofman</i> (1969) 1 Cal.3d 20.....	20
<i>Long Beach Police Officers Ass'n v. City of Long Beach</i> (2014) 59 Cal. 4th 59	20
<i>Mills v. Alabama</i> (1966) 384 U.S. 214	19
<i>N. Cty. Parents Org. v. Dep't of Educ.</i> (1994) 23 Cal.App.4th 144.....	17
<i>Register Div. of Freedom Newspapers Inc. v. County of Orange</i> (1984) 158 Cal.App.3d 893.....	19, 22
<i>Richmond Newspapers, Inc. v. Virginia</i> (1980) 448 U.S. 555.....	19

Statutes

Gov. Code § 6250	9, 11, 18
Gov. Code § 6252	11
Gov. Code § 6253	10
Gov. Code § 6253.9	<i>passim</i>

Other Authorities

<i>Access to Body-Worn Camera Video</i> , Reporters Committee for Freedom of the Press, http://rcfp.org/bodycams	14
CalRIM, <i>Electronic Records Guidebook</i> at p.1, available at https://perma.cc/2N4V-YP4C	12, 13

Carrero, <i>Samuel DuBose Shooting: New Body Cam Video Shows Police Response</i> , NBC News (Jul. 20, 2015), available at https://perma.cc/PE9M-VJYU	14
Carroll, <i>California police use of body cameras cuts violence and complaints</i> , Guardian (Nov. 4, 2013), available at https://perma.cc/2QUY-YKSK	16
Doctor, <i>Newsonomics: The halving of America’s daily newsrooms</i> , NiemanLab (July 28, 2015) available at https://perma.cc/AZJ8-BFFJ	18
Haire & Emery, <i>Body Cameras are becoming the norm in Southern California</i> , Orange County Register (Feb. 23, 2017), available at https://perma.cc/KAU4-SEHS	16
Hennum, et al., <i>City, county government salary database for the Sacramento CA region</i> , Sacramento Bee (Aug. 17, 2016), available at https://perma.cc/5D4Q-RUJ7	12
Ho, <i>Police rarely analyze, share racial data on stops</i> , San Francisco Gate (Aug. 19, 2014), available at https://perma.cc/E6JR-F9U9	18
Marquez, <i>Body camera video allegedly shows Baltimore cop planting evidence</i> , CNN (July 20, 2017), available at https://perma.cc/F22S-JEK2	15
Marusak & Washburn, <i>CMPD releases full video of fatal Keith Lamont Scott shooting</i> , Charlotte Observer (Oct. 4, 2016), available at https://perma.cc/P2UV-JPAY	15
Poston & Rubin, <i>LAPD Misclassified More Than 25,000 Serious Crimes as Minor, Audit Finds</i> , L.A. Times (Dec. 5, 2015), available at http://lat.ms/1XS9XL3	21
Poston & Rubin, <i>LAPD Misclassified Nearly 1,200 Violent Crimes as Minor Offenses</i> , L.A. Times (Aug. 9, 2014), available at http://lat.ms/11T9MBW	21
Poston & Rubin, <i>LAPD’s Misclassified Incidents: How We Reported This Story</i> , L.A. Times (Aug. 9, 2014), available at http://lat.ms/1ul6ucf	20
Poston, et al., <i>LAPD underreported serious assaults, skewing crime stats for 8 years</i> , L.A. Times (Oct. 15, 2015), available at http://lat.ms/1k7rbau	21

<i>Property Document</i> , Orange County Clerk Recorder, available at https://perma.cc/PVP6-G78V	12
Protin, et al., <i>Animated timeline shows how Silicon Valley became a \$2.8 trillion neighborhood</i> , Business Insider (May 30, 2017), available at https://perma.cc/7MRP-6AJ3	12
Sanburn, <i>The One Battle Michael Brown's Family Will Win</i> , Time (Nov. 25, 2014), available at https://perma.cc/TE2J-8N85	14
Samuels, <i>Is There Hope for Local News?</i> , Atlantic (Nov. 10, 2014), available at https://perma.cc/WW33-87ZE	18
<i>State of the News Media</i> , Pew Research (June 15, 2016), available at https://perma.cc/6QHH-B7UD	18
University of Cambridge, <i>First scientific report shows police body-worn-cameras can prevent unacceptable use-of-force</i> , (Dec. 23, 2014), available at https://perma.cc/K68R-P3G6	16
Winsor, <i>Arizona Man Claims Police Brutality After Body Camera Captures Officer Pushing Him to Ground</i> , ABC News (Dec. 30, 2016), available at https://perma.cc/657R-9KZY	15

Constitutional Provisions

Cal. Const., art. I, § 3	11, 22
--------------------------------	--------

I. INTRODUCTION

This appeal concerns the public’s ability to access electronic records under to the California Public Records Act, Gov. Code § 6250, *et. seq.* (the “CPRA” or the “Act”), and, specifically, the limits on the fees a public agency may charge for such access. Respondent made a CPRA request to the City of Hayward Police Department for certain footage captured by police body-worn cameras (“BWC” or “bodycams”). Appellant the City of Hayward withheld copies of the requested records until Respondent agreed to pay more than \$3,000 for the time spent by City employees locating, reviewing, and making redactions to the requested footage. The City argues that it is entitled to charge Respondent these fees pursuant to Government Code section 6253.9, subd. (b)(2). The trial court correctly held that it is not. *Amici*¹ respectfully urge this Court to affirm.

Although the CPRA request at issue in this case seeks BWC footage, Appellants’ interpretation of Government Code section 6253.9 (“Section 6253.9”) would have significant implications for all CPRA requests. Public agencies are increasingly using electronic, rather than paper, records to conduct their day-to-day work. Thus, more and more CPRA requests necessarily seek access to electronic records. If public agencies can charge requesters more than the direct costs of duplication any time an electronic record is redacted—which they are not permitted to do for paper records,

¹ A full description of amici is provided in Appendix A.

see Gov. Code § 6253(b)—the consequences will be far reaching. When the CPRA requires a public agency to release an electronic record, the agency cannot delay or complicate release by imposing barriers, such as additional costs.

Appellants' interpretation of Section 6253.9 in this case, in particular, undermines the purpose of BWC programs. Bodycam programs have been implemented widely by law enforcement across California as a way to increase police transparency and accountability. Media and public access to bodycam videos, which informs the public about matters of public safety and allows the public to hold law enforcement agencies and officers accountable for their actions, is vital to achieving the goals of BWC programs. To fulfill the purpose of BWCs, law enforcement agencies must not obstruct access to bodycam videos by charging additional fees for their release.

Appellants' interpretation of Section 6253.9 will also negatively impact journalists and news organizations who regularly use the CPRA. Charging fees beyond the cost of duplication will put electronic public records practically out of the reach of many members of the news media and the public alike.

Finally, Appellants' interpretation of Section 6253.9 is contrary to the California Constitution and the purpose of the CPRA. The California Constitution instructs the Court to interpret statutes in favor of public

access, in furtherance of the CPRA’s purpose of allowing the public to hold the government accountable. Public agencies cannot impose fees for responding to CPRA requests for electronic records that are not permitted by the Act. Accordingly, this Court should affirm.

II. ARGUMENT

A. Public agencies are increasingly creating and maintaining electronic records.

Both the CPRA and the California Constitution establish the public’s right of access to information concerning the conduct of the people’s business. (Gov. Code § 6250; Cal. Const., art. I, § 3, subd. (b)(1).) This right extends equally to paper and electronic records. (*See* Gov. Code § 6252(e) (defining “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency *regardless of physical form or characteristics*) (emphasis added); *id.* § 6252(g) (defining “writing” as “handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored”); *see also City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.)

The digitization of information has transformed industries across the globe, enabling unprecedented access to information worldwide. In fact, much of the innovation of the digital age originated in California. (Protin, et al., *Animated timeline shows how Silicon Valley became a \$2.8 trillion neighborhood*, Business Insider (May 30, 2017), available at <https://perma.cc/7MRP-6AJ3>.)

Public agencies have not been immune to the spread of digitization. New technologies have revolutionized how government agencies communicate and store information. As the California Records and Information Management (“CalRIM”) Office states in its Electronic Records Guidebook for state agency records managers: “[T]oday’s highly technical environment means that more records will be created and stored electronically.” (CalRIM, *Electronic Records Guidebook* at p.1, available at <https://perma.cc/2N4V-YP4C>.) Public agencies now maintain “complex records such as data spreadsheets, geospatial files, and digital video” all in electronic format. (*Id.*) For example, California counties maintain digital repositories for property records. (See *Property Document*, Orange County Clerk Recorder, available at <https://perma.cc/PVP6-G78V>.) Similarly, state employee salary data is available electronically. (See Hennem, et al., *City, county government salary database for the Sacramento CA region*, Sacramento Bee (Aug. 17, 2016), available at <https://perma.cc/5D4Q-RUJ7>.) In addition, as email has displaced the telephone and paper mail,

public agencies' day-to-day communications are increasingly captured in electronic format, *see* CalRIM, *supra* at p.8) and most state agencies now “operate one or more social media accounts,” creating additional public records. (*Id.* at p.14; *see also* *City of San Jose, supra*, 2 Cal.5th at 617–18 (discussing the changes to a “writing” by public agencies under the CPRA from 1968 to the present).)

Increasingly, as public agencies' records are maintained in electronic format, more and more CPRA requests, necessarily, will involve electronic records. Accordingly, if Section 6253.9 permits a public agency to charge a requester fees that exceed the cost of duplication when responding to a CPRA request for an electronic record if the agency redacts that record before it is released, as Appellants urge here, vast numbers of CPRA requests for all types of public records will soon be subject to significantly increased fees.

B. Public access to BWC videos promotes transparency and public accountability.

Law enforcement agencies have implemented bodycam programs across the country to ensure that law enforcement is accountable to the public. Because they further transparency and increase accountability of law enforcement, BWCs are becoming ubiquitous nationwide. California is on the forefront of BWC implementation; at least seventeen city police departments in California have implemented BWC use and policies—more

than any other state. (*See Access to Body-Worn Camera Video*, Reporters Committee for Freedom of the Press, <http://rcfp.org/bodycams>.)

Footage from BWCs can increase public awareness of police conduct—both good and bad. Access to BWC footage provides the public with a more objective record, which enables greater understanding of law enforcement officers’ interactions with members of the communities they serve. Often, these videos allow the public to see and understand the circumstances surrounding incidents where an officer uses force.

BWC footage has been at the center of the current public discussion surrounding police shootings of people of color. After the controversial death of teenager Michael Brown in Ferguson, Missouri, public concern prompted police departments across the country to implement BWC programs. (Sanburn, *The One Battle Michael Brown's Family Will Win*, Time (Nov. 25, 2014), available at <https://perma.cc/TE2J-8N85>.) And, since then, bodycam videos have been central to the public’s understanding of a number of police shootings. (*See Carrero, Samuel DuBose Shooting: New Body Cam Video Shows Police Response*, NBC News (Jul. 20, 2015), available at <https://perma.cc/PE9M-VJYU> (presenting BWC footage of a University of Cincinnati police officer’s fatal shooting of motorist Samuel DuBose, which contradicted the series events as described in the police report); Marusak & Washburn, *CMPD releases full video of fatal Keith Lamont Scott shooting*, Charlotte Observer (Oct. 4, 2016), available at

<https://perma.cc/P2UV-JPAY> (discussing release of BWC footage of Keith Lamont Scott's death after he was shot by an officer.))

The value of public access to BWC footage for accountability has been underscored by several disturbing incidents where footage from BWCs not only revealed officer misconduct, but contradicted police reports. For example, in 2016, footage from officer BWCs showed officers using unnecessary force on an Arizona man. (Winsor, *Arizona Man Claims Police Brutality After Body Camera Captures Officer Pushing Him to Ground*, ABC News (Dec. 30, 2016), available at <https://perma.cc/657R-9KZY>.) According to the police report, the man had advanced on the officers and continued to fight them despite being handcuffed. (*Id.*) The BWC captured a very different story; the footage showed that the officer instigated the incident, which resulted in the victim's hospitalization, without provocation. (*Id.*) More recently, BWC footage revealed an officer in Baltimore, Maryland, appearing to plant evidence at the scene of a drug arrest. (Marquez, *Body camera video allegedly shows Baltimore cop planting evidence*, CNN (July 20, 2017), available at <https://perma.cc/F22S-JEK2>.)

Bodycam videos have also helped to publicly vindicate police officers accused of misconduct. For example, in early 2017 a Fullerton, California police officer was accused of being vulgar and rude during an encounter with a member of the public. (Haire & Emery, *Body Cameras*

are becoming the norm in Southern California, Orange County Register (Feb. 23, 2017), available at <https://perma.cc/KAU4-SEHS>.) BWC footage of the incident, however, revealed that the officer had done nothing wrong. (*Id.*)

In addition, because officers and members of the public know that BWCs are recording their interactions and that the footage is publicly accessible, bodycams may also have a positive effect on the behavior of police officers and members of the public. A recent study conducted by the University of Cambridge covering the use of BWCs by the police department in Rialto, California indicated that complaints against officers dropped 87% and officers' use of force dropped to 59% after BWCs were introduced to the department in 2012. (University of Cambridge, First scientific report shows police body-worn-cameras can prevent unacceptable use-of-force, (Dec. 23, 2014), available at <https://perma.cc/K68R-P3G6>; Carroll, *California police use of body cameras cuts violence and complaints*, Guardian (Nov. 4, 2013), available at <https://perma.cc/2QUY-YKSK>.)

The benefits of BWCs depend on the availability of bodycam footage to the press and the public. BWCs make the police more transparent and accountable to the public only when the public has access to the footage. Imposing barriers to the release of BWC footage, such as high costs, not only makes them practically inaccessible to the public in

many cases, it undermines the utility of bodycams as an objective source of information by making their release subject to manipulation. A public agency could voluntarily release certain BWC video at no cost when it believes public access to be in its benefit and simultaneously charge higher fees for public access to less flattering footage. The risk of such manipulation undermines public trust in BWC video. For these reasons, public agencies should not be permitted to unnecessarily obstruct access to BWC footage by charging requesters fees beyond the cost of duplication.

C. Charging fees beyond the cost of duplication will preclude many journalists and members of the public from accessing electronic public records.

Under Appellants' interpretation of Section 6253.9, public agencies can charge requesters for any and all costs associated with producing an electronic public record any time the record must be redacted before it can be released. As a result, requesters would be able to access many, if not most, electronic records only after paying fees far beyond the direct cost of duplication. (*See N. Cty. Parents Org. v. Dep't of Educ.* (1994) 23 Cal.App.4th 144, 148 (holding that the "direct cost of duplication" does not include "the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted".)) As a result, most members of the public, including the news media, would be unable as a practical matter to access important information about how

public agencies conduct the people's business. (*See* Gov. Code, § 6250.)

The barrier to access created by such fees is not permitted by the CPRA.

Charging thousands of dollars for copies of electronic records will put them beyond the practical reach of most members of the press and the public. Even larger news media organizations are unlikely to be able to routinely afford to pay high fees for public records. Particularly as newsrooms across the country, and their budgets, continue to shrink, established news organizations are unlikely to be willing to pay substantial fees for public records. (*See State of the News Media*, Pew Research (June 15, 2016), available at <https://perma.cc/6QHH-B7UD>; Doctor, *Newsonomics: The halving of America's daily newsrooms*, NiemanLab (July 28, 2015) available at <https://perma.cc/AZJ8-BFFJ>.) Community newspapers and other local news outlets are especially unable to afford high costs for public records. (*See* Semuels, *Is There Hope for Local News?*, Atlantic (Nov. 10, 2014), available at <https://perma.cc/WW33-87ZE>; *see also* Ho, *Police rarely analyze, share racial data on stops*, San Francisco Gate (Aug. 19, 2014), available at <https://perma.cc/E6JR-F9U9>) (noting that the *San Francisco Chronicle* did not pay the \$1,820 that police officials said it would cost for five years of traffic stop data the *Chronicle* requested under the CPRA.) And such fees are an even larger hurdle for freelance and independent journalists.

When the press cannot access public records due to cost, it is the public that loses. The press is the primary conduit through which the public learns about government activities. (*See Grosjean v. American Press Co.* (1936) 297 U.S. 233, 250 (stating that an “untrammelled press [is] a vital source of public information”); *Mills v. Alabama* (1966) 384 U.S. 214, 219 (stating that “[t]he Constitution specifically selected the press . . . to play an important role in the discussion of public affairs”); *see also Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 573 (noting that “[i]nstead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public.”).) Fees that prevent the press from accessing public records under the CPRA cause the public to lose access to information necessary to ensure “the accountability of government to the public.” (*See Register Div. of Freedom Newspapers Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901 (*Register Div. of Freedom Newspapers*); *see also CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–52 (*CBS*) (stating that “[i]n order to verify [government] accountability, individuals must have access to government files”).)

Access to public records by the news media—and therefore by the public—is especially important when it comes to law enforcement activity. As the California Supreme Court has explained, “Newspapers have

traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed.” (*Kapellas v. Kofman* (1969) 1 Cal.3d 20, 38; *see also Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal. 4th 59, 73–74, 75 (holding that identities of officers involved in shootings while on duty are not categorically exempt from disclosure under CPRA, and noting that the public has a strong interest in information concerning officer-involved shootings).)

There are numerous instances where powerful, important news stories about law enforcement have been possible only because of journalists’ access to electronic records. For example, in 2014, the *Los Angeles Times* “obtained computerized crime data for more than 94,000 incidents recorded by the Los Angeles Police Department in the year ending Sept. 30, 2013” through the CPRA. (Poston & Rubin, *LAPD’s Misclassified Incidents: How We Reported This Story*, L.A. Times (Aug. 9, 2014), available at <http://lat.ms/1ul6ucf>.) As a result, the *Times* could report that the LAPD had misclassified over 1,000 violent crimes over a one-year period between 2012 and 2013, resulting in inaccurate information being presented to the public regarding the crime rate in Los Angeles. (Poston & Rubin, *LAPD Misclassified Nearly 1,200 Violent Crimes as*

Minor Offenses, L.A. Times (Aug. 9, 2014), available at <http://lat.ms/11T9MBW>.)

The *Times* later expanded the scope of its investigation, eventually reporting that the LAPD had “misclassified an estimated 14,000 serious assaults as minor offenses in a recent eight-year period, artificially lowering the city’s crime levels.” (Poston, et al., *LAPD underreported serious assaults, skewing crime stats for 8 years*, L.A. Times (Oct. 15, 2015), available at <http://lat.ms/1k7rbau>.) The *Times*’ reporting prompted an inspector general’s audit of LAPD crime reports that revealed that the LAPD had misclassified tens of thousands of aggravated assaults as minor incidents from 2008 to 2014. (Poston & Rubin, *LAPD Misclassified More Than 25,000 Serious Crimes as Minor, Audit Finds*, L.A. Times (Dec. 5, 2015), available at <http://lat.ms/1XS9XL3>.)

Without access to electronic public records, the *Times* may never have been able to report this important story, and the public would have been left in the dark about the LAPD’s misclassification errors. Allowing public agencies to charge fees, beyond the direct cost of duplication, for access to electronic public records concerning law enforcement, such as the records used by the *Times* to report on crime classification or the BWC videos sought by Respondent, prevents the press from accessing to such records, to the detriment to the public’s right to know.

D. Charging fees beyond the cost of duplication is contrary to the California Constitution and the purpose of the CPRA.

Appellants' interpretation of Section 6253.9 would leave most requesters unable to pay the costs necessary to access most electronic records. (*See supra* Section I.C.) Such a result is antithetical to California Constitution and the purpose of the CPRA.

The California Constitution declares that “[t]he people have the right to access information concerning the conduct of the people’s business” (Cal. Const., art. I, § 3 (stating that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state”.) Californians have long recognized that “[o]penness in government is essential to the functioning of a democracy,” and that “[a]ccess to public records “permits checks against the arbitrary exercise of official power and secrecy in the political process.”” (*Int’l Fed’n of Prof’l & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328, 329 (quoting *CBS, supra*, 42 Cal.3d at 651).) Thus, the CPRA is a powerful mechanism for ensuring “the accountability of government to the public.” (*Register Div. of Freedom Newspapers, supra*, 158 Cal.App.3d at p.901.)

For this reason, the California Constitution provides that statutes, including the CPRA, must be “broadly construed” in favor of public access. (Cal. Const., art. I, § 3, subd. (b)(2).) Yet, contrary to this constitutional

mandate, Appellants ask this Court to construe the CPRA to limit the right of access. Under Appellants' interpretation of Section 6253.9, public agencies could charge fees beyond the cost of duplication for *any* electronic records, not just BWC videos, any time the records must be redacted before they can be released. Such an interpretation imposes a barrier to access to all electronic records, contrary to the California Constitution and purpose of the CPRA.

III. CONCLUSION

For the reasons set forth above, this Court should affirm the decision of the Alameda Superior Court.

/s/ Katie Townsend

Katie Townsend (SBN254321)
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1250
Washington, DC 20005
Telephone: (202) 795-9303
Facsimile: (202) 795-9310
ktownsend@rcfp.org
Counsel of Record

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that the attached *amicus curiae* brief was produced using 13-point Roman type, including footnotes, and contains 3,193 words. I have relied on the word count function of the Microsoft Word word-processing program used to prepare this brief.

Dated: July 31, 2017

/s/ Katie Townsend
Counsel of Record

PROOF OF SERVICE

I, Rachael L. Jones, do hereby affirm that I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. My business address is 1156 15th St. NW, Suite 1250, Washington, DC 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On July 31, 2017, I served the foregoing documents: **Application for Leave to File *Amici Curiae* Brief and *Amici Curiae* Brief of the Reporters Committee for Freedom of the Press and Seven Media Organizations in Support of Respondent National Lawyers Guild, San Francisco Bay Area Chapter** as follows:

UNITED STATES MAIL: On July 31, 2017, I enclosed a true and correct copy of said document in an envelope with postage fully paid for deposit in the United States Postal Service.

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail following our ordinary business practices, for collection and processing correspondence for mailing with the United States Postal Services, addressed as set forth below:

Amitai Schwartz
Law Offices of Amitai Schwartz
2000 Powell Street, Ste. 1286
Emeryville, CA 94608

*Attorney for Plaintiff and Respondent
National Lawyers Guild, San Francisco
Bay Area Chapter*

Alan L. Schlosser
American Civil Liberties Union
Foundation
of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111

*Attorney for Plaintiff and Respondent
National Lawyers Guild, San Francisco
Bay Area Chapter*

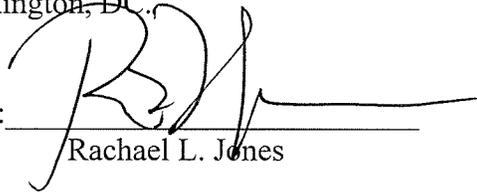
Michael S. Lawson, City Attorney
Justin Nishioka, Assistant City
Attorney
777 B street, 4th floor
Hayward, CA 94541-5007

*Attorneys for Defendant and Appellant
City of Hayward, Adam D. Perez, and
Diane Urban*

I declare under penalty of perjury under the laws of the State of
California and the United States of America that the above is true and
correct.

Executed on the 31st of July 2017, at Washington, DC.

By: _____



Rachael L. Jones

APPENDIX A: DESCRIPTION OF AMICI

The **Reporters Committee for Freedom of the Press** is an unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

The **California News Publishers Association ("CNPA")** is a nonprofit trade association representing the interests of over 1300 daily, weekly and student newspapers and news websites throughout California.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

The **Center for Investigative Reporting (CIR)** believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic

innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

Los Angeles Times Communications LLC and **The San Diego Union-Tribune, LLC** are two of the largest daily newspapers in the United States. Their popular news and information websites, www.latimes.com and www.sandiegouniontribune.com, attract audiences throughout California and across the nation.

The **McClatchy Company** is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Fresno Bee, The Modesto Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI.

APPENDIX B: ADDITIONAL COUNSEL

Jim Ewert, General Counsel
Nikki Moore, Legal Counsel
California News Publishers Association
2701 K St.
Sacramento, CA 95816

Terry Francke
General Counsel
Californians Aware
2218 Homewood Way
Carmichael, CA 95608

Judy Alexander, Chief Legal Counsel
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, California 94608

Thomas Burke
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Counsel to The Center for Investigative Reporting

David Snyder
First Amendment Coalition
534 Fourth St., Suite B
San Rafael, CA 94901

Barbara W. Wall
Senior Vice President & Chief Legal Officer
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107
(703)854-6951

Jeffrey Glasser
Senior Counsel
Tribune Company
202 West First Street
Los Angeles, CA 90012

Juan Cornejo
The McClatchy Company
2100 Q Street
Sacramento, CA 95816