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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

KELLY CLARK; DIANNE WOOTEN;
KIONA MILLIRONS,

Petitioners,

vs.

SACRAMENTO COUNTY DISTRICT
ATTORNEY'S OFFICE; SACRAMENTO
POLICE DEPARTMENT, a political
subdivision of the City of Sacramento; CITY
OF SACRAMENTO,

Respondents.

Case No.: 34-2020-80003417

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CITY OF SACRAMENTO,
INCLUDING SACRAMENTO
POLICE DEPARTMENT'S
OPPOSITION TO PETITION FOR
WRIT OF MANDATE**

Date: April 9, 2021
Time: 11:00 a.m.
Dept: 21

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1 I.

2 INTRODUCTION

3 Petitioners bring this writ pursuant to the California Public Records Act (CPRA), seeking
4 the release of investigatory records regarding the alleged murder of their family member,
5 Amber Clark. As this writ is proceeding, the Sacramento County District Attorney is also
6 engaged in the prosecution of Ronald Seay, the person accused of killing Ms. Clark. The
7 Sacramento Police Department has concluded that the responsive records are investigatory
8 and disclosure of the records and information contained within the records would jeopardize
9 the investigation and prosecution of Mr. Seay. Therefore, the City properly withheld the
10 records and information in them as exempt from disclosure pursuant to Government Code
11 section 6254, subdivision (f) as investigatory records, as well as other exemptions detailed
12 below.

13 The City requests the Court deny the petition for writ of mandate and allow the City and
14 District Attorney to maintain the integrity of the investigation in order to secure a fair and
15 successful prosecution of the accused.

16 II.

17 FACTUAL BACKGROUND

18 On December 11, 2018, Amber Clark was shot and killed. (Complaint for Declaratory
19 Relief and Verified Petition for Writ of Mandate (“Petition”) at ¶ 1.) The Sacramento Police
20 department immediately began investigating the incident. (Declaration of Sergeant Scott
21 MacLafferty, at ¶ 2.)

22 On or about March 3, 2020, Molly Thomas-Jensen, Petitioners’ counsel, submitted a
23 request pursuant to the CPRA (Gov. Code, § 6250 et seq.) for ten categories of records relating
24 to the weapons used in the death of Amber Clark (“Request”). (Declaration of Molly Thomas-
25 Jensen in Support of Petition for Writ of Mandate, Exhibit C.) The Request asked for the
26 following documents:

- 27 1. Records reflecting any firearms trace request made to the Bureau of Alcohol,
28 Tobacco, Firearms, and Explosives (“ATF”), and any firearms trace results received
from ATF or any other law enforcement agency, concerning any firearm(s) recovered

1 in connection with the homicide of Amber Clark.

2 2. All property vouchers or similar records describing any firearm(s),
3 ammunition, ammunition casing(s), or firearm magazine(s) recovered in connection
4 with the homicide of Amber Clark.

5 3. Any other records reflecting a description of the firearm(s), ammunition,
6 ammunition casing(s), or firearm magazine(s) involved in the offense, including but
7 not limited to those reflecting the serial number, make, and/or model of any
8 firearm(s) recovered.

9 4. Any records relating to the purchase, sale, or transfer of any firearm(s),
10 ammunition, or firearm magazine(s) recovered in connection with the homicide of
11 Amber Clark.

12 5. Records of any witness statement solely concerning when, where, how any
13 firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark
14 were obtained by Ronald Seay.

15 6. Records reflecting the name(s) and address(es) of all person(s) from whom the
16 firearms(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark
17 were obtained by Ronald Seay.

18 7. Records of any statement made by Ronald Seay solely concerning the
19 firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark,
20 or solely concerning when, where, and/or how any such firearm(s), ammunition, or
21 firearm magazine(s) were obtained by Ronald Seay.

22 8. Any records relating to statements made by Ronald Seay prior to the
23 homicide of Amber Clark in which Mr. Seay indicated that he wanted to harm other
24 people, including but not limited to statements made by Mr. Seay in June 2018 and
25 documented by the University of Missouri at St. Louis Police Department.

26 9. Records of any search conducted by the Sacramento Police
27 Department in October 2018 for Ronald Seay's previous criminal arrests or
28 convictions.

10 10. Records of any communications with other law enforcement agencies
11 about firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber
12 Clark, or concerning when, where, and/or how any such firearm(s), ammunition, or
13 firearm magazine(s) were obtained by Ronald Seay.

14 After identifying the records responsive to the Request, the City advised Ms. Thomas-
15 Jensen that any responsive records in its possession were exempt from disclosure pursuant to
16 Government Code sections 6254, subdivision (f) and (k), 6255, subdivision (a), Evidence Code
17 section 1040, and Penal Code sections 13100 et seq. and 13300 et seq. as shown in the

1 following table:

2 **Summary of City's Response to March 3, 2020 Request**

3

4

5

Request No. and Summary of Request	Responsive records in City possession?	Applicable exemptions
6 1 Firearms trace information.	Yes	Gov. Code, § 6254 (f) Gov. Code, § 6254 (k) Gov. Code, § 6255 (a) Evid. Code, § 1040
9 2 Property vouchers describing weapons.	Yes	Gov. Code, § 6254 (f) Gov. Code, § 6255 (a)
11 3 Other records describing weapons.	Yes	Gov. Code, § 6254 (f) Gov. Code, § 6255 (a)
13 4 Records relating to the purchase, sale, or transfer of weapons.	No	n/a
14 5 Witness statement related to Ronald Seay obtaining weapons.	No	n/a
16 6 Name(s) and address(es) of person(s) from whom Ronald Seay obtained weapons.	No	n/a
17 7 Statement of Ronald Seay related to obtaining weapons.	No	n/a
18 8 Prior statements of Ronald Seay.	Yes	Gov. Code, § 6254 (f) Gov. Code, § 6255
20 9 Search(es) conducted by Sacramento Police for previous criminal arrests.		Gov. Code, § 6254 (f) Gov. Code, § 6254 (k) Gov. Code, § 6255 Pen. Code, §§ 13100 et seq. & 13300 et seq
22 10 Communications with other law enforcement agencies about weapons obtained by Ronald Seay.	Yes	Gov. Code, § 6254 (f) Gov. Code, § 6254 (k) Gov. Code, § 6255 (a) Evid. Code, § 1040

24

25 (See Decl. of Thomas-Jensen, Exhibit E.)

26 On June 29, 2020, Petitioners filed the instant Petition seeking a declaration that the City
27 had violated the California Constitution and CPRA by failing to release responsive records
28 and an order that the City produce the records. (Petition at ¶¶ 67-68.) On September 4, 2020,

1 Petitioners propounded special interrogatories and requests for production of documents
2 seeking to determine the contents of the City’s investigatory files. (Decl. of Thomas-Jensen at
3 ¶ 7.) Because investigatory files of the Police Department are exempt from disclosure pursuant
4 to Government Code section 6254, subdivision (f), the City filed a motion for protective order.
5 (October 30, 2020, Motion for Protective Order.) The Court granted the Motion for Protective
6 Order on December 22, 2020. (December 22, 2020, Ruling on Submitted Matter.)

7 While the Motion for Protective Order was pending, Sacramento County District
8 Attorney held a preliminary hearing to test the competency of the Ronald Seay, the person
9 accused of killing Amber Clark. (December 14, 2020 hearing, Sacramento Superior Court,
10 Case Number 18FE023832.) After Mr. Seay was held to answer, County Counsel Kelsey
11 Johnson provided to Petitioners copies of the exhibits from that hearing, including a
12 photograph of the weapon used, inventory of the evidence gathered at the scene of the incident,
13 and a diagram of the site. (Declaration of Leslie Walker in Support of Opposition to Motion
14 for Protective Order, Exhibit 1.)

15 On February 23, 2021, Petitioners filed their memorandum of points and authorities in
16 support of the Petition for Writ of Mandate.

17 **III.**

18 **STANDARD OF REVIEW**

19 “All public records are subject to disclosure unless the Public Records Act expressly
20 provides otherwise.” (*Am. Civil Liberties Union of N. California v. Superior Court* (2011) 202
21 Cal.App.4th 55, 66.) CPRA creates “a presumptive right of access to any record created or
22 maintained by a public agency that relates in any way to the business of the public agency”
23 unless a statutory exception applies or “the public interest served by not disclosing the record
24 clearly outweighs the public interest served by disclosure. (§ 6255, subd. (a).)” (*City of San Jose*
25 *v. Superior Ct.* (2017) 2 Cal.5th 608, 616, internal quotations omitted.)

26 “Any person may institute proceedings for injunctive or declarative relief or writ of
27 mandate in any court of competent jurisdiction to enforce his or her right to inspect or to
28 receive a copy of any public record or class of public records under this chapter.” (Gov. Code

1 § 6258; *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.) “If it appears from the plaintiff’s
2 verified petition that ‘certain public records are being improperly withheld from a member of
3 the public,’ the court must order the individual withholding the records to disclose them or to
4 show cause why he or she should not do so.” (Gov. Code, § 6259, subd. (a); *Filarsky v. Superior*
5 *Court, supra*, 28 Cal.4th at p. 426.) Government agencies are “entitled to a presumption that
6 they have reasonably and in good faith complied with the obligation to disclose responsive
7 information.” (*American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal.App.4th
8 55, 85.)

9 IV.

10 ARGUMENT

11 **A. The Records Responsive to the Request are Exempt from Disclosure Pursuant to** 12 **Government Code Section 6254, Subdivision (f) as Investigatory Records and Do** 13 **Not Fall Within the Crime Victim Exception.**

14 Petitioners allege that the City improperly withheld records responsive to their request
15 pursuant Government Code section 6254, subdivision (f), which exempts criminal
16 investigatory files, because, according to Petitioner, the requested records purportedly fall
17 within the exception for crime victims. (Memorandum of Points and Authorities in Support of
18 Petition for Writ of Mandate (“MPA”), at 10:17-14:22.)¹ Their argument fails for the following
19 reasons: the responsive records are within the City’s investigatory files; the responsive records
20 do not fall within the crime victim exception; and even if the requested records did fit within
21 the crime victim exception, the City has shown that their release would endanger the successful
22 completion of the investigation.

23 **1. The Responsive Records Are Not Subject to Disclosure Because They Are Records** 24 **of Investigation of the Sacramento Police Department.**

25 The CPRA exempts from disclosure “[r]ecords of complaints to, or investigations
26 conducted by, or records of intelligence information or security procedures of, . . . any . . .

27 ¹ The City has no records responsive to Requests 4 through 7. (Decl. of Thomas-Jensen, Exhibit
28 E.) Petitioners do not contest this conclusion, so the City’s arguments pertain to Requests 1 through 3
and 8 through 10. “Responsive records” refers to documents responsive to Requests 1 through 3 and 8
through 10 as the City does not possess documents responsive to requests 4 through 7.

1 local police agency.” (Gov. Code, § 6254, subd. (f).) This exemption for investigatory records
2 relates to “investigations undertaken *for the purpose* of determining whether a violation of law
3 may occur or has occurred” and “[i]f a violation or potential violation is detected, the
4 exemption also extends to records of investigations conducted *for the purpose* of uncovering
5 information surrounding the commission of the violation and its agency.” (*American Civil*
6 *Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040, emphasis in original.)
7 The “animating concern behind the records of investigations exemption appears to be that a
8 record of investigation reveals (and, thus, might deter) certain choices that should be kept
9 confidential – an informant’s choice to come forward, an investigator's choice to focus on
10 particular individuals, the choice of certain investigatory methods.” (*Id.* at p. 1041.)

11 All of the responsive records are records of the Sacramento Police Department’s
12 investigation into the death of Amber Clark to determine whether a violation of law occurred.
13 (Decl. of Sgt. MacLafferty, at ¶¶ 2, 3.) They are thus exempt, on their face, from disclosure.
14 (*Haynie v. Superior Court*, 2001, 26 Cal.4th 1061, 1069.) Petitioners do not dispute this
15 conclusion. (MPA, at 10:17-18.) Instead, they claim that the records should nonetheless be
16 disclosed because they purportedly fall within the crime victim exception. (MPA, at 12: 7-22.)

17 Section 6254, subdivision (f) contains a crime victim exception, requiring the public
18 agency disclose the following information to crime victims “unless the disclosure would
19 endanger the safety of a witness or other person involved in the investigation, or unless
20 disclosure would endanger the successful completion of the investigation or a related
21 investigation”:

22 [T]he names and addresses of persons involved in, or witnesses other than
23 confidential informants to, the incident, the description of any property involved,
24 the date, time, and location of the incident, all diagrams, statements of the parties
involved in the incident, the statements of all witnesses, other than confidential
informants, to the victims of an incident . . .

25 (Gov. Code, § 6254, subd. (f), *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361)

26 Petitioners assert that because they are crime victims, the City should produce to them *all*
27 responsive records because, according to their assertion, *some* of the requests fall within the
28 crime victims exception. Specifically, Petitioners assert without explanation that their requests

1 “almost certainly” contain “names and addresses of persons involved in, or witnesses other
2 than confidential informants to, the incident;” a “description of any property involved,”
3 “‘diagrams’ of the incident”; “statements of parties involved in the incident”; or “statements
4 of all witnesses, other than confidential informants.” (MPA, at 12:7-22, citing Gov. Code, §
5 6254, subd. (f).)

6 The request for “records” does not ask for names, property descriptions, or witness
7 statements from the investigatory records. (*Fredericks v. Superior Court* (2015) 233 Cal. App. 4th
8 209, 227, disapproved on other grounds in *National Lawyers Guild, San Francisco Bay Area*
9 *Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 464 [“[A] person who seeks public records must
10 present a reasonably focused and specific request, so that the public agency will have an
11 opportunity to promptly identify and locate such records and to determine whether any
12 exemption to disclosure applies”].) When the individual requests for which the City has
13 responsive documents are compared against the information that must be disclosed to a crime
14 victim, the only three categories that could possibly contain information falling within the
15 crime victim exception are Requests 2, 3, and 8. As explained below, none of these call for
16 disclosable information.

17 Requests 2 and 3 seek a description of the weapons used in the alleged murder of Ms.
18 Clark. Petitioners may be asserting that the following provision in Section 6254, subdivision
19 (f) should be broadly read to require the release of a description of the weapon(s): “the
20 description of any property involved . . . to the victims of an incident . . .and any person
21 suffering bodily injury or property damage or loss, as the result of the incident . . .” However,
22 the later reference to “property damage” demonstrates that the section requires the disclosure
23 of a description of property damaged by the incident, not all property involved in the incident.
24 To require such disclosure would broaden the information disclosure requirement of the crime
25 victim exception well beyond the six categories of information set forth in Section 6254,
26 subdivision (f).

27 Request 8 seeks “statements made by Ronald Seay prior to the homicide of Amber Clark.”
28 This request could be interpreted to request information falling within the requirement to

1 disclose “statements of the parties involved in the incident.” (Gov. Code, § 6254, subd. (f).)
2 Such a reading would similarly broaden the required disclosure to include the disclosure of
3 statements made well in advance of the incident, obtained by the local police agency through
4 its investigation. If it did, the release of would be exempted by Government Code, section
5 6254, subdivision (k) and Evidence Code, section 1040 permitting a public entity to “refuse to
6 disclose” “information acquired in confidence by a public employee in the course of his or her
7 duty and not open, or officially disclosed, to the public prior to the time the claim of privilege
8 is made” if “[d]isclosure of the information is against the public interest because there is a
9 necessity for preserving the confidentiality of the information that outweighs the necessity for
10 disclosure in the interest of justice.” (Evidence Code, § 1040 (a) & (b)(2).) “Ongoing
11 investigations fall under the privilege for official information.” (*People v. Jackson* (2003) 110
12 Cal.App 4th 280, 287.)

13 Therefore, the responsive records are investigatory files exempt from disclosure and the
14 information within them does not fall within the crime victim exemption.

15 **2. The Responsive Records Are Investigatory Records Not Subject to Disclosure**
16 **Because Their Release Would Endanger the Successful Completion of the**
17 **Investigation or a Related Investigation.**

18 Government Code section 6254, subdivision (f) does not require the disclosure of
19 information derived from investigatory records to crime victims if to do so “would endanger
20 the successful completion of the investigation or a related investigation.” Even if, contrary to
21 the City’s position, a description of the weapons involved in the incident and the statements
22 of Ronald Seay prior to the incident do fall within the ambit of those materials subject to
23 disclosure to crime victims, the City may withhold them based on a determination that their
24 disclosure would compromise the continuing investigation necessary for the prosecution of the
25 case. (*Williams v. Superior Ct.* (1993) 5 Cal.4th 337, 349 [“subdivision (f) . . . (1) articulates a
26 broad exemption from disclosure for law enforcement investigatory records, (2) requires law
27 enforcement agencies to provide certain information derived from the records about the
28 incidents under investigation, and (3) permits the withholding of information that (a) would
endanger the safety of a witness or other person, (b) would endanger the successful completion

1 of an investigation, or (c) reflects the analysis or conclusions of investigating officers.”)]

2 Sergeant MacLafferty has detailed risks to the ongoing investigation and fair trail of the
3 accused posed by releasing any of the information requested by Petitioners. “[T]here is an
4 extreme likelihood of intense investigation up to and through the trial process.” (Decl. of Sgt.
5 MacLafferty, at ¶ 6.) “[R]elease of the investigatory records, including information about the
6 weapons used in the killing of Amber Clark and also the statements made by Ronald Seay
7 prior to December 11, 2018, obtained by the Sacramento Police Department via investigation
8 into the incident will allow the requestor to conduct his or her own investigation into the
9 incident. Doing so will likely taint witness testimony at trial.” (Decl. of Sgt. MacLafferty, at ¶
10 5.) Sergeant MacLafferty further explained that release of the firearm(s) information “could be
11 prejudicial the defendant’s ability to a fair trial and the people’s ability to put on a compelling
12 case based on factual information.” (Decl. of Sgt. MacLafferty, at ¶ 5.) This determination is
13 based on the professional opinion of a 25-year law enforcement officer who is supervising the
14 investigation into the death of Amber Clark. (Decl. of Sgt. MacLafferty, at ¶ 1, 2, 4, 8; see *Los*
15 *Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222, 244 [expert opinion
16 predicting the consequences of the release of documents is admissible to show public interest
17 in non-disclosure.]) Petitioners’ present only the argument of counsel to the contrary. (MPA
18 1:13-15, 14:18-1; *Beagle v. Vasold* (1966) 65 Cal.2d 166, 176 [“argument of counsel does not
19 constitute evidence”]; Evid. Code, § 801.)

20 The responsive records are investigatory records and therefore exempt from disclosure.
21 To the extent the records contain any information potentially subject to disclosure under the
22 crime victim exemption, that information is also exempt from disclosure because its release
23 would endanger the successful completion of the investigation.

24 **B. Even if Responsive Records Fell Outside the Crime Victim Exception, Only the**
25 **Statutorily Required Information, Not the Entire Investigatory File Would be**
26 **Disclosable.**

27 Petitioners assert that because the investigatory file contains *some* information to which a
28 victim is entitled, the entire investigatory file should be disclosed. (MPA, at 12:7-22.) This
position is directly contradicted by the case law making clear that while Section 6254,

1 subdivision (f) requires “disclosure of *information derived from the records*” in most cases it
2 “preserv[es] the exemption for the records themselves.” (*Haynie v. Superior Court, supra*, 26 Cal.
3 4th 1061, 1072.)

4 For the reasons outlined above, the City has properly withheld the responsive records as
5 exempt. However, even assuming that the court orders the disclosure of certain records, this
6 does not create an exemption to the entire investigatory file. This flawed logic would turn the
7 CPRA on its head, and would (in theory) eliminate *all* exemptions codified in the Act. A
8 similar argument has been specifically rejected in the context of Gov Code 6254, subdivision
9 (f): “[The] provisions for mandatory disclosure *from* law enforcement investigatory files
10 represent the Legislature's judgment, set out in exceptionally careful detail, about what *items of*
11 *information* should be disclosed and to whom.” (*Williams v. Superior Court* (1993) 5 Cal.4th 337,
12 361, emphasis added.) The crime victim exception requires the disclosure of certain pieces of
13 information from the investigatory file, not the entirety of the file. (*Id.*) “The Legislature has
14 carefully limited the exemption for law enforcement investigatory records by requiring the
15 disclosure of specific information from such records” (*Id.* at p. 354.) As explained by the
16 Supreme Court in the context of the portion of Section 6254 subdivision (f) relating to the
17 requirement to disclose certain information related to complaints of request for assistance
18 unless to do so would endanger the successful completion of the investigation or a related
19 investigation, “The Legislature’s effort to provide access to selected information from law
20 enforcement investigatory records would have been a wasted one if, . . . the [records]
21 themselves were subject to disclosure. (*Haynie v. Superior Court, supra*, 26 Cal. 4th 1061, 1072.)

22 Therefore, to the extent the court determines the City has an obligation to disclose any
23 information, it should be directed only to disclose the property description and statements of
24 people involved in the incident, not the entirety of the investigatory file.

25 **C. The City Properly Relied on Government Code Section 6254, Subdivision (k).**

26 The City also relied on the exemption in Section 6254, subdivision (k), to exempt the
27 production of the records responsive to Request 1 (firearms trace information), Request 9
28 (records of Ronal Seay’s previous criminal records), and Request 10 (communications with

1 other law enforcement agencies). Petitioners allege the City’s reliance on Section 6254,
2 subdivision (k) was erroneous because the City applied it to “unspecified records,” because the
3 City failed to identify which federal or state law it relied upon, and because City improperly
4 relied on Tiaht Rider. (MPA at pp. 14-21.) Each of these assertions is demonstrably, factually,
5 false.

6 Government Code section 6254, subdivision (k) exempts from disclosure “[r]ecords, the
7 disclosure of which is exempted or prohibited pursuant to federal or state law, including, but
8 not limited to, provisions of the Evidence Code relating to privilege.” “Succinctly put,
9 subdivision (k) incorporates other disclosure prohibitions established by law.” (*Long Beach*
10 *Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67, internal markings omitted.)
11 “[S]ubdivision (k) is not an independent exemption. It merely incorporates other prohibitions
12 established by law.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656.)

13 The City relied on Section 6254, subdivision (k), in addition to 6254, subdivision (f) for
14 investigatory records, in response to Requests 1, 9, and 10. (See discussion in section IV.A
15 *supra*.) In each case, the City identified the state law prohibiting the disclosure of the requested
16 records. For Requests 1 and 10, the relevant state law is Evidence Code section 1040 relating
17 to official information. Evidence Code section 1040 permits a public entity to “refuse to
18 disclose” “information acquired in confidence by a public employee in the course of his or her
19 duty and not open, or officially disclosed, to the public prior to the time the claim of privilege
20 is made” if “[d]isclosure of the information is against the public interest because there is a
21 necessity for preserving the confidentiality of the information that outweighs the necessity for
22 disclosure in the interest of justice.” (Evidence Code, § 1040 (a) and (b)(2).) This public interest
23 in demonstrated in Sections IV.A.2. *supra* and IV.D, *infra*. For Request 9, the relevant state
24 laws are Penal Code sections 13100 et seq., 13300 et seq. restricting access to criminal history
25 information.

26 Petitioners’ assertion that the City relied on 6254, subdivision (k) to withhold “unspecified
27 records” is therefore false. The City specifically identified which requests section 6254,
28 subdivision (k) was applicable – Evidence Code section 1040 and Penal Code sections 13100

1 and 13300; Petitioners’ failure to challenge the application of these laws waives any argument
2 that the City improperly relied on them. (See *Citizens for Positive Growth & Pres. v. City of*
3 *Sacramento* (2019) 43 Cal.App.5th 609, 629–30.)

4 Petitioners’ assertion that the City failed to identify which state or federal law it relied
5 upon in citing Section 6254, subdivision (k) is also incorrect, as each applicable state law is
6 listed above. Finally, as Petitioner admit, nowhere does the City rely on the Tiahrt Rider in its
7 response or briefing on the matter. (MPA, at 15:7-11.) The claim that the City improperly relies
8 on it is therefore unsupported.

9 The City properly relied on Government Code section 6254, subdivision (k) in
10 conjunction with Evidence Code section 1040 and Penal Code sections 13100 and 13300.

11 **D. The City Properly Relied on Government Code Section 6255**

12 In addition to the exemptions identified above, the City relied on Government Code
13 section 6255 in withholding the responsive records. “[S]ection 6255 establishes a ‘catchall’
14 exemption that permits the government agency to withhold a record if it can demonstrate that
15 ‘on the facts of a particular case the public interest served by not making the record public
16 clearly outweighs the public interest served by disclosure of the record.’” (*Times Mirror Co. v.*
17 *Superior Ct.* (1991) 53 Cal.3d 1325, 1338.) “Where the public interest in disclosure of the
18 records is not outweighed by the public interest in nondisclosure, courts will direct the
19 government to disclose the requested information. [Citations.] Conversely, when the public
20 interest in nondisclosure clearly outweighs the public interest in disclosure, refusal to release
21 records will be upheld. [Citations.]” (*Los Angeles Unified Sch. Dist. v. Superior Ct.* (2014) 228 Cal.
22 App. 4th 222, 240.) Consistent with the constitution and the CPRA, in evaluating the public
23 interest, “a court must look to the nature of the information sought and whether release of that
24 information would contribute to the public’s understanding of government.” (*Ibid.*)

25 Here, the public interest in non-disclosure is a fair trial and successful prosecution of the
26 person who allegedly killed Amber Clark. (Decl. of Sgt. MacLafferty, at ¶ 5.) There is a
27 “powerful public interest in solving homicides and bringing killers to justice.” (*County of Orange*
28 *v. Superior Court* (2000) 79 Cal.App.4th 759, 766.) There is also a public interest in protecting

1 the investigatory process, including the process by which the Sacramento Police Department
2 confidentially obtains information from other law enforcement agencies. (Decl. Sgt.
3 MacLafferty, at ¶¶ 1, 2.) In comparison, Petitioners have provided no evidence of a specific
4 public interest in disclosing the records. (See *Los Angeles Unified School District v. Superior Court*,
5 *supra*, 228 Cal.App.4th at p. 249 [Section 6255 applies only to public, not private interests;
6 denial of request upheld where requestor failed to clearly articulate how requested information
7 would provide insight into public agency's performance.])

8 The public interest in a fair trial and successful prosecution as detailed by Sergeant
9 MacLafferty weighs heavily in favor of non-disclosure. As described in section IV.A.2. *supra*,
10 the release of the requested information poses a high likelihood of compromising the
11 continuing investigation into the death of Amber Clark as well as a fair trial of the accused.
12 (Decl. of Sgt. MacLafferty, at ¶¶ 5, 6.) As the opinion of Sergeant MacLafferty, a 25-year law
13 enforcement officer, demonstrates the public interest in non-disclosure outweighs the interest
14 in disclosure. (*Los Angeles Unified School District v. Superior Court, supra*, 228 Cal.App.4th at p.
15 244.)

16 In comparison, Petitioners offer almost no evidence supporting their assertion that the
17 public interest favors disclosure. Petitioners offer their personal interest in learning the
18 circumstances of Amber Clark's murder, identifying responsible parties, and advocating for
19 policy change; their belief that the information may educate the public and may shed light on
20 important government functions, including the ability to detect, deter, and prevent violence in
21 public spaces.² (MPA at pp. 22:15-2:8; *Los Angeles Unified School District v. Superior Court, supra*,
22 228 Cal.App.4th at p. 249.) When the hypothetical possibility of educational value is weighed
23 against the very real likelihood of compromising the prosecution of a person accused of
24 murder, the balance weighs heavily in favor of non-disclosure. (See *County of Orange v. Superior*
25 *Court* (2000) 79 Cal.App.4th 759, 766.)

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² Plaintiffs' personal desire to identify the responsible parties is precisely one of the City's feared outcomes. Any secondary investigation into the matter could compromise the testimony of those involved. (See Decl. of Sgt. MacLafferty, at ¶ 5.)

1 Next, Petitioners attempt to dismiss the purpose of the catch-all provision, alleging it is an
2 “end run” around the victim’s access provisions of section 6254, subdivision (f). (MPA at pp.
3 21-22.) Were this true, the catch-all provision would not exist at all as the only available
4 exemptions would be only those specifically enumerated in Section 6255. (*Times Mirror Co. v.*
5 *Superior Court* (1991) 53 Cal.3d 1325 [“While the specific exemptions set forth in section 6254
6 may be helpful in identifying certain interests to be protected under section 6255, they are not
7 exclusive.”] The court in *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1422 cited
8 by Petitioners rejected the application of Section 6255 where other exemptions applied to
9 *prohibit* the disclosure of the records that were otherwise exempt from disclosure pursuant to a
10 different exemption, namely Penal Code sections 832.5 through 832.8 incorporated into the
11 CPRA through 6254, subdivision (k). Here, the City cited 6255 in an abundance of caution in
12 case the court found the other applicable exemptions did not apply. *City of Hemet* does not bar
13 the application of Section 6255.

14 **V.**

15 **CONCLUSION**

16 Respondents City of Sacramento, including the Sacramento Police Department, seek to
17 protect the investigation and prosecution of the person accused of killing Amber Clark.
18 Petitioners’ effort to obtain the responsive records threaten to undermine the investigation and
19 prosecution of the case. The City therefore requests the court deny the Petition for Writ of
20 Mandate to preserve the prosecution of the matter.

21 DATED: March 15, 2021

SUSANA ALCALA WOOD,
City Attorney



24 By: Leslie Zoena Walker (Mar 15, 2021 15:13 PDT)

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