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13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 **KELLY CLARK, DIANNE WOOTON,**
16 **KIONA MILLIRONS,**

17 **Plaintiffs/Petitioners,**

18 **vs.**

19 **SACRAMENTO COUNTY DISTRICT**
20 **ATTORNEY'S OFFICE, SACRAMENTO**
21 **POLICE DEPARTMENT, CITY OF**
22 **SACRAMENTO.**

23 **Defendants/Respondents.**

24 **Case No. 34-2020-80003417**

25 **MEMORANDUM OF POINTS AND**
26 **AUTHORITIES IN SUPPORT**
27 **SACRAMENTO COUNTY DISTRICT**
28 **ATTORNEY'S OFFICE OPPOSITION TO**
PETITION FOR WRIT OF MANDATE
UNDER THE CALIFORNIA PUBLIC
RECORDS ACT AND CALIFORNIA
CONSTITUTION, ARTICLE I, SECTION
28

DATE: April 9, 2021

TIME: 11:00 a.m.

DEPT: 21

JUDGE:

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I.

INTRODUCTION

Petitioners bring this writ pursuant to the California Public Records Act (CPRA), seeking the release of investigatory records regarding the alleged murder of their family member Amber Clark. The Sacramento County District Attorney’s Office (SCDA) is prosecuting Defendant Ronald Seay for the homicide of Amber Clark. SCDA concluded the responsive records are investigatory and disclosure of the records and information contained within the records would jeopardize the investigation and prosecution of Defendant Seay. SCDA withheld the records on that basis and determined that information in them is exempt from disclosure pursuant to Government Code section 6254, subdivision (f) as investigatory records, as well as other exemptions.

Petitioners have failed to join indispensable parties in this matter. Furthermore, release of the requested records will jeopardize the prosecution, would compel SCDA to commit an act contrary to law (release of records that are Federally prohibited from release) and is contrary to the public’s interest.

II.

FACTUAL BACKGROUND

On December 11, 2018, Amber Clark was shot and killed. (Complaint for Declaratory Relief and Verified Petition for Writ of Mandate (“Petition”) at ¶ 1.) The Sacramento Police department subsequently began investigating the alleged homicide.

On or about March 3, 2020, Molly Thomas-Jensen, stating she represented the family of Amber Clark, submitted a request for ten categories of records relating to the death of Amber Clark (“PRA Request”). (Petition at Exhibit A). The PRA Request stated that it was submitted on behalf of Amber Clark’s husband Kelly Clark, her mother, Dianne Wooton, and her sister Kiona Millirons, who are the Petitioners in this action. Relevant to this litigation, the PRA Request asked for the following documents:

1 1. Records reflecting any firearms trace request made to the Bureau of Alcohol, Tobacco,
2 Firearms, and Explosives (“ATF”), and any firearms trace results received from ATF or any
3 other law enforcement agency, concerning any firearm(s) recovered in connection with the
homicide of Amber Clark.

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

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

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

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

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

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

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

21 9. Records of any search, conducted by the Sacramento Police Department in October 2018,
for Ronald Seay’s previous criminal arrests or convictions.

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

25 After identifying the records responsive to the PRA Request, SCDA advised Ms.
26 Thomas-Jensen, in a letter dated March 5, 2020, that Ronald Seay has been charged with Clark’s
27

1 murder and is currently being prosecuted by the District Attorney's Office in Sacramento
2 Superior Court docket number 18FE23832, and the matter had not yet been brought to trial.
3 SCDA advised the records were exempt from disclosure pursuant to Government Code section
4 6254(f) and cited relevant case law. (Petition at Exhibit C.) In addition, SCDA also determined
5 the following exempted disclosure: Government Code sections 6254, subdivision (k), and 6255;
6 Evidence Code section 1040; Penal Code sections 13100 et seq. and 13300 et seq; the People's
7 right to a fair criminal trial in the underlying matter; and the Defendant's (Ronald Seay in the
8 underlying criminal matter) right to a fair trial as guaranteed by the United States Constitution 6th
9 and 14th Amendments and the State of California Constitution. SCDA further objects to each
10 interrogatory to the extent that the "Tiahrt Rider" enacted most recently in 2011 as part of the
11 Consolidated and Further Continuing Appropriation Act, 2012, Pub. L. No 112-55, 125 Stat.
12 552, 609-10 (2011) applies.

13 On or about June 30, 2020, Plaintiffs filed the instant Petition seeking a declaration that
14 the SCDA had violated the Public Records Act (Government Code section 6250 et seq.) by
15 failing to release responsive records and an order that the SCDA produce the records. (Petition at
16 ¶¶ 67-68.) Plaintiffs propounded special interrogatories and requests for production of
17 documents seeking to determine the contents of the SCDA investigatory files. The City filed a
18 motion for protective order (October 30, 2020, Motion for Protective Order.) SCDA filed a
19 motion for protective order. The Court granted the Motion for Protective Order on December
20 22, 2020. (December 22, 2020, Ruling on Submitted Matter.)

21 On or about December 14, 2020 SCDA introduced Exhibits into evidence at Ronald
22 Seay's preliminary hearing. (Decl. of Kelsey D. Johnson, at ¶ 2.) Some evidence must be
23 introduced at a preliminary hearing on order for the court to rule that there is enough evidence to
24 hold the Defendant to answer. Once those documents were introduced into evidence, there was
25 no longer a risk to the prosecution. On January 6, 2021 those eight Exhibits were provided to
26 counsel of record in this matter. (Decl. of Kelsey D. Johnson, at ¶ 3.) The Declaration of Molly
27 Thomas-Jensen filed in support of the points and authorities failed to disclose that fact.

1 *Plaintiffs'* Memorandum of Points and Authorities filed in support of this motion *failed to*
2 *disclose to the court that Plaintiffs have been provided with numerous documents* and were
3 provided those documents soon after the preliminary hearing (thus there was no longer a risk to
4 the prosecution) and weeks prior to when Plaintiffs' filed their Memorandum of Points and
5 Authorities. The documents that were provided to Plaintiffs, and information that had been
6 provided to them previously satisfy what a victim would otherwise be entitled to obtain. Thus,
7 Plaintiff has a substantially different argument to the court today than at the time the case was
8 filed.

9 III.

10 STANDARD OF REVIEW

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

18 "Any person may institute proceedings for injunctive or declarative relief or writ of
19 mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive
20 a copy of any public record or class of public records under this chapter." (Gov. Code § 6258;
21 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.) "If it appears from the plaintiff's verified
22 petition that 'certain public records are being improperly withheld from a member of the public,'
23 the court must order the individual withholding the records to disclose them or to show cause
24 why he or she should not do so." (Gov. Code, § 6259, subd. (a) *Filarsky v. Superior Court*,
25 *supra*, 28 Cal.4th at p. 426.) Government agencies are "entitled to a presumption that they have
26 reasonably and in good faith complied with the obligation to disclose responsive information."
27 (*American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 85.)

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IV.
ARGUMENT

A. This Court Should Dismiss Petitioner’s Writ As Petitioners Have Failed to Join Indispensable Parties

“Whether to dismiss an action for failure to name an indispensable party is subject to the discretion of the court.” (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1299.) In *Tracy Press*, the court evaluated four factors to determine whether the dismissal of the action should be reversed for abuse of discretion: whether there would be prejudice to the person not joined, whether the court could design protective provisions to mitigate that prejudice, whether any order rendered in the non-party's absence would be adequate, and the adequacy of the remedy available to the plaintiff. (*Id.* at pp. 1298-1302.) The *Tracy Press* court concluded the order of dismissal was not an abuse of discretion because (1) there would be potential prejudice to the unjoined party, (2) the plaintiff "suggests no method by which we could enter an order in favor of [plaintiff] but, at the same time, protect [the unjoined party's] interests" (*id.* at p. 1300), and (3) any order entered in the absence of the unjoined party would be inadequate and create confusion and potentially conflicting orders. (*Id.* at p. 1301.) While the *Tracy Press* court acknowledged that the final factor weighed against dismissal, because "failure to name an indispensable party leaves [plaintiff] without a remedy[,] [t]his situation . . . is of [plaintiff's] own making and, therefore, does not weigh in favor of a determination on the merits." (*Id.* at p. 1302.)

A plaintiff's failure to join an indispensable party "is not "a jurisdictional defect" in the fundamental sense [because] even in the absence of an "indispensable" party, the court still has the power to render a decision as to the parties before it which will stand. [Instead, it] is for reasons of equity and convenience, and not because it is without power to proceed, that the court should not proceed with a case where it determines that an "indispensable" party is absent and cannot be joined. [Citation.]" [Citation.]" (*Save Our Bay, Inc. v. San Diego Unified Port Dist.*

1 (1996) 42 Cal.App.4th 686, 692 [quoting *Sierra Club, Inc. v. California Coastal Com.* (1979) 95
2 Cal.App.3d 495, 500.)

3 **1. Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) or other Federal**
4 **Agency is an Indispensable Party**

5 Petitioners cited a fact sheet published by the U.S. Bureau of Alcohol, Tobacco, Firearms
6 & Explosives. (Thomas-Jensen Dec, at ¶ 15.) The Kramer Levin team and Everytown Law
7 knows how to sue ATF and have done so in the past. (Decl. of Kelsey D. Johnson, at ¶ 4.)

8 Petitioners briefed an “Overview of the Tiahrt Rider” and spent considerable length
9 arguing why, despite the “Tiahrt Rider,” Plaintiffs are entitled to firearm trace data generated by
10 the ATF. (Memorandum of Points and Authorities in Support of Petition for Writ of Mandate
11 (“MPA”) at 15:21-21:9.) Plaintiffs argued that the Tiahrt Rider does not apply as it “forbids only
12 *public disclosures* of certain information, not the narrower, targeted disclosure to crime victims
13 at issue here.” (MPA, at 15:14-17.) Assuming *arguendo* Plaintiffs were considered “victims” as
14 described in Government Code Section 6254, Subdivision (f), disclosure of firearm trace data
15 under the crime victim exception would still be a “public disclosure.”

16 Plaintiffs’ argument that the disclosure would be a “targeted disclosure to crime victims”
17 and would thus not be a “public disclosure” is directly contrary to Plaintiffs’ stated interest in the
18 firearm trace data. “[D]isclosure of the records may allow these victims to better understand
19 how the firearm and ammunition were purchased and used to murder Amber Clark. Plaintiffs
20 also hope that, by obtaining these public records, they might prevent future attackers from
21 obtaining firearms in a similar manner—so that future families will not have to experience their
22 grief.” (MPA, at 1:14-18.) Plaintiffs have also represented they “hope to identify flaws in the
23 system that allowed Ronald Seay to obtain a handgun and help prevent future acts of violence.”
24 (MPA, at 1:27-2:2.) Plaintiffs submitted to the court, “[t]hey set out to confirm what they were
25 hearing in hopes of identifying any gaps in the system that could have contributed to Amber’s
26 murder. By discovering and highlighting the circumstances of her death, they hoped they might
27 prevent a future similar tragedy.” (MPA 3:18-21.)

1 In this matter, Plaintiffs chose not to name the ATF or any other federal agency. Plaintiffs
2 cannot use the CPRA to obtain documents (that are not public and shared with specific law
3 enforcement for limited purposes) that are not otherwise obtainable. Although SCDA
4 acknowledges the jurisdiction of this court, equity and convenience dictate the court should not
5 proceed in the absence of the ATF or other Federal Agency as it is an indispensable party to this
6 matter.

7 **2. Criminal Defendant, Ronald Seay, is an Indispensable Party**

8 Ronald Seay is currently charged with murdering Amber Clark, a violation of Penal Code
9 section 187(a). There have been multiple news stories and articles written about him, the
10 homicide, and the victim, Amber Clark. According to abc10.com Seay's attorney requested bail
11 and for the media to be excluded from covering the case. Both requests were denied. (Dec of KJ
12 ¶ 4.) He was arraigned on December 14, 2018. (Saccourt.ca.gov Public Case Access.) There was
13 a doubt as to Mr. Seay's competency to stand trial. On September 6, 2019 doctors were
14 appointed pursuant to Penal Code section 1369. (Saccourt.ca.gov Public Case Access.) A
15 *Marsden* motion was scheduled to be heard for March 19, 2020, but it was dropped.
16 (Saccourt.ca.gov Public Case Access.) On August 27, 2020 the court granted a motion for
17 release of records. (Saccourt.ca.gov Public Case Access.) On October 13, 2020 Mr. Seay was
18 found competent to stand trial. (Dec. of Rod Norgaard at ¶ 6; Saccourt.ca.gov Public Case
19 Access.) On December 14, 2020 he was held to answer. (Dec. of Rod Norgaard at ¶ 7;
20 Saccourt.ca.gov Public Case Access.) On February 24, 2021 Mr. Seay was arraigned, pled not
21 guilty and not guilty by reason of insanity, and doctors were appointed pursuant to Penal Code
22 section 1027 to prepare a report on Mr. Seay's sanity. (Dec. of Rod Norgaard at ¶ 8;
23 Saccourt.ca.gov Public Case Access.) The matter is currently set for April 8, 2021 for the return
24 of reports prepared by those medical professionals. (Dec. of Rod Norgaard at ¶ 9;
25 Saccourt.ca.gov Public Case Access.). A court hearing is scheduled for May 26, 2021 for a
26 return on doctor reports.

1 It is not currently known whether Mr. Seay or his counsel have been informed of this case.
2 Plaintiffs have argued and cited Mr. Seay's criminal and mental health history. (MPA at 2:21.)
3 Plaintiffs seek records of statements made by Ronald Seay prior to the homicide in which Mr.
4 Seay indicated that he wanted to harm other people. (MPA at 4:19-21.) Mr. Seay's mental health
5 and sanity is in direct issue in this case. It is unknown at this time if there will be legal
6 challenges regarding statements he may or may not have made. Whether or not Mr. Seay's
7 defense counsel has any statements in their possession is irrelevant as to whether those
8 statements should be disclosed. Theoretically, Defense counsel could make a motion pursuant to
9 *Miranda* and assert that Mr. Seay's 5th and 6th Amendment Rights pursuant to the United States
10 Constitution were violated. There could be motions that Mr. Seay was deprived the right to
11 counsel or he did not have the mental capacity to know what he was saying. All of those issues
12 can taint the jury pool and can affect Mr. Seay's right to a fair trial. Defense counsel already
13 made a motion (that was denied) to exclude media coverage of the case. (Dec. of Kelsey
14 Johnson at ¶ 4.) One could reasonably presume Mr. Seay has a position on this motion, is
15 pending charges on a felony with special circumstances, and is an indispensable party to this
16 motion.

17 **B. The Records Responsive to the Request are Exempt from Disclosure Pursuant to**
18 **Government Code Section 6254, Subdivision (f) an Investigatory Records and Do**
19 **Not Fall within the Crime Victim Exception**

20 Petitioners allege that SCDA improperly withheld records responsive to their request
21 pursuant to Government Code section 6254, subdivision (f), which exempts criminal
22 investigatory files, because, according to Petitioner, the requested records purportedly fall within
23 the exception for crime victims. (MPA, at 10:17-14:22) Their argument fails for the following
24 reasons: the responsive records are within the SCDA investigatory files, and the responsive
25 records do not fall within the crime victim exception. Even if the requested records fit within the
26 crime victim exception, the SCDA has shown that their release would endanger the successful
27 completion of the investigation and prosecution.

1 [T]he names and the address of persons involved in, or witnesses other than confidential
2 informants to the incident, the description of any property involved, the date, time, and location
3 of the incident all diagrams, statements of the parties involved in the incident, the statements of
4 all witnesses, other than confidential informants, to the victims of an incident . . .

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

6 Petitioners assert that because they are crime victims, SCDA should produce to them all
7 responsive records because, according to their assertion, some of the requests fall within the
8 crime victim exception. Specifically, Petitioners assert without explanation that their requests
9 “almost certainly” contain “names and addresses of persons involved in, or witnesses other than
10 confidential informants to, the incident;” a “description of any property involved.” “diagrams’ of
11 the incident”; “statements of parties involved in the incident”; or “statements of all witnesses,
12 other than confidential informants.” (MPA, at 12:7-22, citing Gov. Code, § 6254, subd. (f).)

13 The request for “records” does not ask for names, property descriptions, or witness
14 statements from the investigatory records. (*Fredericks v. Superior Court* (2015) 233 Cal. App.4th
15 209, 227, disapproved on other grounds in *National Lawyers Guild, San Francisco Bay Area*
16 *Chapter v. City of Hayward* (2020) 9 Cal.5th 4888, 464 [“[A] person who seeks public records
17 must present a reasonably focused and specific request, so that the public agency will have an
18 opportunity to promptly identify and locate such records and to determine whether any
19 exemption to disclosure applies.”].)

20 None of the requested information is disclosable other than what was previously provided
21 to Petitioners. Requests 2 and 3 seek a description of the weapon(s) used in the alleged murder of
22 Ms. Clark. That information was provided in the charging document. To the extent Petitioners
23 impute a broader reading to the statutory language, they are mistaken. Section 6254, subdivision
24 (f) states in part, “the description of any property involved . . . to the victims of an incident . . .”
25 However, the later reference to “property damage” demonstrates that the section requires the
26 disclosure of a description of property *damaged* by the incident, not all property involved in the
27 incident. To required such disclosure would broaden the information disclosure requirement of

1 the crime victim exception well beyond the six categories of information set forth in Section
2 6254, Subdivision (f).

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

17 Mr. Seay has pled not guilty by reason of insanity. The medical reports have not been
18 completed. This is an active, open investigation, even if there is not a question regarding the
19 identity of the person who shot and killed Ms. Clark. Additional argument were made in the
20 section addressing why Mr. Seay is an indispensable party and are incorporated. For the
21 foregoing reasons, the responsive records are investigatory files exempt from disclosure and the
22 information within them does not fall within the crime victim exemption.

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

26 Government Code section 6254, subdivision (f) does not require the disclosure of
27 information derived from investigatory records to crime victims if to do so “would endanger the
28

1 successful completion of the investigation or a related investigation.” Even if, contrary to the
2 SCDA position, a description of the weapon involved in the incident (other than what was
3 already provided) and the statements of Ronald Seay prior to the incident do fall within the ambit
4 of those material subject to disclosure would compromise the continuing investigation necessary
5 for the prosecution of the case. (*Williams v. Superior Ct.* (1993) 5 Cal.4th 337, 349 [“subdivision
6 (f) . . . (1) articulates a broad exemption from disclosure for law enforcement investigatory
7 records, (2) requires law enforcement agencies to provide certain information derived from he
8 records a about the incidents under investigation, and (3) permits the withholding of information
9 that (a) would endanger the safety of a witness or other person, (b) would endanger the
10 successful completion of an investigation, or (c) reflects the analysis or conclusions of
11 investigating officers”])

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

1 15, 14:18-1; *Beagle v. Vasold* (1966) 65 Cal.2d 166, 176 [argument of counsel does not
2 constitute evidence”]; Evid. Code, § 801.)

3 Assistant Chief Deputy in the Major Crimes Bureau of the Sacramento County District
4 Attorney’s Office and prosecutor in the matter of the People of the State of California v. Ronald
5 Seay, Rod Norgaard, gave his professional, expert opinion regarding why the requested records
6 should not be released. Assistant Chief Deputy Norgaard has been a prosecuting attorney in
7 SCDA for 29 years and has supervised the Major Crimes Bureau for approximately 7 years.
8 (Decl. of Rod Norgaard, at ¶ 1, 2, 3.) “[Disclosure of the records and the information contained
9 therein could jeopardized this investigation as well as future investigations. The investigation in
10 this matter may continue through trial and through the finalization of any verdict and appellate
11 process. Release of the information has the potential to damage or taint future investigation into
12 this matter and may compromise future testimony.” (Decl. of Rod Norgaard, at ¶ 11.) Mr.
13 Norgaard disclosure may “chill a victim’s willingness to come forward with information about a
14 crime or dissuade witnesses from providing accurate information. It may chill other law
15 enforcement bureaus, departments or agencies from cooperating with law enforcement
16 investigations when their cooperation is not otherwise compelled. It could chill investigatory
17 decisions I make in furtherance of prosecuting this and future criminal cases.” (Decl. of Rod
18 Norgaard, at ¶ 12.) Furthermore, “[i]n my opinion disclosure of the requested materials in this
19 instance would create a bad precedent for my office with respect to future requests to provide
20 such information. For example, if some next of kin harboring malicious intent requested
21 information on who sold or transferred a murder weapon to a defendant prior to the charged
22 conduct my office would have no principled way of objecting to that request,.” (Decl. of Rod
23 Norgaard, at ¶ 13.) In addition, disclosure of the requested “records and information contained
24 therein may create triable issues that would not otherwise exist and thus risk successful
25 prosecution and justice.” (Decl. of Rod Norgaard, at ¶ 15.)

26 The responsive records are investigatory records and therefore exempt from disclosure.
27 To the extent the records contain any information potentially subject to disclosure under the

1 crime victim exemption, that information is also exempt from disclosure because its release
2 would endanger the successful completion of the investigation.

3 **C. Even if Responsive Records Fell Outside the Crime Victim Exception, Only the**
4 **Statutorily Required Information, Not the Entire Investigatory File Would be**
5 **Disclosable.**

6 Petitioners assert that because the investigatory file contains some information to which a
7 victim is entitled, the entire investigatory file should be disclosed, (MPA, at 12:7-22.) This
8 position is directly contradicted by case law making clear that while Section 6254 subdivision (f)
9 requires “disclosure of information derived from the records” in most cases it “preserv[es] the
10 exemption for the records themselves.” (*Haynie v. Superior Court, supra*, 26 Cal. 4th 1061,
11 1072.)

12 For the reasons outlined above, SCDA has properly withheld the responsive records as
13 exempt. However, even assuming that the court orders the disclosure of certain records, this
14 does not create an exemption to the entire investigatory file. This flawed logic would yield an
15 absurd result in that it would theoretically eliminate all exemptions codified in the Act.
16 Theoretically, the parent of a child murdered by the other parent would have access to
17 information that would undermine prosecution. This reading would place prosecutors and other
18 law enforcement in the untenable position of having to make judgement in every case that could
19 be fluid. This reading would significantly complicate and risk all inter-family criminal
20 investigations and prosecutions, intimate partner violence, child violence, many child molest
21 cases. The public has a great interest to having prosecutors devote their time to the
22 ascertainment of justice on behalf of the citizens of Sacramento County.

23 A similar argument has been specifically rejected in the context of Gov Code 6254,
24 subdivision (f): “[The] provisions for mandatory disclosure *from* law enforcement investigatory
25 files represent the Legislature’s judgment, set out in exceptionally careful detail, about what
26 *items of information* should be disclosed and to whom.” (*Williams v. Superior Court* (1993) 5
27 al.4th 337, 361, emphasis added.) The crime victim exception requires the disclosure of certain

1 pieces of information from the investigatory file, not the entirety of the file. (Id.) “The
2 Legislature has carefully limited the exemption of law enforcement investigatory records by
3 requiring the disclosure of specific information from such records” (Id. at p. 354.) As explained
4 by the Supreme Court in the context of the portion of Section 6254 subdivision (f) relating to the
5 requirement to disclose certain information related to complaints of request for assistance unless
6 to do so would endanger the successful completion of the investigation or a related investigation,
7 “The Legislature’s effort to provide access to selected information from law enforcement
8 investigatory records would have been a wasted on if, . . . the [records] themselves were subject
9 to disclosure. (*Haynie v. Superior Court, supra*, 26 Cal. 4th 1061, 1072.)

10 Therefore, to the extent the court determines SCDA has an obligation to disclose any
11 information, it should e directed only to disclose the property description (which has been
12 provided already) and statements of people involved in the incident, not the entirety of the
13 investigatory file.

14 **D. SCDA Properly Relied on Government Code Section 6254, subdivision (k)**

15 SCDA also relied on the exemption in Section 6254, subdivision (k) to exempt the
16 production of the records responsive the Request 1 (firearm trace information), Request 9
17 (records of Ronald Seay’s previous criminal records), and Request 10 (communications with
18 other law enforcement agencies).

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

1 Evidence Code section 1040 is the relevant state law relating to official information.
2 Evidence Code section 1040 permits a public entity to “refuse to disclose” “information acquired
3 in confidence by a public employee in the course of his or her duty and not open, or officially
4 disclosed, to the public prior to the time the claim of privilege is made: if “[d]isclosure of the
5 information is against the public interest because there is a necessity for preserving the
6 confidentiality of the information that outweighs the necessity for disclosure in the interest of
7 justice.” (Evidence Code, § 1040 (a) and (b)(2).) The public interest in this case been discussed
8 at length. In addition, Penal Code sections 13100 et seq., 13300 et seq. restrict access to criminal
9 history records. Petitioner has failed to challenge the application of these laws and thus waives
10 any argument that they were relied upon improperly. (See *Citizens for Positive Growth & Pres.*
11 *v. City of Sacramento* (2019) 43 Cal.App.5th 609, 629-30.).

12 SCDA has properly relied on Government Code section 6254, subdivision (k) in
13 conjunction with Federal Law, Evidence Code section 1040, and Penal Code sections 13100 and
14 13300.

15 **E. SCDA Properly Relied on Government Code Section 6255**

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

4 One public interest in non-disclosure is a fair trial and successful prosecution of Mr.
5 Seay. (Decl. of Sgt. MacLafferty, at ¶ 5.) There is a "powerful public interest in solving
6 homicides and bringing killers to justice." (*County of Orange v. Superior Court* (2000) 79
7 Cal.App.4th 759, 766.) There is also a public interest in protecting the investigatory process,
8 including the process by which the Sacramento Police Department confidentially obtains
9 information from other law enforcement agencies (Decl. Sgt MacLafferty, at ¶¶ 1,2.) It is
10 axiomatic that there is a public interest in Federal Law Enforcement Agencies knowing that
11 information they "own" provide, and/or share with local law enforcement agencies would be
12 protected by Federal legal protections. It is common sense that other states may choose not to
13 report certain data that is not otherwise required to be provided to Federal Agencies if the state
14 knows the information can be accessed through a different states laws and that state can ignore
15 Federal law. It would create additional confusion, complicate investigations, and impede
16 cooperation among states.

17 Petitioners have suffered as a result of this heinous crime. They have stated their
18 personal interests in obtaining the information they are requesting, but there is a lack of evidence
19 from Petitioners to support their assertion that the public interest favors disclosure. Plaintiffs'
20 personal interests in learning additional circumstances of Ms. Clarks murder, identifying
21 responsible parties, and advocating for policy change, their belief that the information may
22 educate the public and may shed light on important government functions, including the ability
23 to detect, deter, and prevent violence in public spaces. (MPA at pp. 22:15-2:8; *Los Angeles*
24 *Unified School District v. Superior Court, supra*, 228 Cal.App.4th at p. 239.) When the
25 hypothetical possibility of educational value is weighed against the very real likelihood of
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1 compromising the prosecution of a person accused of murder¹, the balance weighs heavily in
2 favor of non-disclosure. (See *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759,
3 766.

4 Petitioners have disregarded the expert opinion of Rod Norgaard, the Supervisor of the
5 Major Crimes Bureau and prosecutor on the Ronald Seay case. Petitioners have disregarded the
6 expert opinion of Sgt. Scott MacLafferty, a Supervisor in the Homicide Unit of the Sacramento
7 Police Department. Petitioners have offered no competent evidence to rebut the professional and
8 expert opinions of career law enforcement officers who have worked and continue to work on
9 this case. Instead, the only declaration or evidence submitted in support of their position was
10 from an attorney working on the instant case who based most of her statements on publicly
11 available information about the criminal prosecution of Ronald Seay. (Decl. Molly Thomas-
12 Jensen, at ¶ 4, 5.) There is no evidence that she has ever investigated, prosecuted, or defended a
13 criminal case. There is no evidence she has any particularized knowledge or opinion to rebut the
14 opinions set forth by Mr. Norgaard or Sgt. MacLafferty. She wrote, “[n]o accomplices have
15 been charged in connection to this case. There is no mention of any potential accomplices in any
16 of the media reports I reviewed. My clients told me that they have never been informed by
17 Defendants that there are any potential accomplices involved in this case . . .” (Decl. of Molly
18 Thomas-Jensen, at ¶ 5.) Whether or not there were accomplices to the homicide is only
19 minimally relevant. It minimizes, ignores, and/or shows a naivety regarding the complexities
20 and intricacies regarding successful prosecution of this or any homicide with special
21 circumstances. Particularly where there are/were competency issues, and are current sanity
22 issues. Criminal investigations may not begin and end with a particular act in time. The

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25 ¹ The “compromising” of the prosecution may not be whether or not Mr. Seay pulled the trigger; the “compromise”
26 can include, but is not limited to: additional continuances, pre-trial publicity, possibility of change of venue motions,
27 challenge finding an impartial jury; creates circumstances which can lead to more fertile cross examination and
28 impeachment; additional appellate issues; disclose particular investigative techniques, additional time the
prosecutors need to use to address issues collateral to successful prosecution of additional cases on their caseloads.
In addition, depending on whether there is trace evidence, that could compromise additional investigations, some of
which the prosecuting district attorney may not be aware.

1 legislature was aware of this when an exceptionally narrow exception to the exception was made
2 for crime victims to receive certain information under specified circumstances.

3 Petitioners have characterized the catch-all provision as an “end run” around the victim’s
4 access provision of section 6254, subdivision (f). (MPA at pp. 21-22.) That is inaccurate. Were
5 that the case, there would be no need for the catch-all provision and the only available
6 exemptions would be only those specifically enumerated in Section 6255. (*Times Mirror Co. v.*
7 *Superior Court* (1991) 53 Cal.3d. 1325 [“While the specific exemptions set forth in section 6254
8 may be helpful in identifying certain interests to be protected under section 6255, they are not
9 exclusive.”] The court in *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1422
10 cited by Petitioners rejected the application of Section 6255 where other exemptions applied to
11 prohibit the disclosure of the records that were otherwise exempt from disclosure pursuant to a
12 different exemption, namely Penal Code sections 832.5 through 832.8 incorporated into the
13 CPRA through 6254, subdivision (k). In this case SCDA cited 6255 in an abundance of caution
14 were the court to find the other applicable exemptions did not apply. *City of Hemet* does not bar
15 the application of Section 6255. For the reasons stated herein Section 6255 applies.

16 V.

17 CONCLUSION


18 Respondent SCDA has been zealously prosecuting the homicide of Amber Clark. SCDA
19 has provided documents to Petitioners once they have become public (for example: introduced at
20 the preliminary hearing). SCDA must maintain their ability to continue to successfully prosecute
21 cases; public safety relies on their ability to do that. SCDA cannot be put in a position where
22 they are ordered to violate federal law. SCDA must have reliable cooperation with other law
23 enforcement agencies (including Federal and other states) and witnesses. SCDA and the public
24 have an interest that Mr. Seay’s constitutional rights are not violated or jeopardized.

25 Were the court to grant Petitioners’ motion, this and future criminal prosecutions and
26 investigations would be jeopardized. For the forgoing reasons SCDA respectfully requests the
27 court: 1)_ this action for failure to join indispensable parties and 2) to deny the case on the

1 merits. In the alternative, SCDA requests an in camera review of any documents or information
2 prior to ordering disclosure. If the court orders disclosure of any documents or information
3 SCDA request to be heard regarding instituting protective orders for the dissemination and/or use
4 of any documents or information.

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6 DATED: 3/19/2021

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9 By: 
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10 Deputy County Counsel

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