

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>JULY 22, 2021</b>	<b>DEPT. NO</b>	<b>21</b>
<b>JUDGE</b>	<b>HON. SHELLYANNE W. L. CHANG</b>	<b>CLERK</b>	<b>E. HIGGINBOTHAM</b>
<b>KELLY CLARK, DIANNE WOOTON, and KIONA MILLIRONS,</b>  <b>Plaintiffs and Petitioners,</b>  <b>v.</b>  <b>SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE, SACRAMENTO POLICE DEPARTMENT – a political subdivision of the City of Sacramento, and CITY OF SACRAMENTO,</b>  <b>Defendants and Respondents.</b>		<b>Case No.: 34-2020-80003417</b>	
<b>Nature of Proceedings:</b>		<b>RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE</b>	

This matter came on for hearing on July 2, 2021. Having considered the filings and arguments of the parties, the Court now rules as set forth herein. For ease of review, the Court has restated its tentative ruling, but rules as stated in its “final ruling” section.

**TENTATIVE RULING**

The following constitutes the Court’s tentative ruling on Petitioners Kelly Clark, Dianne Wooton, and Kiona Millirons’ (“Petitioners”) Petition for Writ of Mandate, which is scheduled to be heard by the Court in Department 21 on Friday, July 2, 2021, at 10:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing and further advises the clerk that such party has notified the other side of its intention to appear.

**In light of COVID-19 self-quarantine measures, the Court advises counsel to contact the Court clerk to obtain appearance log-in information. There shall be NO in-person appearances.**

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Court clerk no later than 4:30 p.m. on the day before the hearing. The

fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B); Gov. Code, § 68086.) Payment is due at the time of the hearing.

### **I. Factual and Procedural Background**

On December 11, 2018, Amber Clark was shot and killed. Ronald Seay was detained shortly after the murder and remains in custody. On March 3, 2020, Petitioners<sup>1</sup> submitted public records requests to Respondents Sacramento County District Attorneys' Office ("SCDA") and the Sacramento Police Department ("SPD") concerning the following ten categories of records:

1. Records reflecting any firearms trace request made to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), and any firearms trace results received from ATF or any other law enforcement agency, concerning any firearm(s) recovered in connection with the homicide of Amber Clark.
2. All property vouchers or similar records describing any firearm(s), ammunition, ammunition casing(s), or firearm magazine(s) recovered in connection with the homicide of Amber Clark.
3. Any other records reflecting a description of the firearm(s), ammunition, ammunition casing(s), or firearm magazine(s) involved in the offense, including but not limited to those reflecting the serial number, make, and/or model of any firearm(s) recovered.
4. Any records relating to the purchase, sale, or transfer of any firearm(s), ammunition, or firearm magazine(s) recovered in connection with the homicide of Amber Clark.
5. Records of any witness statement solely concerning when, where, how any firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark were obtained by Ronald Seay.
6. Records reflecting the name(s) and address(es) of all person(s) from whom the firearms(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark were obtained by Ronald Seay.
7. Records of any statement made by Ronald Seay solely concerning the firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark, or solely concerning when, where, and/or how any such firearm(s), ammunition, or firearm magazine(s) were obtained by Ronald Seay.
8. Any records relating to statements made by Ronald Seay prior to the homicide of Amber Clark in which Ronald Seay indicated that he wanted to harm other people, including but not limited to statements made by Ronald Seay in June 2018 and documented by the University of Missouri at St. Louis Police Department.

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<sup>1</sup> Petitioners are the husband, mother, and sister of Amber Clark.

9. Records of any search, conducted by the Sacramento Police Department in October 2018, for Ronald Seay's previous criminal arrests or convictions.
10. Records of any communications with other law enforcement agencies about the firearm(s), ammunition, or firearm magazine(s) used in the homicide of Amber Clark, or concerning when, where, and/or how any such firearm(s), ammunition, or firearm magazine(s) were obtained by Ronald Seay.

The SCDA responded via letter dated March 5, 2020, indicating that Ronald Seay "has been charged with [Amber] Clark's murder and is currently being prosecuted by this Office in Sacramento Superior Court docket number 18FE023832 and has not yet been brought to trial." (Decl. of Molly Thomas-Jensen ISO Pet., Exh. D, ROA # 74.) With regard to the requested documents, the SCDA stated,

The materials you seek are exempt from disclosure under the CPRA. Government Code section 6254(f) exempts from CPRA disclosure records of complaints to or investigations conducted by any local police agency, investigatory files compiled by any local police agency, and investigatory files compiled by any other local agency for law enforcement or licensing purposes... There can be no question that the District Attorney's Office is a local agency that conducts police or law enforcement investigations and has complaints and investigatory files within the meaning of section 6254(f).

....

You have indicated that you are the authorized representative of Kelly Clark (Amber Clark's husband), Dianne Wooton (Amber Clark's mother), and Kiona Millirons (Amber Clark's sister). However, the criminal case... is still pending. As such, disclosure of the information to which the victim's relatives may be entitled under section 6254(f) would endanger the successful completion of the investigation. Further, much of the material you have requested would not fall within the scope of information to which crime victims and/or their authorized representatives may be entitled under 6254(f) even at the conclusion of the criminal prosecution of Ronald Seay.

Therefore, your request for records is denied at this time. You may wish to consider resubmitting your request once the case is complete and closed.

*(Ibid.)*

Respondent City of Sacramento (“City”) also responded to the request on behalf of the SPD, via an undated letter. With regard to requests 4, 5, 6, and 7, the City indicated it had no responsive records. (*Id.* at Exh. E.) With regard to the remainder of the requests, the City stated it could not produce any records because they were all exempt pursuant to Government Code sections 6254(f), (k), and 6255(a)<sup>2</sup>, Evidence Code section 1040, and/or Penal Code sections 13100, *et seq.*

Petitioner now seeks a writ of mandate directing Respondents to provide the requested records.

The merits hearing was originally scheduled for April 9, 2021. However, the Court vacated the hearing and ordered Respondents to file “**under seal for the Court’s review only**, a supplemental brief addressing each category of documents and identifying how, based on the specific facts at issue in this case and the current posture of the prosecution’s case of Ronald Seay, disclosure would endanger a witness or the successful completion of the investigation.” (Apr. 8, 2021 Tentative Ruling at p. 7, ROA # 89, adopted by Apr. 9, 2021 Minute Order, ROA # 90.) The Court ordered the supplemental briefing to be filed under seal, stating:

The Court is sensitive to the fact that the prosecution of Ronald Seay is ongoing and does not want any attorney work product to become part of the public record so the Court is ordering Respondents to file this information under seal for the Court’s eyes only. But in order for the Court to make a reasoned analysis and decision, this showing for all of the categories of requested documents must be made by Respondents.

(*Id.* at p. 8.)

Respondents filed supplemental briefs and supporting evidence under seal on May 7, 2021. Specifically, the SCDA filed a supplemental brief, Declaration of Rod Norgaard, and Declaration of Kelsey D. Johnson. Mr. Norgaard was assigned as the prosecutor in the matter of *the People of the State of California v. Ronald Seay* until it was recently reassigned to District Attorney Allison Dunham. (See Decl. of Rod Norgaard ISO SCDA’s Opp’n to Pet. ¶¶ 3, 4, ROA # 82.) The City and SPD also filed a supplemental brief, along with the Declaration of Leslie Z. Walker.

Having reviewed Respondents’ supplemental briefs and supporting evidence in camera, the Court re-set this matter for a hearing on the merits for Friday, July 2, 2021.

## II. Standard of Review

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate “to compel the performance of an act which the law specially enjoins.” The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and

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<sup>2</sup> Hereinafter, all statutory references are to the Government Code, unless otherwise noted.

beneficial right to performance.” (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) “Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty.” (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640)(citations omitted.)

### III. Discussion

#### A. **Statutory Background**

The California Public Records Act (§ 6250, *et seq.*) (“PRA”) provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Public records are to be open to inspection and “any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.” (§ 6253.)

The PRA has several categories of documents that are exempt from disclosure. One such category is found in section 6254, subdivision (f)<sup>3</sup>, which provides that records of complaints to or investigations by law enforcement are exempt. Specifically, subdivision (f) provides:

Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, 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, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the

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<sup>3</sup> The Court finds its analysis concerning section 6254, subdivision (f) to be dispositive, as discussed *infra*. Therefore, the tentative ruling does not discuss the other statutes cited by Respondents in support of their decisions not to provide documents/information in response to Petitioners’ PRA requests.

successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

The California Supreme Court has summarized this subdivision as follows:

[Subdivision (f)] (1) articulates a broad exemption from disclosure for law enforcement investigatory records, (2) requires law enforcement agencies to provide certain information derived from the records about the incidents under investigation [to certain categories of people], 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 of an investigation, or (c) reflects the analysis or conclusions of investigating officers.

*(Williams v. Superior Court (1993) 5 Cal.4th 337, 349.)*

#### **B. Consideration of the Supplemental Briefing In Camera**

Petitioners objected to the Court's review of supplemental briefing in camera in a motion for reconsideration, essentially arguing they should be provided the opportunity to respond to Respondents' arguments. (See Mem. of P. & A. ISO Pet'rs Mot. for Reconsideration 4:6-13, ROA # 92.) The Court denied the motion for reconsideration on April 29, 2021. (See ROA # 97.)

"To determine a claim of exemption from the [PRA's] disclosure provisions, the court may but is not required to examine the disputed records in camera." (*Register Div. of Freedom Newspapers v. Cnty. of Orange* (1984) 158 Cal.App.3d 893, 901.) "Section 6259 provides the 'court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.' [Citation.]" (*Ibid.*) "However, the in camera hearing provisions of Evidence Code section 915, subdivision (b) are permissive. [Citation.] Thus, under section 6259 'in camera inspection of the record in question is not required as a matter of law, but is trusted to the sound discretion of the trial court.' (*Yarish v. Nelson* (1972) 27 Cal.App.3d 893, 904.)" (*Ibid.*)

Although this statute concerns a court's review of the documents that are the subject of the PRA request, the Court is of the view that it also provides support for the in camera review of a party's arguments when necessary for the responding party to adequately support a claim under this particular exemption without disclosing the substance of the documents and/or information sought to be exempt from disclosure in order to not interfere with the successful completion of the investigation and prosecution of the defendant in the criminal proceeding.

Further, after reviewing Respondents' supplemental briefs and supportive evidence, the Court finds that the rules governing sealing, CRC 2.550, *et seq.*, allow the sealing of said

documents in their entirety. An overriding interest exists that overcomes the right to public access to the documents, *i.e.*, section 6254, subdivision (f)'s investigation exemption; the overriding interest supports sealing the documents; a substantial probability exists that the overriding interest will be prejudiced if the documents are not sealed; and sealing the documents in their entirety is narrowly tailored under the circumstances - no less restrictive means exists to achieve the overriding interest. (See CRC 2.550(d).)

### **C. The Parties' Arguments**

Petitioners argue they are victims for purposes of section 6254, subdivision (f) because they are the surviving family of Amber Clark. Consequently, pursuant to that subdivision, Petitioners argue they are entitled to the disclosure of "certain public records...that might otherwise be properly withheld...because they have rights that are separate and distinct from their rights as members of the public." (Pet'r's Mem. of P.&A. ISO Pet. ("MPA") p. 9.) As victims, Petitioners contend they are entitled to the records sought because they "almost certainly contain one or more of the following:

- (1) the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident;
- (2) a description of any property involved;
- (3) diagrams of the incident;
- (4) statements of the parties involved in the incident; or
- (5) the statements of all witnesses, other than confidential informants.

(MPA p. 12.) Petitioners further argue that Respondents have not and cannot establish that disclosure of the documents would "endanger the safety of a witness or other person involved in the investigation" or would "endanger the successful completion of the investigation or a related investigation." (MPA p. 13.)

The Court agrees with Petitioners that they are victims within the meaning of section 6254, subdivision (f), as commonsense dictates that the surviving spouse, sister, and mother of a murder victim are also victims of the crime. However, the plain language of that subdivision provides that if disclosure would endanger the successful completion of the investigation, or would endanger the safety of a witness or other person involved in the investigation, the information is exempt from disclosure.

Respondents oppose the petition on such grounds, rejoining that release of any responsive documentation or information contained therein would compromise the continuing investigation necessary for the prosecution of Ronald Seay.

Respondents have the burden of proving the applicability of this exemption, and the showing must be sufficiently particularized. (See *American Civil Liberties Union of N. Cal. v.*

*Super. Ct. (2011) 202 Cal.App.4th 55, 67* [“The agency opposing disclosure bears the burden of proving that an exemption applies.” (Citation.)”]; *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59, 75 [discussing the “particularized showing necessary to outweigh the public’s interest in disclosure” in analyzing section 6255, subdivision (a)’s catchall exemption].)

Here, having considered Respondents’ supplemental briefing, the Court finds Respondents have demonstrated that all responsive documents and information contained therein are exempt from production under section 6254, subdivision (f) of the PRA.<sup>4 5</sup> All responsive documents are part of Respondents’ investigatory files and, thus, fall within section 6254, subdivision (f)’s exemption. Further, all responsive information that is discloseable pursuant to the victim exception within subdivision (f) need not be disclosed because Respondents have shown with sufficient particularity that the disclosure thereof would endanger the successful completion of the investigation and trial of Ronald Seay.

The Court is limited in what details it can publicly disclose to support its decision since the prosecution of Ronald Seay is ongoing. However, it states generally that Respondents’ declarations filed in support of their supplemental briefs demonstrate that the disclosure of information responsive to the PRA requests could be used for impeachment purposes, taint the jury pool, interfere with the sanity portion of Ronald Seay’s criminal trial, and discourage cooperation among fellow law enforcement agencies.

In light of its ruling, the Court need not consider the other arguments raised by Respondents. (See *Rackauchas v. Super. Ct. (2002) 104 Cal.App.4th 169, 178* [declining to consider other PRA exemptions after concluding the subject document was exempt from disclosure under section 6254, subdivision (f)].)

For the stated reasons, Petitioners’ Petition for Writ of Mandate is DENIED.<sup>6</sup>

In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, Respondents’ counsel is directed to prepare an order denying the petition, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to opposing counsel for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

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<sup>4</sup> The Court notes that the City and SPD represent under oath that they have no records responsive to Requests Nos. 1, 4, 5, 6, 7, or 10. Therefore, their supplemental brief discusses records responsive to the remaining requests, *i.e.*, Requests Nos. 2, 3, 8, and 9.

<sup>5</sup> The Court further notes that SCDA showed Petitioners already possess much of the information contemplated by the victim exception to section 6254, subdivision (f). They know the parties “involved in the incident,” have a diagram of the incident and photographs, and a description of the firearms and ammunition involved. Petitioners received the firearm information, including serial numbers, at Ronald Seay’s December 14, 2020 preliminary hearing. Information concerning the weapons was not disclosed by Respondents until that time.

<sup>6</sup> The Court’s decision on the Petition for Writ of Mandate appears to dispose of Petitioners’ declaratory relief claim as well. Thus, the Court does not discuss it separately/further.



## FINAL RULING

As an initial matter, the Court notes that it unintentionally omitted reference in its tentative ruling to the Declaration of Allison Dunham that was filed under seal in support of the City and the SPD's Supplemental Brief. Allison Dunham is the prosecutor to whom the Seay criminal case is currently assigned. The Court considered her declaration in deciding this matter, along with the other materials specified on page 4 of the tentative ruling.

The Court additionally notes that the parties expressed some uncertainty at the hearing as to whether the Court reviewed in camera any of the underlying documents claimed to be protected from disclosure. The Court has not. The Court has only reviewed the supplemental briefing and supporting declarations, as identified above. (See *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001, 1013 [discussing the trial court's discretion in relying on the sworn representations of the Public Defender about the contents of the subject documents rather than reviewing, in camera, the documents themselves in analyzing a proffered PRA exemption.] )

At the hearing on this matter, Petitioners argued that the Court's decision to review the referenced supplemental briefing in camera had no basis in the law and precluded Petitioners from responding to the briefing. The Court disagrees that its decision is legally unsupported for the reasons provided in section III, B of the tentative ruling. The Court likens this situation to when a defense affidavit filed in support of a *Pitchess* motion is permitted to be filed under seal. (See, e.g., *Garcia v. Super. Ct.* (2007) 42 Cal.4th 63, 72 [discussing the competing concerns a trial court must weigh when deciding whether to file a declaration in support of a *Pitchess* motion under seal, stating: "ruling on a request to file under seal involves balancing an accused's interest in protecting privileged information against opposing counsel's right to effectively challenge the discovery motion"].) Under the circumstances of this case, including that it involves section 6254, subdivision (f)'s exemption, allowing Petitioners access to the supplemental briefing would undermine the purpose of the exemption. The supplemental briefing, itself, comprises attorney work product. For example, the declarations of Mr. Norgaard and Ms. Dunham, the former and current prosecutors assigned to the Seay criminal case, provide details concerning the prosecution's current trial strategy and their legal analysis concerning how disclosure of the subject documents/information would compromise that strategy.

Petitioners also asked at the hearing that the Court enter a protective order, permitting the supplemental briefing to be seen by Petitioners' attorneys only. The Court finds that doing so would not assist the Court in this case, given the particular PRA exemption that is at issue. Petitioners' counsel are not involved in the criminal case and are not in a position to second guess the trial strategy of the assigned prosecutors. There would be no utility in the exercise of entering an attorneys' eyes only protective order under the specific circumstances of this case. If there were a disagreement between counsel as to whether release of a document would compromise the successful completion of the investigation or safety of a witness, the Court would likely defer to the judgment of the assistant district attorneys trying the criminal case who are most familiar with the facts, trial strategy, and the impact of any release of the requested information.

Moreover, the Court is not persuaded by Petitioners' argument that the Court of Appeal's opinion in *ACLU of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55 dictates a different result. Although the Court of Appeal, at pages 63 and 64 of the opinion, states that the in camera inspection of documents in connection with a PRA dispute "should not be resorted to lightly" and "is generally disfavored," the Court of Appeal also pointed out that in camera review is "sometimes necessary" and may be invoked "when the issue at hand could not be otherwise resolved." (Internal quotation marks and citations omitted.)

Finally the Court notes that Petitioners requested, at the hearing, a stay of this action to allow them to appeal the Court's final ruling in this matter. The request for a stay is denied since there is nothing to "stay." The Court has not ordered Respondents to produce/disclose any document(s) or information.

As expressed at the hearing, the Court is extremely sympathetic to Petitioners, as Amber Clark's surviving family members. However, the Court finds that allowing Petitioners access to Respondents' supplemental briefing would compromise the ongoing criminal proceeding, further injuring them. The criminal trial should be permitted to play out without unnecessary interference or complication.

Accordingly, and for the reasons stated in the Court's tentative ruling, Petitioners' Petition for Writ of Mandate is DENIED.

Respondents' counsel is directed to prepare an order denying the petition, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to opposing counsel for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

## Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: July 22, 2021

E. Higginbotham, Deputy Clerk /s/ E. Higginbotham



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