

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN  
FRANCISCO BAY AREA CHAPTER,

Plaintiff and Respondent,

v.

CITY OF HAYWARD, et al.,

Defendants and Appellants.

Case No. S252445

Court of Appeal No. A149328

Alameda County Superior Court  
Case No. RG15785743  
(Hon. Evelio Grillo)

AFTER A DECISION OF THE COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION THREE

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**ANSWER TO PETITION FOR REVIEW**

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To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Defendants and Appellants City of Hayward, et al. (the “City”), respectfully submit this Answer to the Petition for Review filed by Plaintiff and Respondent National Lawyers Guild, San Francisco Bay Area Chapter (“NLG”).

### **Counterstatement of The Issue**

The Court of Appeal properly framed the issue. “Is the City entitled under section 6253.9, subdivision (b) (section 6253.9(b)) to recoup from the Guild certain costs it incurred to edit and redact exempt material on otherwise disclosable police department body camera videos prior to the electronic public records’ production?” [Slip Opinion (“Opn.”) at 4].

### **Introduction**

The law is not being challenged by the NLG. A directive from the Legislature is being challenged. As one might notice from the NLG’s Petition for Review (“Petition”), the NLG breezes by the legislative record of Government Code section 6253.9, subdivision (b) (“§6253.9(b)”), providing no legislative support for its proposed construction. The reason is simple— it is irrefutable that the Legislature intended “extraction” to include the cost of “redaction” and adopted §6253.9(b) to allow agencies

to charge requesters the costs of redacting electronic documents. No colorable argument exists to the contrary. So again, what the NLG is really arguing against is the Legislature and its adoption of this law, not the law itself.

As the NLG recognizes, this case turns on the meaning of the word “extraction.” The term “extraction” stems from a 2000 amendment to the Public Records Act (“PRA”) related to electronic records. The amendment added §6253.9(b) to the PRA, creating an exception to the general rule that agencies may only charge those requesting records under the PRA for “the direct cost of duplication.” Ancillary tasks, such as the compilation and redaction of records, are not considered to be part of “the direct cost of duplication.” Yet with §6253.9(b), when electronic records are requested, and “notwithstanding” this general rule, the statutory provision under dispute says the following:

“[T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when . . . [t]he request would require data compilation, extraction, or programming to produce the record.”  
[§6253.9(b)].

The Court of Appeal found unequivocal evidence from the legislative history of the 2000 amendment that the term “extraction” in §6253.9(b) was intended to encompass “redaction” and thereby the removal of exempt material from non-exempt records.

Rather than focusing on this incontrovertible legislative record, the NLG mistakenly relies on *dicta* in this Court’s decision in *Sierra Club v. Superior Court* (2013) 57 Cal.4<sup>th</sup> 157 (“*Sierra Club*”), to contradict the legislative history. This Court analyzed §6253.9 in *Sierra Club* to assist in determining the meaning of §6254.9, the latter being the statute under dispute in that matter. In *Sierra Club*, this Court principally discussed bill opponent concerns over the accidental disclosure of exempt material when providing a database to a requestor. This Court was not focused on determining whether the term “extraction” included the concept of “redaction.”

Other than referencing *Sierra Club*, the NLG virtually ignores the legislative record, arguing that the record should not be part of the court’s consideration. It is true, though, that it is not necessary for a court to consider the legislative history of a statute. This is particularly true in the instant matter. The Court need not consider the legislative history because §6253.9(b) is already clear on its face. A plain reading is all that is necessary. The common understanding and dictionary definition of “extraction” is “to remove or take something out.” [Opn. at 9]. That is precisely what occurred here with the body-camera videos



under dispute, the City took out exempt material. The statute says what it means. No ambiguity exists. There is no need for any strained interpretations. The law is accessible to the reader and provides clear instruction that a requestor bears certain costs associated with taking out information from records. Such costs allow for more disclosure, more access and transparency, since otherwise exempt records can be reasonably segregated.

And here with the NLG, the City desired transparency. It found a way to increase transparency through extracting exempt information from its body-camera videos as authorized by §6253.9(b). The reason for the City in even having body-camera video was because the City felt it could improve transparency and subsequently itself. The value of these videos is in the content, what they show us, how they move us to change, better ourselves as a society. Both parties align on the significant importance of the release of body-camera video to the public.

Yet with transparency come issues of privacy. We are here because the City removed exempt material from body-camera videos. Removing private information from possibly horrific situations, the absolute worst that can be imagined, is a necessary safeguard for all of us. Deeply personal private moments should not be broadcast to the world simply because a police officer captured that moment on video. Appropriately, the Legislature provided the necessary exemptions allowing for the removal of certain categories of information. [See, §6254].

Our value in transparency is only enduring if we protect

our value in privacy. The concepts are intertwined. Extracting exempt information from a record, as authorized by §6253.9(b), is a fortification of the foundational privacy interests found in both the PRA and the California Constitution, as well as a furtherance of transparency by maximizing access and encouraging more disclosures, not less. The Court of Appeal ruling in this matter allows these two foundational interests to maintain an indispensable balance.

There is no need for Supreme Court review of this matter since no question of law is presented. Only the definition of a single word is challenged by the NLG, and because of the legislative record, the term “extraction” is no longer disputable. Unequivocal legislative support is found for this already clear term. Accordingly, the City respectfully requests that this Court deny the NLG’s Petition.

### **Statement of the Case**

#### **A. Background of PRA Requests for Body-Camera Videos.**

Editing body-camera videos is a burdensome task and it can take agencies as long as a year to service PRA requests for video records. [JA:297-311]. Washington D.C. mayor Muriel E. Bowser said that these costs could imperil Washington D.C.’s balanced budget, anticipating that costs could reach upwards of \$1.5 million annually. [JA:317]. A significant part of a city’s costs

in producing body-camera videos for public inspection is the editing required to remove private and exempt information. [JA:317-321]. The Seattle Police Department released a statement stating that “[a] simple redaction in a one-minute video can take specialists upward of half an hour, whereas more complicated edits- like blurring multiple faces or pieces of audio- can take much, much longer.” [JA:323-324]. Editing videos, and the resources expended to service voluminous PRA video requests, even forced some cities to suspend or discontinue use of body-cameras altogether. [JA:326].

In May of 2014, the City of Hayward instituted its body-camera program. In a given month, the City generates more than 1093 hours of body-camera video footage. [JA:254]. Officers encounter situations where persons captured in the videos are seen experiencing their worst life moments, such as nightmarish medical emergencies, situations involving sexual assault, child abuse, and rape. [JA:245]. Officer safety is also an issue. Occasionally videos illustrate tactical maneuvers and security procedures used by officers to protect themselves and the public. [JA:245]. Release of these private police security practices could compromise officer safety and the efficacy of tactical maneuvers. The City remains cognizant of these and many other privacy considerations posed by its vast database of videos. [JA:260, 265]. It is against this backdrop that the City received the NLG’s PRA request for eleven categories of records.

## B. NLG's PRA Request to the City

The facts are undisputed. Desiring to be transparent, City staff spent over 170 hours identifying, compiling, reviewing and redacting records in response to the NLG's broad PRA request for eleven categories of records related to protest demonstrations. [JA:76-78; JA:249]. The City made every effort to be as transparent as possible. It produced redacted records, including the emails of Hayward Police Department supervisors, private reports, volumes of data and logs, all in the interest of transparency. [JA:241-245.]. All these documents were provided to the NLG free of charge. [JA:245]. No costs were imposed onto the NLG for the production of these sensitive records despite the redactions performed on many of the documents. [*Id.*]. City staff provided NLG with hundreds of responsive paper and text-based electronic records, converting them all to a PDF format; and e-mailing the PDFs to the NLG, as NLG had requested to avoid the copying costs authorized by the PRA. [*Id.*]. Again, the NLG was not charged anything for all this work, including the direct costs of duplicating the records as PDFs, a cost indisputably allowed by §6253(b). [JA:78, §6253(b)]

But the 90 hours of police body-camera videos the City had retained from the Berkeley demonstrations posed a problem for the City. [JA:48-50]. The City did not question that the videos are public records under the PRA; in fact, the City asked the NLG if they wanted the videos although they were not sought explicitly

or implicitly in the NLG's request. [JA:243]. The problem was that a review of the videos revealed they contained information that was exempt from disclosure under the PRA because of privacy or security concerns, and redacting the exempt portions would be a monumental task, requiring considerable City resources and time. [*Id.*]. The NLG agreed to temporarily narrow their request to six hours, but redacting the six hours was still a big task, requiring staff to meticulously review the videos; separately mark the start-and-stop time of exempt audio and video; find a special software program to efficiently perform the extractions; and manually use this program to perform the edits. [JA:247-248]. Just using the program for the initially requested six hours plus additional videos requested later took 35.3 hours. [JA:249]. The \$3,247.47 charge includes only these 35 hours of editing the videos plus 4.9 hours for an IT specialist to locate and download the 90 hours of videos from the thousands of hours stored in the cloud, compiling those responsive documents into a single folder. [JA:163-166].

The NLG's action seeks refund of the entire amount paid for these edited body-camera videos. [JA:10].

### C. Superior Court Proceedings.

NLG petitioned the superior court for a writ of mandate, seeking to compel the City to refund all the money it paid for the edited body-camera videos. [JA:2-10]. In response, the City

asserted that the charges were authorized by §6253.9(b) because “data compilation” and “extraction” were required to produce the records. [JA:209-238, 559-564]. The superior court recognized that an agency was authorized to invoice the costs of “data compilation, extraction, and programming,” however, believed such costs may only be invoiced if the agency creates a nonexistent record via construction:

“There is no indication in Government Code 6253.9(a) or (b) that the cost provisions concern time spent redacting exempt information from existing public records. The text of Government Code 6253.9(b)(2) strongly suggests that this exception applies only when a CPRA request requires a public agency to produce a record that does not exist without compiling data, extracting data or information from and [*sic*] existing record, or programing a computer or other electronic devise [*sic*] to retrieve the data.” [JA:627-628].

The superior court also held that with respect to the City’s claim that the NLG PRA request was unduly burdensome (under §6255), that the 170 hours of work to service the NLG’s request, including the 35 hours of extraction and 4.9 hours of compilation, did not qualify as unduly burdensome. [JA:634-647].

Generally, the reasoning behind the superior court's argument was that electronic records are to be treated identically to paper records unless a new, previously nonexistent electronic record is constructed. [JA:647]. The superior court believes there is "no indication" the Legislature intended that a public agency "could characterize its redactions of electronic documents as 'extractions' and thereby recover its costs of redacting exempt information." [JA:631]. The Court of Appeal disagreed.

#### D. The Court of Appeal's Opinion

Following briefing from the parties and judicially noticing the full legislative record of §6253.9, the Court of Appeal issued its opinion denying the NLG's writ and reversing the superior court ruling. It concluded that "based on the language of the statute, the legislative history, and policy considerations that the costs allowable under section 6253.9, subdivision (b)(2) include the City's expenses incurred in this case to construct a copy of the police body camera video recordings for disclosure purposes, including the cost of special computer services and programming (e.g., the Windows Movie Maker software) used to extract exempt material from these recordings in order to produce a copy thereof to the Guild." [Opn. at 15]. The NLG filed a Petition for Rehearing questioning the City's 4.9 hours invoiced for compiling the body-camera videos. The Court of Appeal remanded the matter to the trial court to determine precisely what fees of those billed the

City may recover under §6253.9(b), but unequivocally, the judgment remained reversed in its entirety. [*Id.*].

## **Reasons For Denying Review**

### **I. The Court of Appeal’s Decision Correctly Applied the Law**

As previously stated, when electronic records are requested, §6253.9(b) states that a “requester shall bear the cost of producing a record,” as well as pay the cost to “construct a record,” and the cost of “programming and computer services necessary to produce a copy of a record,” if “the request would require data compilation, extraction, or programming to produce the record.” [§6253.9(b)]. The principal matter under dispute is the Legislature’s meaning of the word “extraction.”

Contrary to statements made by the NLG, the Court of Appeal properly framed the process of statutory interpretation. ‘When we interpret a statute, “our fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose.”’ [Opn. at 6]. The Court of Appeal presented the process of review, which is to first examine the statutory language, giving it a plain and common sense meaning, considering the language in the context of the statutory framework, and if there is more than one reasonable interpretation, considering the purpose of the provision, legislative history, and public policy. [*Id.*]



The Court of Appeal next considered Article I, section 3(b) of the California Constitution. [Opn. at 6-7]. After properly laying out the constitutional imperative to broadly construe a statute if furthering access and narrowly construe if limiting access, the Court of Appeal stated the following: ‘ “Given the strong public policy of the people’s right to information concerning the people’s business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), ‘all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.’” [Opn. at 7]. The Court of Appeal emphasized the word “*expressly*” to highlight the point that ultimately the legislative intent is paramount, and acknowledged that with regard to a narrow construction of §6253.9(b), the Legislature has for this provision, “*expressly* provided to the contrary.” [*Id.*].

In a unanimous decision, after considering the statute and the supporting legislative record, the Court of Appeal correctly found that §6253.9(b) was intended to “expand the circumstances under which a public agency could be reimbursed.” [Opn. at 14]. The Court of Appeal further held that the legislative history shows that “section 6253.9(b) was intended to permit a local government to recover costs in circumstances, like this, where electronic public records require special computer programming to segregate disclosable from nondisclosable material.” [Opn. at 11].

In support of its conclusions, the Court laid out a

chronology of §6253.9's adoption. [*Id.*]. The Court of Appeal began by recognizing that the first draft of Assembly Bill 2799 ("AB2799"), the bill giving rise to §6253.9, "did *not* include the language" requiring "that the requester shall bear the costs of producing an electronic record." [*Id.*]. Because of this omission, opposition groups objected to the bill "on the precise ground that redacting or segregating nondisclosable electronic records from disclosable electronic records would be time-consuming and costly." [*Id.*].

Concerning this bill opposition, the Court of Appeal then explained that "AB2799 was amended on June 22, to ensure the bill would not place new burdens on state or local agencies," and thereby AB2799 was "amended to require *the requester to bear the cost* of producing a copy of an electronically held record." [Opn. at 12]. To support this analysis, the Court of Appeal discussed that the California Newspaper Publishers Association urged that "[§6253.9] guarantees the costs associated with any extra effort that might be required to make an electronic record available shall be borne by the requester, not the state or local agency." [Opn. at 13]. Also noted by the Court of Appeal was the California Association of Clerks and Election Officials who initially opposed the first draft of the bill because it did not address "costs associated" with the "redaction of information," but following the bill amendment and inclusion of §6253.9(b), thanked the author of the bill because AB2799 "now addresses the costs incurred by public agencies in providing copies of

electronic records.” [*Id.*; *See also*, LH:302].

The Court of Appeal mentions that there were “several documents supporting the City’s position.” [Opn. at 11]. The full legislative history was judicially noticed by the Court of Appeal. [*Id.*]. Continually throughout the legislative record it shows that the author’s drafting §6253.9 and the agencies reviewing the legislation all believed the inclusion of §6253.9(b) allowed agencies to recoup the redaction costs of producing an electronic record, including the costs to compile, redact, and for programming necessary to produce records. (*See*, LH:198 [Author’s “Background Information”, stating “[a]mendments may be introduced to address the issue of the cost and feasibility of redacting public information.”]; LH:222 [CNPA letter, stating “[t]he most recent amendments would allow state and local agencies ... to recover costs associated with compiling data, extracting data, or performing programming.”]; LH:279 [AB2799 Analysis, stating “costs may be charged only for records produced periodically would require data programming, compilation or extraction to produce it.”]; LH:357 [Sponsor’s Letter to Governor, stating “[a]fter lengthy negotiations,” AB2799 “was amended to require the requester to bear the cost of producing a copy of an electronically held record”]; LH:347 [Author’s statement on June 28, 2000 after the §6253.9(b) amendment was made, noting that opponents were concerned that producing electronic records “would prove very costly to public agencies,” and that to “help alleviate their concerns, I amended the bill to address the costs

incurred by public agencies in providing copies of electronic records under circumstances now described in my bill.”; *Compare with*, LH:429, author statement prior to §6253.9(b) amendment, previously stating that “opponents argue that requiring them to provide a document in a computerized form forces them to revise (or redact) certain documents so that confidential information is not included with public information,” but then later saying that the author had “scheduled a meeting with opposition next week to listen to their concerns.”]; LH:832 [DMV Enrolled Bill Report stating AB2799 clarifies that agencies “may charge the requester for producing a copy of a record, including the cost to construct a record as well as the cost of programming and computer services.”]; LH:842 [State Pesticide Dept. Enrolled Bill Report, stating AB2799 “may create onerous tasks for those Department staff who must redact/delete protected information such as social security numbers, medical information, names,” but “[t]his bill, as amended, provides for direct reimbursement and makes specific that requestor's will pay for programming time, albeit at the lowest programmer's pay level”]; LH:859 [Conservation Dept. Enrolled Bill Report, stating “Existing law provides ... that the requester may be a charged a fee associated with the direct costs of duplication,” but “AB2799 specifies that direct costs shall include costs associated with duplicating electronic records,” and “[t]his would include costs of programming and computer services associated with compilation and extraction of a record”];

LH:900 [Finance Enrolled Bill Report, stating “the requester of information would bear the ‘direct cost’ of programming and computer services necessary to produce a record not otherwise readily produced,” and, “[t]herefore, any additional costs to the state would be paid by the requester” and local agencies could also “charge fees to cover those costs”]). After a review of the legislative history, the intent is irrefutable. Nothing whatsoever provides to the contrary. The Court of Appeal properly construed the term “extraction” as aligning with the City’s plain reading and common-sense interpretation of the statute.

Before this Court is a question of intent, not law. The law is undisputed; both parties agree that a requester bears the cost of production if extraction is required. Only the Legislature’s definitions are in question. Thus, the Court of Appeal looked to the legislative history to determine the intent of the statute, its meaning, and indeed there it found our answer. The intent is clear now, but the law has always been understood.

## II. This Case Creates No Split from This Court’s Analysis of the Legislative History in *Sierra Club*

Eighteen years ago, the Legislature adopted §6253.9(b) and the parties now seek to determine the meaning of a single word in that statute. No other decision specifically addresses the question before this Court. Yet the NLG relies on *Sierra Club*, a case concerning an entirely distinct statutory provision in

§6254.9 (not §6253.9), as a basis for questioning §6253.9's compelling legislative record regarding the term "extraction."

The NLG focuses on *dicta* within *Sierra Club* whereby this Court explains that agencies reviewing §6253.9 expressed concern over the amount of staff time required to perform redactions and the increased risk of unintentional disclosure of exempt material, and that "[t]he Legislature does not appear to have adopted any amendments in response to this concern, and documents in the Governor's Chaptered Bill File suggest that these concerns remained in effect through the final enrolled bill." [Petition at 35-36, citing *Sierra Club* at 174-175]. What the NLG misses is that this Court in *Sierra Club* was reviewing §6253.9 as it pertains to the disclosure of databases, not to address whether extractions may be invoiced by an agency. The lack of "amendments in response to this concern" referenced by this Court seems to regard the staff time that must be diverted by an agency towards the redaction of electronic records and the possibility of accidental disclosure of private, exempt material. The concern was not over whether that staff time redacting records could be charged to a requestor. It is true that opposition remained in effect, and that the complaint of staff diversion and accidental disclosure remained issues of debate. This compels the NLG to think that the remaining bill opposition was concerned over whether redactions were reimbursable, not simply that the opposition was opposed to the staff time that would be diverted for redactions from other agency tasks and

operations.

As noted above, it is true that after the inclusion of §6253.9(b) opposition to the bill remained. Even though the 2000 amendment addressed agency concerns regarding extraction, the narrative of the bill opposition remained nearly identical despite the amendment. Admittedly, it is strange that following the amendment the opposition did not change its tune. This similarly baffled the author of AB2799. When answering the question of whether AB2799 still had opposition, the author responded by stating the following:

“Q — Is there still opposition?

A — Only one is registered. Amendments were recently adopted that have removed almost all the opposition. Opponents were concerned that this requirement would prove very costly to public agencies. To help alleviate their concerns, I amended the bill to address the costs incurred by public agencies in providing copies of electronic records under circumstances now described in my bill.

Consequently, the Association of Chief Clerks and Elections Officials, the County of Los Angeles, and the State Association of Sheriffs have removed their opposition.

Orange County remains opposed; however, initially, they were opposed to the very issue, which the recent amendments rectified. In good faith, I adopted amendments to address their concerns. However, they refused to remove their opposition and stated that it is unnecessary to provide public records in electronic form. I regard their position as a barrier to improving access to public records and remain miffed by their breach in the negotiations.” [LH:347].

Orange County did not withdraw its opposition even though amendments were drafted to address its cost concerns. Throughout the drafting of AB2799, Orange County continued to voice opposition based on the considerable time it takes to gather, copy and edit electronic records. (See, LH:280, [Bill Analysis, saying that “[t]he County of Orange claims that the costs of redacting exceed the amounts that legally they may charge for copies . . . [h]owever, the recent amendments to the bill should allay the County of Orange’s objections.”]; LH:865, [Water Resources Enrolled Bill Report, stating that the bill is “opposed by the County of Orange. Previous opposition from other local public agencies was withdrawn when provisions concerning the cost of reproducing electronic records were added.”]; *See also*, LH:177, 187, 225, 243-244, 252-253, 263, 280, 282, 292, 297, 300, 333, 399, 827, 830, 838, 842, 853-854, 858,



865, 883, 893, 911-912, 973, 982, 1046, and 1152).

It is understandable that the NLG confuses the continued opposition to AB2799 as instructive. However, the author and agencies reviewing the legislation explain that the opposition to the bill was purely an obstructionist stance, not actually a position predicated on the desire for the inclusion of additional terms to remedy agency redaction costs. This Court's §6253.9 analysis in *Sierra Club* concerns staff time and accidental disclosure. It does not conflict with the indisputable legislative record concerning who must bear the costs associated with redacting electronic records.

This is a matter of first impression. There is no split in authority or challenge to the holding in *Sierra Club* by the Court of Appeal's ruling. The ruling by the Court of Appeal addresses the issue of whether the costs imposed by the City were authorized by §6253.9(b), and focused on whether the concept of redaction is encompassed in the term "extraction." This is distinct from this Court's analysis in *Sierra Club*, and therefore, "uniformity" remains. [California Rules of Court, Rule 8.500(b)(1)]. There is no need for granting the Petition to further clarify the definition of "extraction."

### III. The Supposed Policy Implications Posited by the Petition are Speculative and Controverted by the Record

There are clear differences between how the parties' view §6253.9(b). It is surprising, though, how many fundamental

principles on which the parties agree. Little distance exists as to each parties' belief concerning the general purposes of the Public Records Act. This is particularly true in terms of both parties wanting to improve transparency, and integrate systems that allow for greater disclosure, making more records available to requestors and expanding what is considered reasonably segregable.

The law and its plain meaning should guide a Court's decision when interpreting a statute. Plain meaning and legislative intent override any policy arguments put forth. Yet, generally a law is symbolic of a larger policy or principle, thus, the rhetoric the NLG promulgate should be addressed. The NLG claims that body-camera records will become out of reach to the average requestor. It argues that the Court of Appeal ruling "will in turn make access to such records unaffordable to all but affluent requestors." [Petition at 13]. Such a position ignores the realities of public requests for police body-camera video, and is not, in any way whatsoever, "mindful of the right of individuals to privacy." [§6250].

A. Extraction is Necessary to Protect Individual Privacy.

The NLG has argued that monitoring police activity is an important public interest. [Petition at 10-11]. The NLG is right. This is very important. Making sure police are not infringing on individual rights is essential to our democracy, and excessive force has appropriately become a key issue in the national dialog.

Still, the right of access to public records "is not absolute."

[*Copley Press, Inc. v. Superior Court* (2006), 39 Cal.4<sup>th</sup> 1272, 1282 (“*Copley Press*”)]. Privacy is also important, and the Legislature acknowledged this declaring in §6250 that it was “mindful of the right of individuals to privacy.” [*Ibid.*]. This “express policy declaration at the beginning of the Act bespeaks legislative concern for individual privacy as well as disclosure.” [*Copley Press* at 1282.] And Proposition 59 similarly expressed this concern, providing additional “assurance” that the “right of access is not meant to supersede or modify existing privacy rights.” [*Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4<sup>th</sup> 353, 366, citing Cal. Const., art. I, §3(b)(3).]

The PRA expressly protects privacy by setting forth “numerous” exemptions, “generally” involving documents or information “that for one reason or another should remain confidential.” [*Ardon v. City of Los Angeles* (2016) 62 Cal.4<sup>th</sup> 1176, 1182, citing §6254 (with subdivisions (a)-(z) & (aa)-(ad)); *See also*, §§6254.1-6254.33 & §§6275 - 6276.48 (providing additional exemptions).]

The balancing of privacy and disclosure is also reflected in §6253(a), which requires:

*“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.”*

“In other words, the fact that a public record may contain some confidential information does not justify withholding the entire

document;” rather, if possible, the agency is required to redact the “exempt” parts and “produce the remainder.” [*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1336 (*Santa Clara*)].

Courts continually provide that the reason that the redaction of records is necessary is because individual privacy deserves protection. Never once does the NLG speak about the need for protecting individual privacy in its Petition. But privacy should not be ignored. It drives the entire opening sentence of the PRA and sets forth a mandate for the entire statute—maintaining mindfulness to the right to privacy. Recouping the costs of redacting documents is a safeguard to this important interest. The fees authorized by §6253.9(b) create more access because they make many electronic records “reasonably segregable” under §6253, and allow for narrow, specific extractions of exempt material. Access, overall, is improved by the integration of §6253.9(b). But also, imposing costs for extracting exempt video allows thoroughness in the review of sensitive, private videos, to ensure that exempt information is not released. All interests are served by the City’s imposition of fees and subsequent release of edited records, including both the interests of transparency and individual privacy.

While it is in the public interest to have body-camera videos available for public viewing, equally important, and arguably the most important interest, is the interest in the privacy rights of the individuals captured in the videos.

B. Police Videos Typically Do Not Contain Much Exempt Material, Therefore the Costs for Most Police Videos Will be Negligible.

A major focus by the NLG is on unsubstantiated claims that police videos will become too costly. There is no denying that the language in §6253.9(b) authorizing a city to impose certain costs will impose a burden onto requestors, however minimal that imposition may be.

Still, it cannot be overstated that most body-camera videos do not have anywhere near the volume of exempt material as the videos requested by the NLG. When looking at the plethora of police body-camera videos, particularly those videos where we see police kill unarmed people, most of these videos do not need anywhere close to the number of redactions required as the videos sought by the NLG. At most, the production costs for most videos would be equivalent to the cost of a couple extractions. Generally, police videos have very little, if any, exempt material within them, requiring minimal extractions, and thus, not costing the requester much, if anything at all. As such, most requests do not necessitate extracting enormous amounts of exempt material from several hours of videos such as those requested by the NLG.

The facts here are distinct. Six hours of videos were reviewed after the NLG agreed to temporarily narrow its request. [JA:353]. Such voluminous requests with overwhelming amounts of exempt material are the exception, not the norm. Most videos

will be affordable, and videos with no exempt material will be invoiced at the direct cost of duplication. Access will not be interrupted by the Court of Appeal's ruling.

These and other policy reasons show why the public is not burdened and in actuality benefit from §6253.9(b). Still, these policy arguments are superfluous in light of a plain reading of the statute and the supporting legislative history. The Legislature stated why it integrated §6253.9(b)— it wanted requesters to bear the costs of compiling, redacting, and programming electronic records. Our policy reasons are unimportant. Again, the arguments presented by the NLG, including the NLG's policy arguments, are a challenge to the Legislature and its adoption of the 2000 amendment integrating §6253.9(b), not an actual challenge to the law itself, as the statute's direction is clear, supported by irrefutable legislative support.

### **Conclusion**

Other than the NLG, 'no one disputes that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information, and to that end perform data compilation, extraction or computer programming if "necessary to produce a copy of the record."' [*Sander v. Superior Court* (2018), 26 Cal.App.5<sup>th</sup> 651, 669, *citing* §6253.9(b)].

There is no question as to the purpose of §6253.9(b), only

of a definition, which the legislative record undeniably addresses, thus there is no question of law. Additionally, the Court of Appeal ruling does not conflict with this Court's ruling in *Sierra Club*, and thus uniformity of decision is maintained.

The Petition presents no proper ground for review. Accordingly, the City respectfully requests this Court deny the Petition.

Dated: November 27, 2018

/s/ Justin Nishioka

Justin Nishioka  
Assistant City Attorney  
Attorney for Defendants and  
Appellants

**CERTIFICATE OF WORD COUNT  
(Cal. Rules of Court, rule 8.204(c))**

The text of this brief consists of 5623 words as counted by the Microsoft Word 2016 version word-processing program used to generate the brief.

Dated: November 27, 2018

/s/ Justin Nishioka

Justin Nishioka  
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**PROOF OF SERVICE**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 777 B Street, 4th Floor, Hayward, California 94541-5007.

On November 27, 2018, I served the document(s) described as:

**ANSWER TO PETITION FOR REVIEW**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

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(BY U.S. MAIL) I am readily familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

(STATE) Under the laws of the State of California.

(FEDERAL) I declare that I am employed in the office of a member of the bars of this Court at whose direction the service was made

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on November 27, 2018, at Hayward, California.

\_\_\_\_\_  
/s/ Morgan Cahee  
Morgan Cahee