SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER,

Plaintiff and Appellant,

v.

CITY OF HAYWARD, ET AL.,

Defendants and Respondents.

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

ANSWER BRIEF ON THE MERITS

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Introduction

We all remember Rodney King. Our hearts have been broken by the myriad of police abuses and murders captured on video since. There is no question that public disclosure of body-camera video is important. But whether these videos should be disclosed to the public is not under dispute. The question here is more objective. The Court in this matter must determine whether agencies were afforded the ability to recoup specified costs associated with compiling and editing electronic records, and whether such a provision was integrated into the California Public Records Act ("PRA") in 2000. As you will find in the following sections, Government Code section 6253.9, subdivision (b) ("§6253.9(b)") was included, per a plain and commonsense reading, according to §6253.9's author, and as interpreted by various bodies at the time of its adoption, to allow agencies to be reimbursed the costs of compiling information and extracting exempt material from electronic records. It was made for situations like the one here.

The City of Hayward (the "City") has appropriately invoiced its costs. Thus, the Court of Appeal ruling must be affirmed.

Statement of the Facts

In December 2014, the Hayward Police Department

("HPD") provided mutual aid at a demonstration in Berkeley "protesting the deaths of Michael Brown and Eric Garner, which had received national attention and notoriety." (Joint Appendix, vol I, tab 2, p. 6 ["JA":6] [NLG Petition].) Because the National Lawyers Guild ("NLG") "has questions about the conduct of the agencies providing mutual aid in connection with [such] demonstrations," about seven weeks later, NLG submitted a PRA request to HPD seeking "written and electronic" records related to HPD's response to, not only the Berkeley demonstration, but also "each demonstration from November 24, 2014, to the date of this request." (JA:342 [hereafter referred to as the "Request"].) The Request sought eleven categories of records, described generally and specifically, for each demonstration in this two-month period, including:

- "All" HPD "communications" pertaining both to the HPD's provision of mutual aid and to each demonstration (specifying, among other records in the latter category, "dispatch computer entries," "complete audiotapes of all radio communications," "dispatch logs," and "e-mails");
- "All" individual officers' "logs, notes, or chronologies;"
- "All" HPD "reports" (specifying, among other reports, "operations plans," "incident reports," and "supplemental reports"); and

- Records identifying the officers who were in command and the officers, "if any," who approved use of "batons," "chemical agents" or "gas dispersal devices;" plus records "pertaining to the amount and nature" of these and "less lethal munitions" used and records otherwise "detailing" their use. (JA:76-78.)

The Request reminded the City of the PRA's deadlines, asked that all requested records be provided "without delay," and adding "if portions of the documents are exempt from disclosure, please provide the nonexempt portions." (*Id.* at 78, citing §6253.) The Request further asked that fees "normally applicable" to PRA requests be waived and that records in "electronic form" be e-mailed to avoid "copying costs," but offered to pay the "direct costs of copying" if copying was necessary (that is, the cost the PRA explicitly authorizes agencies to charge). (JA:78, citing §6253 & §6253.9.)

After receiving the Request, Adam Perez, HPD's "Records Administrator" promptly began identifying and compiling responsive records with the assistance of HPD and other City staff. (JA:242-244 [Perez Declaration].) Although Perez and "at least five HPD staff members" were "working diligently" on the Request, because of the "voluminous amount of separate and distinct records" requested, Perez determined the City would need additional time to respond. (*Id.* at 244.) About three weeks after the Request, and a few days after NLG submitted a new request for additional records, Perez informed NLG that due to the "voluminous nature" of the requests, responsive documents would be produced "on a rolling basis . . . as they became available." (*Id.* at 244-245.)1

Before the records were produced, Perez had to review them to see if removal of non-disclosable material was required (such as "information concerning security measures, investigatory files that might compromise active investigations, privileged communications, medical files, information concerning minors"). (JA:245.) Focusing on written or text-based electronic records (like reports and e-mails), Perez "read through and redacted over two hundred and twenty written documents" and then converted them to PDF format for e-mailing. (*Id.* at 245.)2 All the written or text-based records responsive to the Request were e-mailed to NLG within 45 days of the Request. (*Ibid.*) No fees whatsoever were charged to the NLG for these text-based records, including "the time spent searching, reviewing, redacting, and converting these records to

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1 The additional records requested were for records "related to less than lethal munitions" used during the Berkeley demonstration. (JA:244.)

2 To clarify, the 220 documents are actually 220 *pages* of documents, each page being considered an individual document. In these documents, about 45 redactions were performed. Each redaction takes about 20 seconds to accomplish. (*See*, YouTube, "How to Redact in Adobe Acrobat" https://www.youtube.com/watch?v=71Cm4Owomlg (accessed on March 19, 2019).)

PDF format" or for the "direct cost" of duplicating documents from various formats into a PDF format— a cost that NLG had offered to pay and a charge the PRA allows. (*Ibid.*; JA:78, §6253(b).)

Although the Request did not explicitly ask for body-camera videos, and although such videos are not encompassed by any of the eleven general categories of specified records in the Request, in the course of compiling responsive records, Perez identified HPD "body-worn-camera" or "BWC" videos as potentially responsive to the Request. (JA:243.) According to Nathaniel Roush, a City IT Manager responsible for HPD's BWC program, the City instituted a BWC program in 2014, and, since then, approximately 1000 hours of videos have been "generated per month." (JA:254 [Roush Declaration].) All these videos are stored through a "Digital Evidence Management System," specifically "Taser International Inc.'s *Evidence.com*," which is a "cloud" database using a password protected external website. (*Id.* at 253; JA:39-40 [Roush Deposition].) The standard process for storing the videos is that, when officers return to the police station, they put their cameras into a "docking station" that automatically uploads all new footage into the *Evidence.com* system without any "logging-in" and without accessing the system. (JA:43-44.) The uploaded videos can later be downloaded onto CDs or DVDs by those with access, whereby the "selected" BWC footage is downloaded and stored in the HPD property room "at the request" of "certain" staff, but it is not possible to download directly from the HPD body-cameras to a CD or DVD. (*Id.* at 42, 44-45.) As far as Roush knows, videos downloaded from *Evidence.com* are in MP4 format. (*Id.* at 50, 52-53.)

After Perez confirmed that HPD body-camera videos are records covered by the PRA and that NLG wanted such videos although it had not asked for them, he asked Roush to compile the videos because he (Perez) "did not have access to" the *Evidence.com* database and had not "received the training to search and navigate through the *Evidence.com* system." (JA:243.) To assist Roush, Perez gave him the Request and a list of "cases, incidents, and keywords" which Roush used to formulate the method "to process" the search; Roush then performed 45 searches, yielding 141 videos, amounting to "roughly 90 hours of recorded BWC footage." (JA:244.) Roush then reviewed these videos for accuracy, downloaded and burned them onto DVDs, which he provided to Perez. (JA:49-50.) Roush estimates it took him "about ten seconds" per search for the 45 searches, "about one minute and 45 seconds per video" to "[verify] the contents" of the 141 videos, and "about 20 minutes" to review the DVDs to see if they were "downloaded and copied properly," for a total of about 4.9 hours on these tasks. (*Id.* at 50-51.)

Roush did not review any videos to determine if they included exempt or non-disclosable material as that is not his "area of expertise." (JA:51-52.) He also could not have done any editing on *Evidence.com* because that system "allows users to search, find, and review [stored videos] using various search tools," but, due to "technical limitations" at that time, *Evidence.com* did "not allow for the efficient redaction of BWC footage" and "third party software which specializes in audio/video editing is utilized for the extraction of confidential audio/video BWC footage." (JA:254-255.)

After Perez received the 90 hours of body-camera videos, he reviewed them to determine if they contained material "exempt from disclosure [that] would need to be extracted from the footage." (JA:245.) Because he identified exempt audio and video content "such as, personal medical information and law enforcement tactical security measures," he "researched software tools" that could efficiently extract the content. (*Id.* at 245-246.) The City had never previously provided body-camera videos in response to a PRA request and had no appropriate editing software. (*Id.* at 246.) After investigating, testing and rejecting several software programs, Perez determined a free program "called 'Windows Movie Maker' had most of the editing functions needed to prepare the BWC footage for public release." (*Id.* at 246-247.)

Even with this program, editing the 90 hours of videos responsive to the Request would be a monumental task, requiring considerable City resources and time, so the City asked NLG to narrow the Request insofar it now included body-camera videos. (*Id.* at 247.) This narrowing of the request is consistent with the PRA, which requires agencies to assist the public in making focused and effective requests, including providing "suggestions for overcoming any practical basis for denying access to the records or information sought." (§6253.1(a).)

After some back and forth, NLG agreed to narrow the Request "for now" to approximately six hours of video taken at the Berkeley demonstration by five different officers during three distinct time frames. (JA:371-372; *See,* JA:247; JA:7 [Petition, stating NLG "temporarily narrowed the request"].)3 Perez then met again with Roush, who "navigated through [the City's] *Evidence.com* system" to retrieve the requested six hours of videos while Perez "reviewed and helped identify" the requested footage. (JA:247.) The narrowed set of videos was downloaded and burned onto DVDs. (*Ibid.*) Now the hard part began— Perez needed to remove the exempt information. (*Ibid.*)

Perez formulated an efficient multi-phase extraction process (JA:248), that allowed for specific, narrow extractions for "police activity" and broad extractions for "medical information." (JA:643-644 [trial court analysis of how more redactions and higher cost creates more access].) The "first step" was going through and marking previously identified

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3 By this time, NLG had obtained all the requested written and text-based records (JA:245) and, thus, was able to identify pertinent time periods and officers.

sections "that were exempt from disclosure" and noting "the start and end time" of each section. (JA:248.) This included placing electronic markers on the "audio content." (*Ibid.*) The "second step . . . was to extract all audio" into a "separate audio file" in MP3 format. (*Ibid.*) The "third step" was "to extract all exempt video and audio portions" that had been identified in the first step using the Windows Movie Maker software; this step required uploading all video and audio portions that had to be edited onto a "storyboard" and then editing them by "using the 'split' function . . . to separate specific sections of the video." (*Ibid.*) This splitting was done first for all video portions and then all audio portions, using the notes Perez had made on the start and end of exempt portions. (*Id.* at 249.) But Perez also had to listen to the audio to make sure he did not "inadvertently edit out portions of audio that were not exempt from disclosure." (*Ibid.*) The "final step" was to combine the edited audio and video portions into a new finished product in MP4 format "using the 'Save Movie' function" and carefully "syncing" the video and audio so that "you don't get to a point in the video to where nothing matches verbally to what you see visually." (*Ibid*; JA:601-602 [Perez Deposition II]; *See*, Perez Depositions I and II at JA:102-108, and JA:594-598, for more complete descriptions of the process.) This multi-phase extraction process allowed Perez to quickly remove exempt information, taking approximately nine minutes of editing for each one minute of video. (JA:249, 371-372 [35 hours to edit approximately 4 hours of videos]; *Compare with*, JA:323 [30 to 1 ratio for Seattle Police], and JA:428 [27 to 1 ratio for third-party vendor].)

Though Perez spent approximately 35 hours to perform the extractions, the total time he spent producing the body-camera videos was far greater. In fact, he calculated he "personally spent approximately 170 hours" responding to the Requests, including time spent "engaged in the search and identification of records, researching viable editing options, redacting documents, and compiling and extracting audio/video footage for this request." (JA:111, JA:249.)

Although the City chose not to charge NLG for any of the costs it had incurred producing written and text-based records, because of the significant amount of time necessarily spent by Perez on the body-camera videos, the City decided to determine the reasonable and authorized charges for the body-camera videos in consultation with NLG. (JA:360-364 [Nishioka Declaration, Ex. 10, e-mail exchange between City and NLG].) The City had never been asked to produce body-camera videos in response to a PRA request, so it looked to its fee schedule to see if they might be encompassed by an existing fee, and initially believed they might be considered "communication tapes," for which the charge is $103 per tape. (*Id.* at 364, 377 [Ex. 11, Fee Schedule].) It was soon apparent to both NLG and the City that the records sought were not "communication tapes." (*Id.* at 362.) After reviewing case law and the PRA, as

NLG had suggested, the City determined it could and would charge NLG $2,939.58 for the requested videos, calculated using Roush and Perez's hourly salary plus benefits and charging for 4.9 hours of Roush's time and 35.3 hours of Perez's time. (*Id.* at 364; JA:249.) The City narrowly construed the reimbursement provision in §6253.9(b). (JA:48-49, 255 [Roush]; JA:101-102, 104, 106; JA:247; JA:582-583 [Perez].) The 4.9 hours of Roush's time does not include time formulating the search method and performing miscellaneous tasks, like burning the videos into DVDs and properly preserving the DVDs as potential evidence. (*Ibid.*) The 35.3 hours of Perez's time only includes the time doing the editing process on Windows Movie Maker; it does ***not*** include his time: collecting and compiling the videos; reviewing the initial 90 hours of videos briefly and the six hours in the narrowed Request more thoroughly (for a total of 45 to 50 hours); attempting to do the editing of the six hours of videos with available software; or the time spent researching viable software options. (*Ibid.*)

The City also agreed to make the edited videos available for inspection free of charge. (JA:361.) After NLG had viewed the videos at a "dual monitor work station" set up at HPD, with an HPD staff member in attendance, NLG was given an invoice for the $2,939.58 cost of copies. (JA:250.) When NLG complained the charge was "excessive," the City agreed to a "reassessment" of its invoice, but determined the invoiced amount was correct. (*Id.* at 359, 356.)

Almost three months later, NLG paid the invoiced amount of $2939.58 "under protest" and was provided with copies of all the videos in the narrowed request; specifically, seven separate videos, in MP4 format, totaling 232 minutes were released. (JA:26 [NLG Declaration]; *see also*, JA:8 [Petition].) Shortly after, NLG requested a second set of videos encompassing footage taken by 24 named officers plus any other HPD officers at the Berkeley demonstration in three more time periods. (JA:26-27, 250.) The City promptly edited the second set of videos using the same process as with the first set, made them available for free inspection, and offered to provide copies for $308.89. (JA:128-129, 250.)[4]

Without paying this invoiced amount, NLG filed the instant action, seeking a refund of the amount it paid for edited body-camera videos and for release of the second set of videos without payment. (JA:2.) But about two weeks later, NLG paid the invoiced amount for the second set of videos and was provided with two videos, in MP4 format, totaling 65 minutes. (JA:26-27.)

The City has since implemented steps to minimize the cost of production for similar electronic record requests, waiving fees if a request presents a negligible burden. (JA:250-

4 The decrease in the costs was because there were "less videos and less time length of videos." (JA:129.)

251.)

Standard of Review

As the NLG recognized, the issue in this case is the proper interpretation of the cost-bearing provision of §6253.9 and the application of that provision to the undisputed facts. Appropriately, the Court of Appeal exercised its independent judgment and 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." (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2018) 27 Cal.App.5th 937, 952.) This Court must also exercise an independent review and decide the proper interpretation of §6253.9, upholding the trial court's factual findings if based on substantial evidence. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.)

When reviewing a statute, the Court's fundamental task is to determine the Legislature's intent. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616 ["*City of San Jose*"].) In order to ascertain the Legislature's intent, courts first look to the words of the statute, giving the statutory language a plain and commonsense meaning. (*Ibid.*) "It is the language of the statute itself that has successfully braved the legislative gauntlet." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215.)

The language is not examined in isolation, "but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*Ibid.*) The court is not to follow a literal interpretation if it leads to absurd consequences the Legislature did not intend. (*City of San Jose*, at 616.)

"Interpretation must be reasonable." Civ. Code § 3542. If the plain and commonsense interpretation does not lead to absurd consequences, then the analysis can end. However, if more than one "reasonable" interpretation is found, then "courts may then consider other aids, such as the statute's purpose, legislative history, and public policy." (*City of San Jose*, at 616.) Language of a statute is to be considered "in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Id.* at 617.)

When considering the language of a statute, it is a court's "task to construe, not to amend, the statute." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) "In the construction of a statute . . . the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted." (*Ibid.*) The court may not, "under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (*Ibid.*)

"[T]he Legislature, and not the courts, is vested with the responsibility to declare the public policy of the state." (*Green v. Ralee Engineering Co.* (1988) 19 Cal.4^{th} 66, 71-72.) "Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature." (*Estate of Horman* (1971) 5 Cal.3d 62, 77.) "We must assume that the Legislature knew how to create an exception if it wished to do so." (*California Fed. Savings & Loan Assn., supra,* at 349.)

Argument

I. THE STATUTORY TERM AT ISSUE: §6253.9

In Government Code §6253.9(b), the Legislature created an exception to the general rule that agencies may only charge the direct cost of duplication for PRA requests. The relevant portion of §6253.9 reads as follows:

> "(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable

public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall apply with the following:
(1) The agency shall make the information available in any electronic format in which it holds the information.
(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the 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."

II. THE PRA DISTINGUISHES BETWEEN PAPER AND ELECTRONIC RECORDS, PROVIDING IN §6253 THAT REQUESTERS OF PAPER RECORDS MAY

ONLY BE CHARGED THE "DIRECT COSTS OF DUPLICATION," BUT PROVIDING IN §6253.9 THAT REQUESTERS OF ELECTRONIC RECORDS MAY BE CHARGED ADDITIONAL COSTS IF "DATA COMPILATION, EXTRACTION, OR PROGRAMMING" IS NECESSARY TO PRODUCE THE RECORD.

The PRA was enacted in 1968 for the purpose of providing the public with a broad right of access to government information. (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1281.) It begins with the Legislature's declaration that while being "mindful of the right of individuals to privacy," "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§6250.) This right was, moreover, "enshrined in the state Constitution," by Proposition 59 in 2004. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 164 ["*Sierra Club*"], citing Cal.Const., Art.I, §(3)(b)(1).) The PRA broadly defines "public records" as any "writing" of a public agency "containing information relating to the conduct of the public's business . . . regardless of physical form" and then defines "writing" as including specified written, visual and electronic records plus "every other means of recording upon any tangible thing any form of communication or representation." (§6252(e) & (g).) There is, thus, no dispute that police body-camera videos are public records covered by the PRA.

Although the PRA's broad definition of public records encompasses paper and electronic records, and although the "format of information is not generally determinative" when applying the provisions of the PRA, a 2000 amendment to the PRA added §6253.9, which addresses only electronic records. (*Sierra Club* at 165, citing Stats.2000, ch. 982, "AB2799.") As presented above, Subdivision (a) of §6253.9 provides that "any agency having information that constitutes an identifiable public record not exempt from disclosure . . . that is in an electronic format shall make that information available in an electronic format when requested," adding in subdivision (1) that the information should be made available "in any electronic format in which [the agency] holds the information," and in subdivision (2) that an agency must "provide a copy of an electronic record in the format requested" if that format "is one that has been used by the agency to create copies for its own use or for provision to other agencies."

Subdivision (b) of §6253.9 addresses the costs of providing the record, drawing the distinction between paper and electronic records at issue in this case. To understand the distinction, it must be understood that: "Generally speaking, an agency may recover only the direct cost of duplicating a record." (*County of Santa Clara v. Superior Court* (2009) 170

Cal.App.4th 1301, 1336 ["*Santa Clara*"], citing §6253(b).) Specifically, §6253(b) provides:

> *"upon a request for a copy of records that reasonably describes an identifiable record or records, [each agency] shall make the records promptly available to any person upon payment of fees covering* ***direct costs of duplication****, or a statutory fee if applicable."*

This language has been understood to limit the amount agencies can recover, limiting recoupment to direct costs. These direct costs have been interpreted "to cover the cost of running the copy machine, and conceivably also the expense of the person operating it while excluding any charge for the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." (*Santa Clara* at 1336, citing *North County Parents Organization for Children with Special Needs v. Department of Education* (1994) 23 Cal.App.4th 144, 148 ["*North County*"]; *accord, Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 236 ["*Fredericks*"].) However, as *Fredericks* explains, *North County* dealt with paper records, and since *North County* was decided in 1994, AB2799 added §6253.9 to the PRA, with a new "costs provision" that "has permitted allocation of additional costs for production of information in an electronic format." (*Id.* at 219, 236, citing §6253.9(b).)

As added by AB2799, §6253.9(a)(2) clarifies that "the cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format." But §6253.9(b), also as added by AB2799, "allows an agency to recover specified ancillary costs" beyond the direct cost of duplication when the greater burden of producing a copy of an electronic record warrants asking the requester to bear the additional costs. (*Santa Clara*, at 1336.) In full, subdivision (b) provides:

> *"Notwithstanding paragraph (2) of subdivision (a),* ***the 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*** *either of the following applies:*
>
> *(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.*
>
> *(2)* ***The request would require data compilation, extraction, or programming to produce the record."***

In short, as *Santa Clara* and *Fredericks* both make clear, *North County* remains the law for ***paper records***, but it has limited application to ***electronic records.*** For electronic records, agencies are ***not*** limited to charging the direct cost of duplication if producing a copy requires "data compilation, extraction, or programming," and may "recover specified ancillary costs," including costs not allowed in *North County*, like the cost of redaction. (*Fredericks*, at 237; *Santa Clara*, at 1336.)

Because producing the body-camera videos requested by NLG required the City to compile MP4 video files and then extract exempt video data using a specialized computer program, after reviewing §6253.9(b), the City determined it was permitted to charge NLG for some of its costs, including the cost of compiling videos and removing the exempt information. The express PRA language aligns with this interpretation.

III. THE CITY PROPERLY CHARGED FOR COMPILING THE BODY-CAMERA VIDEOS BECAUSE THE TERM "DATA COMPILATION" ENCOMPASSES SEARCHING FOR AND GATHERING RECORDS FROM A LARGE DATABASE.

Pursuant to the NLG's PRA request, Nathaniel Roush, an IT manager for the City, was required to gather, search for, and compile body-camera videos on a cloud-based database called *Evidence.com*. This process of searching for and gathering responsive electronic records constitutes "data compilation."

In a computer related context, "data" is defined as the following:

"Computer data is information processed or stored by a computer. This information may be in the form of text documents, images, audio clips, software programs, or other types of data."[5]

It thus follows that "data compilation" is the process of bringing responsive computer files ("text documents, images, audio clips") from a database or multiple databases and compiling that information into a record. This is precisely what was done by Roush. "Computer data" files were searched for, gathered, and compiled from a database onto a DVD. In addition to aligning with a plain and commonsense understanding of the term "data compilation," the compilation performed by Roush also aligns with applicable case law, specifically, the Court of Appeal decision in *Fredericks*.[6]

In *Fredericks*, the Petitioner submitted a request for "complaints and/or requests for assistance" made to the San Diego Police Department over the sixty-day period prior to the request. (*Id.* at 215.) Incident History Reports were found to be responsive. (*Ibid.*) Compiling those Incident History Reports,

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5 TechTerms, definition of "data," https://techterms.com/definition/data (accessed on March 7, 2019); *See also*, JA:24.13 (NLG, citing Webster's New World College Dictionary, defining "data" as "facts or figures to be processed; evidence, records, statistics from which conclusions can be inferred; information.")

6 This argument was presented previously in both the trial court and in the Court of Appeal. (JA:562-563 & Appellants' Reply Brief, p. 19; *Compare with*, NLG Opening Brief ("OB"), p. 64-65)

and then performing redactions on those compiled records, allowed the agency to invoice costs by which the court could "condition disclosure upon," since "generation, compilation, and redaction" were required to produce the record. (*Id.* at 238.)

The court in *Fredericks* stated that, because of AB2799 and the integration of 6253.9(b), agencies can charge the costs of compiling electronic records. (*Id.* at 236.) As shown below, the court stated this after recognizing its earlier decision in *North County*:

> "*Generally, the ancillary costs of retrieving, inspecting, and handling material to be prepared for disclosure may not be charged to the requestor.* (North County Parents Organization, supra, 23 Cal.App.4th at p. 148, 28 Cal.Rptr.2d 359 [but concurring and dissenting opinion would allow access to public records to be circumscribed in appropriate instances by 'reasonable conditions regarding format and price'], conc. & dis. Opn. Of Huffman, J., at p. 154, 28 Cal.Rptr.2d 359.) *However, since this court decided that case in 1994, another CPRA costs provision was added in 2000, section 6253.9, subdivision (b) (Stats. 2000, ch. 982, §2, p. 7142), to allow allocation of costs for production of information in an electronic format.*" (*Ibid.*) (*emphasis* added)

Roush searched for computer data in the *Evidence.com* database that was responsive to the NLG's PRA request and compiled that video data into a single responsive file. This process aptly applies to the *Fredericks* Court's usage of the term "compilation." (*Id.* at 236.)

Here, the NLG's initial PRA request did not name or identify any specific videos. The requested body of information was not already compiled into a single folder or simply retrieved from a file cabinet. The records here required 4.9 hours of compilation. (JA:54.) They required searches over 45 distinct parameters. (JA:50.) Thus, a plain reading of the term "data compilation" and an application of the decision in *Fredericks* allows the City to charge the NLG for the extensive compilation of video by Roush.

IV. THE CITY PROPERLY CHARGED FOR EDITING THE RESPONSIVE BODY-CAMERA VIDEOS BECAUSE THE TERM "EXTRACTION" ENCOMPASSES THE REMOVAL OF EXEMPT INFORMATION FROM AN ELECTRONIC RECORD.

A. The Definition of Extraction

The principle issue under dispute is whether the term "extraction" encompasses the removal of exempt information. "[C]ourts appropriately refer to the dictionary definition to ascertain the ordinary, usual meaning of a word." (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1451 ["*County of Stanislaus*"].) Here, there is no dispute as to the dictionary definition of "extraction." (JA:224 [City Ps.&As]; JA:24.13 [NLG Ps.&As].) "Extraction" is defined as "the action of taking out something, especially using effort or force." (JA:411; *compare with*, JA:171 & 629.) Synonyms listed with the word "extraction" are words such as "removal," "taking out," "drawing out," "pulling out," and "withdrawal." (*Ibid.*) It is difficult to imagine how editing a video to remove certain sounds and images is anything other than "taking out something. . . using effort." In the context of video files, the concept of "extraction" perfectly aligns with the editing process done by the City. The process of extracting exempt information from a video involves each and every synonym listed above. It requires "removal," "taking out," "drawing out," "pulling out," and "withdrawal" of exempt information from the record.

When we view just the word "extraction" in the context of the facts before us, a plain, commonsense understanding aligns with the interpretation that "extraction" occurred when the City removed exempt material from the responsive body-camera videos. But the term "extraction" is not read in isolation but considered in conjunction with the entire statutory scheme. Its context matters, as explained below.

B. Extraction Considered in Context to the Statutory Scheme

Construing the term "extraction" to encompass the removal of exempt material effectuates the purpose of §6253.9(b), and makes sense when §6253.9(b) is read in the context of §6253.9 and the PRA as a whole. The PRA is designed to balance public access and privacy, providing for both wide disclosure and multiple exemptions. (*City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, 1433 ["*City of Richmond*"].) It also furthers both access and privacy by requiring disclosure of "reasonably segregable" portions of requested records "after deletion of the portions that are exempted by law." (§6253(a).) "Deletion" in this context means extraction of non-disclosable material from disclosable records— exactly what the City did with the requested body-camera videos.

The right of access to public records "is not absolute." (*Copley Press* at 1282.) There is generally a "tension between the public's right to know and the equally important public interest in protecting citizens and public servants from unwarranted exposure of private matters." (*City of Richmond,* at 1433.) The Legislature acknowledged this "tension between privacy and disclosure," also 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 expresses 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.4th 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.4th 1176, 1182, citing §6254 [with subdivisions (a)-(z) & (aa)-(ad)]; *See also*, §§6254.1-6254.33 & §§6275 - 6276.48 [providing additional exemptions].) Striking a balance between privacy and disclosure, §6255(a) allows agencies to withhold any record if it shows "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

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 remove the "exempt" parts and "produce the remainder." (*Santa Clara,* at 1336.)

Doing this extraction— or conversely producing non-exempt material from exempt records— imposes "a tangible burden" on agencies. (*Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 124.) But nothing in the PRA "suggest[s] that a records request must impose no burden on the government agency." (*Fredericks,* at 237.) To the contrary, "an agency may be forced to bear a tangible burden in complying with the [PRA]." (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601,615-616.) Public agencies are not, however, required to bear an undue burden. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452-453.)

Generally, for paper or text-based electronic records, the segregation process does not impose an undue burden on agencies, whether it involves extracting exempt portions from non-exempt records or non-exempt portions from exempt records. Hence, §6253(b) provides agencies must bear this cost and all other costs involved in producing the record except the "direct costs of duplication" which must be borne by the requester under §6253(b) and §6253.9(a)(2). (*North County,* at 147; *Santa Clara,* at 1336.) However, as this case shows, the segregation process for some electronic records, like videos, can be quite burdensome— far more burdensome than simply taking a black pen to non-disclosable material, like social security numbers in a paper record. (*See*, §6254.29.) It is reasonable to construe §6253.9(b) as intended to relieve this undue burden by requiring the requester to bear the additional costs involved in producing some electronic records, including the cost of "extraction" to comply with the segregation requirement in §6253(a)— whether the extraction is of disclosable material from a record made exempt by §6254(a)-(ad) and §§6254.1-6254.33 or, the converse, extraction of exempt material from a disclosable record.

Either way, requiring the requester to bear this additional cost would serve the interests of both privacy and disclosure. Rather than trying to withhold electronic records because the cost of removing private information would be great, or electing to not remove private information because of the cost, agencies should willingly and fully comply with the segregation requirement of §6253(a), knowing their costs could be recouped. *Fredericks* explains that, should "redaction" of the electronic records requested in that case be necessary because of "significant confidentiality concerns" in §6254(f)(2), and should the "fiscal burdens" of this redaction be unreasonable, rather than a court allowing withholding the records because of this burden, §6253.9(b) allows the court to "condition disclosure upon an additional imposition of fees and costs, over and above the direct costs of duplication." (*Fredericks,* at 238; *compare with,* OB, p.64)

Allowing agencies to recoup their costs editing police body-camera videos is essential. Police body-camera videos may contain invaluable "information relating to the conduct of the public's business" (§6252(e).) The ACLU shared similar sentiments in a 2013 policy statement. (JA:431.)

However, some jurisdictions may choose not to implement body-camera programs because of the fiscal burden of producing the videos for public inspection. (*See*, JA:216-217 [citing Exs. 1-7 to City Declaration at JA:284-340]; *See also*, JA:323, Seattle Police Department statement that the "painstaking redaction process" for body-camera videos "takes a significant amount of time," explaining 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"].)

Alternatively, instead of denying public access to police body-camera videos because of the cost of extraction, agencies may not properly edit videos, failing to preserve individual privacy in situations where privacy is needed most. As the ACLU policy statement on body cameras states, compared to other video surveillance,

> *"Body cameras have more of a potential to invade privacy [as] [p]olice officers enter people's homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations."* (JA:431.)

Hence, to resolve the tension between privacy and transparency, the ACLU has recommended editing body-camera videos, showing that §6253.9 is a key device in resolving this tension. (*Id.* at 435.)

Editing some electronic records is not as costly and burdensome as producing edited body-camera videos. It may be no more burdensome to produce copies of some electronic records than it is to produce copies of paper records, minimizing the cost to the requester. It is important to remember that if a record is simply copied for a requester, requiring no compilation or extraction, the "cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format." (§6253.9(a)(2).) But as here with the NLG, §6253.9(b) shows that in certain circumstances there is an exception, allowing agencies to invoice specified costs, including the cost to remove exempt material from a record.

The undisputed plain and commonsense meaning of "extraction" encompasses the removal of exempt material from body-camera videos before producing requested copies. Here, a plain reading is all that is necessary. The statute says what it means. There is no need to read beyond the contents provided in §6253.9. But if we delve even further, this construction, that "extraction" means taking something out, is further supported by §6253.9's legislative history.

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V. THE LEGISLATIVE HISTORY OF §6253.9 SUPPORTS THE CITY'S INTERPRETATION OF THE STATUTE.

The provision under dispute, §6253.9, was integrated into the PRA by Assembly Bill 2799. Prior to the adoption of AB2799, the only reference in the PRA to electronic records was the mandate that "[c]omputer data shall be provided in a form determined by the agency." (LH:3, 28, 69.) Requesters were at the behest of agencies to determine the form in which they received records. In order to give the requester more control over the format in which records are received, AB2799 was drafted with the purpose of making electronic records available in an electronic format, with the hope of minimizing "the flow of paper" needed to accommodate PRA requests. (LH:1-2, 320.)

There were multiple failed precursor bills to AB2799, the primary precursors being Assembly Bill 179 ("AB179") and Senate Bill 1065 ("SB1065"). (JA:398) These bills were similar to AB2799 and failed "for reasons of expense, administrative burdens, and the potential breach of citizen confidentiality."[7]

AB179 was introduced in 1997 and vetoed that same year. (LH:1203.)[8] The Governor stated that a reason AB179 was

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7 LH:169 (County of Orange opposition to AB2799: ["[W]e believe that AB 2799 contains the same provisions as those contained in AB 179 (Bowen) and AB (*sic*) 1065 (Bowen), bills that were vetoed by two different governors for reasons of expense, administrative burdens, and the potential breach of citizen confidentiality."].)
8 Filed concurrently, the City requests this Court take judicial notice

vetoed was because "[g]overnment employees spend thousands of hours each year . . . segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy." (LH:897.) Opposition to AB179 stated that the bill would create a "significant fiscal and administrative burden for local government" and that there was no authority for the "recovery of staff time and equipment to duplicate the data, only for the recovery of direct costs, such as charging for a disk." (LH:1190 [Senate Rules Committee Third Reading]; *See also*, LH:1222, [County Clerks Association of CA letter in Opposition, stating AB179 "did not include a key provision . . . to recover the full cost of providing electronic-records to commercial entities" and that "the ability of local agencies to recoup the full cost of providing a service is preferable to collecting a partial cost for the service."].)

Following AB179, SB1065 was introduced in 1999 and considered to be a re-introduction of AB179. (LH:1192 [Letter of author]; LH:1168 [Bill history].) Similar cost concerns were raised in SB1065, whereby opponents recommended that SB1065 "be modified to clarify that the programming expenses incurred by the agencies in selecting, sorting, manipulating, and masking the data be part of the direct costs associated with duplicating electronic records." (LH:1254, [Dept. of Finance Bill

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of the entire legislative history of §6253.9, which includes documents related to AB179. These legislative records that were not judicially noticed by the Court of Appeal include LH:1153 and above.

Analysis]; *See also*, [Background/Question & Answer, stating that opposition has concerns over the cost of "redaction, equipment, and hardware and software needs."]; LH:1300 [City of San Diego opposition because SB1065 would "undercut entire operations" in addition to "escalating costs to comply."].) SB1065 was vetoed and stricken from the Senate file on January 10, 2000 but was quickly replaced the following month with AB2799, the bill giving rise to §6253.9, and the bill that successfully survived the legislative gauntlet. (LH:1168)

As originally introduced in February 2000, AB2799 was "[a]n act to amend Sections 6253 and 6255 of, and add Section 6253.2 to, the Government Code." (LH:1) AB2799 proposed several controversial changes to existing law, but the initial opposition focused on a "reverse balancing" provision, which allowed disclosure of records if the public interest in disclosure outweighed the public interest in non-disclosure and which was rapidly deleted. (LH:5, 10).9 After this "reverse balancing"

9 The primary reason that the "reverse balancing" provision was deleted was because of concerns related to the disclosure of exempt, confidential information, as well as privacy concerns for those identified in the records. (*See*, LH:126, [Wine Institute letter stating that "reverse balancing" could jeopardize "highly sensitive information" and "individuals' and businesses' right to privacy"]; LH:142, [San Bernadino County Sheriff's Department letter, who had privacy concern for victims and being "prevented from redacting much of this information"]; LH:416, [G.O. Committee Report, stating that opposition is opposed "because they fear this provision will permit the release of confidential victim and witness information . . ."].)

provision was removed, various concerns remained, including that, because of the need to remove exempt information, producing some records in electronic format could be costly, burdensome and difficult (if not impossible). (*See*, e.g, LH:40-41 [Com. Analyses, both stating that opponents "claim *redacting* the nondisclosable information from the electronic records could be a costly and time-consuming process"]; LH:97, 231: [L.A. Sheriff Letters, stating "*redacting* information . . . which is confidential and not otherwise subject to disclosure" may be impossible]; LH:153 [San Bernardino Sheriff Letter, stating AB2799 "fails to address the *redaction* problems created by providing the data in an electronic format," adding no program currently exists with "the capability of extracting exempt records from releasable ones"]; LH:164, 266 [Com. Analyses, both stating "workload in *redacting* non-disclosable electronic records from disclosable records" was a "[p]otential cost"]; LH:195-196 [Republican Analysis, stating some electronic information "may not be for public consumption" and purging to "eliminate nondiscloseable records ... could be a costly endeavor," with one opponent claiming that "*redacting* (removing) the sensitive parts of records" may be impossible]; LH:230 [L.A. County Letter, stating some electronic records "would require special programming to provide information without jeopardizing employee privacy," and AB2799 "will increase substantially the cost of legal review, *redaction* and special programming"] (*emphasis* added).)

The Legislature was also informed that, because there was no provision in AB2799 for agencies to recover the greater costs that could be incurred in producing electronic records, agencies could only recover the "direct costs of duplication", which has been interpreted to preclude recovery of many costs, including redaction costs. (*See*, e.g., LH:40, 71, 341 [Com. Analyses, stating, "Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release]; LH:153 [San Bernardino Sheriff Letter, stating the bill "fails to address the actual cost to the public of *redacting* an electronic database," explaining "to *redact* the database, each record must be reviewed individually," but "costs for personnel to review the database are not currently reimbursable, only the cost of the copy of the file"]; LH:196 [Republican Analysis, stating opponents claim "that the costs of *redacting* exceed the amounts that legally they may charge for copies"]; LH:533 [Clerks etc. Letter, stating the bill allows recovery of the direct costs of duplication but that "does not include... costs associated with *redaction* of any information that is exempted or prohibited from disclosure"]; LH:308 [Analysis on Third Reading, stating AB2799 "does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary." This is problematic because "agencies retain massive databases which may include disclosable as well as nondisclosable public records," and that "separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that is more vulnerable to error and may result in the unintentional release of nondisclosable records."] (*emphasis* added).)

Because of these agency complaints and opposition to AB2799, the author "scheduled" a meeting with opponents "to listen to their concerns," noting their argument 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" and "this process will be costly and time consuming," but he initially expressed little sympathy for this argument. (LH:429 [Author's "Questions and Answers] (*emphasis* added).) The meeting in June 2000 changed his mind.

The author "worked closely" with opponents and in June 2000, proposed an amendment to address their concerns about "the cost and feasibility of *redacting* public information."10 (LH:198 [Author's "Background Information"] (*emphasis* added); *See also*, 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

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10 June 22, 2000 amendments to AB2799 hereafter referred to as the "June amendment."

electronically held record"]; LH:211 [Clerks etc Letter, thanking author "for agreeing to amend the bill to address their concerns" about "costs incurred" producing electronic records].)

The author's June amendment (approved by the Senate in July and the Assembly in August) added §6253.9(b) as it now reads. (*See*, LH:33 ["Final History"]; LL:16-21 [Leg. Counsel Digest & Bill showing June revisions to AB2799].)11 The added language was understood to provide that "*the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced*" (LH:17 [Leg. Counsel Digest]; accord, LH:170 [Com. Analysis].) Put differently, as the sponsor stated in a letter to the Governor, urging he sign the bill:

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11 At the same time of the June amendment, §6253.2 was renumbered as §6253.9 because of conflict with another bill. (LH:404.) In addition to integrating §6253.9(b), the June amendment also created §6253(c)(4), which allows additional time for agencies to respond to requests if an agency has "[t]he need to compile data, to write programming language or a computer program, or to construct a computer report to extract data." (LH:19.) This language in §6253(c)(4) is a reiteration of the language in §6253.9(b). The legislative record suggests that the reason §6253(c)(4) was integrated was because of the "time-consuming" nature of compiling, extracting, and programming electronic records (*see*, LH:161, 207, 478), and because "sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy." (LH:1100 [Bill Analysis of Senate Judiciary Committee, June 2000]; *See also*, LH:873, para. 3 [Comparing a search for paper records with electronic records].)

> "AB 2799 was amended on June 22, to ensure the bill would not place new burdens on state or local agencies. Specifically, the bill was amended to require *the requester to bear the cost* of producing a copy of an electronically held record [as set forth in the text of §6253.9(b)]. & This provision guarantees the costs associated with any extra effort that might be required to make an electronic public record available shall be borne by the requester, not the state or local agency." (LH:358)

"Extra effort," as used by the author, is a reference to how §6253.9(b) should be distinguished, broadly construing the additional burdens of producing electronic records from paper requests.

State agencies and departments similarly read §6253.9(b) broadly. (*See*, e.g., 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"].)

It was also understood that the June amendment could override *North County* with its limits on "direct costs of duplication" in some circumstances. (*See*, LH:850-851, 853 [Water Resources Board Enrolled Bill Report explaining "*North County*," with its limits on charges for producing copies of records "imposed an additional financial burden on agencies" but AB2799 requires "the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced," and, thus, it would have little "fiscal impact" on the Board (which, at any rate, gets "[v]ery few requested records [that] require redaction or reprogramming")]; LH:864-865 [Water Resources Dept. Enrolled Bill Report, stating "under this bill some requesters would pay only the direct costs of duplication" while "[o]ther requesters would be required to pay the entire cost of locating and producing a copy" and further stating AB2799 addresses opponents' "concerns" in that, among other things, "requesters must bear the entire cost of producing copies in circumstances where a copy is not readily available"].)

After the June amendment, nearly all opponents withdrew their opposition. (*See, e.g.*, LH:227 [Sponsor's Letter, stating June amendment "removed all known opposition" except for Orange County]; LH:187 [Senate Judiciary Committee Report: "The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials. The amendments last made to the bill shifted these entities' position to neutral."]; LH:391 [Clerks etc. Letter, withdrawing opposition after June amendment; LH:390 [State Sheriffs Assn. Letter withdrawing opposition after June amendment]; LH:389: [L.A. County Letter, stating June amendment "address Los Angeles County concerns"].) The June amendments now allowed agencies to recoup the costs of compiling and editing records if computer services were necessary to produce the record. (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: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: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."].)

There is no question as to what the June amendment sought to accomplish. The legislative history shows the path and pressures that led to the adoption of the statutory provision at issue here in this case. However, if any question remained as to how electronic records should be invoiced, the author removed any ambiguity when he made the following statement:

"Q — What do the Senate Amendments do exactly?

A — The amendments address several issues:

1. The amendments would specify what costs the requestor will be responsible for. If the record is an electronic record in a format used by the agency to make its own copies, the cost of duplication would be the cost of producing a copy in an electronic format. For example, if the request means simply downloading a document on a disk, the cost of the duplication would only be the cost of the disk (*sic.*)

   However, if the public agency would be required to produce a copy of an electronic record outside of its regularly scheduled intervals (for instance, length quarterly reports) or the request would require extensive data compilation, extraction, or programming, the requestor would be required to pay for the costs of producing the record, including the cost to construct a record and any other computer services necessary to produce the record." (LH:486-487) (emphasis added by Author)

The author makes clear the purposes of subsection (a) and subsection (b) of §6253.9. Subsection (a) concerns retrieval of an identified record by "simply downloading a document on a disk." Subsection (b) can be applied to electronic record requests that require "any other computer services necessary to produce the record."

The legislative history effectively closes the door to any colorable debate as to the meaning of the statute. If electronic records require any "computer services necessary to produce the record," beyond "simply downloading" the record, then the requester bears those costs. (LH:358) The City's 4.9 hours of data compilation and 35.3 hours of extraction using specialized programming are precisely the construction and computer services conceptualized by the Legislature. Moreover, these invoiced costs fit the intent of the bill.

AB2799 was created with the hope of widening the range of documents to which a requester has access. Section 6253.9(b) aligns with this purpose. It increased access because it expanded the definition of what is considered "reasonably segregable." (§6253(a).) Nearly all electronic records, regardless of how many exemptions are present, or how much extraction of exempt material is required, have since become accessible to a requester. No request can be considered unduly burdensome with proper recoupment of agency costs. Additional costs equate to additional access (*See*, JA:643-644), so with AB2799 and §6253.9(b), overall, requester access is improved.[12]

A. The Legislative History Chronicles Events Leading to the Adoption of §6253.9 and Therefore the Legislator's Comments and Agency Reports are Entitled to Consideration by the Court

A glaring void exists in the NLG's arguments concerning the legislative history. No legislative record provided by the NLG supports its fundamental position that "extraction" should be narrowed to only include taking non-exempt data out of an exempt record and, though construction, using that non-exempt data to create an entirely new record that did not previously exist. There is simply no support for this interpretation.

Yet, as shown above, the City has a wealth of support. The legislative history, which were the records available to the Legislature when lodging their respective votes, and the information available to the Governor when signing the bill, consistently and repeatedly reflect the statutory interpretation of §6253.9 as presented herein by the City.

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12 Regarding the issue of "access," the case *County of Stanislaus* is instructive. In that case, the Court rejected the Plaintiff's claim that fees limit the right to access. The court stated: "The evidence presented in this case shows that (1) 'access' has a monetary component, an elapsed time component and a convenience component and (2) there are tensions or tradeoffs among these components." (*Id.*, at 1451-1452.)

In response to the compelling legislative history, the NLG suggests that this Court ignore the legislative record, including all author and agency statements and reports. However, applicable case law contradicts such a dismissive approach.[13]

The NLG cites *Altaville Drug Store, Inc. v. Employment Development Department* (1988) 44 Cal.3d 231, whereby this Court stated that a single "1979 Committee Report" and two letters in the legislative record "do not constitute legislative intent." (*Id.* at 238 & fn. 6.) This court stated that the letters in the *Altaville Drug Store* decision said "nothing about the question before" the court, or the effect of the applicable bill amendment to the provision being analyzed. (*Ibid.*) But this present matter here is distinguishable, as AB2799's legislative history specifically addresses "the question before us" and the "effect" of the applicable statutory "amendment." (*Ibid.*) The legislative record cited by the City is directly, and specifically about the effect of the June amendment on §6253.9 and §6253.9's effect on the PRA generally.

The NLG also cites *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692 ("*California Teachers*"), claiming that the comments made by individual legislators, including the author, does not necessarily

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13 City's Request for Judicial Notice (filed concurrently) provides further support why legislative history is appropriately considered. (*See*, City's Request for Judicial Notice, p. 6-7)

express the view of the Legislature. (OB, p.53.) *California Teachers* is a case that has been long held precedent for legislative history analysis and is cited in all the legislative history cases referenced by the NLG. (*Ibid.*) An important point made in *California Teachers* is not noted in the NLG's Brief. After stating that an author's comments may not necessarily reflect the Legislature as a whole, this Court stated the following:

> "A legislator's statement is entitled to consideration, however, when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion." (*California Teachers*, at 700.)

This is exactly what happened here. The author of AB2799 does not only express personal sentiments, but provides a clear description of the events giving rise to the integration of §6253.9(b) into the bill— he chronicles the path of §6253.9's adoption.

For example, the author of AB2799 narrates the adoption of §6253.9(b) when describing the bill opposition prior to the June amendment, and then later, describing the remaining opposition following the June amendment. As noted previously, prior to the June amendment, the author stated 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 that the author had "scheduled a meeting with opposition next week to listen to their concerns." (LH:429, [Questions and Answers]; *See also*, LH:198, para.5, & LH:207, para.3.) Then on June 28, 2000, following the June amendment giving rise to §6253.9(b), the author explains that opponents to the bill 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." (LH:347, [Questions and Answers].)

Even though cited by the NLG, *California Teachers* aligns with the City's position that the author's statements are instructive in interpreting §6253.9(b)(2). These author comments above chronicle the author's appeasement of bill opponents, and to this purpose, present why the author integrated §6253.9(b) and the cost-bearing provision at issue.

The NLG also requests that this Court ignore all letters by agencies describing AB2799. The NLG states that "[l]etters to individual legislators, including the author, do not show legislative intent." (OB, p. 53.) What the NLG misses, and what makes many of these agency letters particularly instructive, is that the letters verify the sentiments of the bill author, not only in content but regarding timeline, adding additional clarity to the legislative intent. In *Hassan*, a case cited in earlier proceedings by the NLG, the Court implies that such agency letters are not instructive *unless* supported by a statement from the legislature, such as the bill author here. (*Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 723 ["We note that the legislative record . . . contains at least three letters. But the lack of support for this interpretation from any source within the Legislature itself confirms the Court of Appeal's conclusion . . ."]; NLG Respondent's Brief, p. 39.) Here, the statements of the author, discussing concessions made to bill opponents, and the timeline by which opposition was withdrawn from the bill in relation to these author comments, clarifies the legislative record.

For example, look at the California Association of Clerks and Elected Officials ("CACEO"). Prior to the June amendment, the CACEO expressed that AB2799 did not address the cost burdens associated with data compilation, extraction, and programming:

> "[W]e understand that it is the intent of the sponsor that such costs not include costs associated with any *minor programming* that may be required to comply with a request made pursuant to this section of the bill and costs associated with *redaction of any information* that is exempted or prohibited from disclosure by other sections of law.
>
> Additionally, the current language of the bill does

> not address public agency costs or difficulties involved in providing information that, although regularly provided by the agency, is provided at a specific time interval due to the *size or complexity of the database from which the information is extracted, or other workload factors that would make it extremely burdensome to provide the record 'on demand.'* "
>
> (LH:533-534) (*emphasis* added)14

Following this statement by the CACEO and subsequent negotiations, the June amendment was made. (LH:358.) The CACEO thereafter withdrew its opposition:

> "This bill now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill. We appreciate your willingness, and that of the bill's sponsor, to work with us to resolve the issues raised during the discussion of AB 2799." (LH:302, 391,

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14 *See also*, LH:513 [San Bernardino County Sheriff, May 3, 2000, stating that "[t]his bill also fails to address the actual cost of redacting an electronic database" and that "[a]ll of the costs for personnel to review the database are not currently reimbursable." San Bernardino Sheriff's opposition later withdrawn following the June amendment.]; LH:585 [County of Los Angeles Opposition, May 2000, stating AB2799 "would increase substantially the cost of legal review, redaction and special programming" and that "special programming" is necessary "to provide information without jeopardizing employee privacy." This opposition was also withdrawn following the June amendment.]

[CACEO Letter to Assembly Member Kevin Shelley (AB2799 author) Withdrawing Opposition, June 21, 2000].)

To summarize more basically, the CACEO opposed AB2799 because the bill did not address programming, redaction, and compilation costs, then following the §6253.9(b) amendment by the author, the CACEO removed its opposition to the bill because the amended bill addressed its cost concerns.

Once §6253.9(b) was integrated into the bill, with the understanding that ancillary costs such as "data compilation, extraction, and programming," would be borne by the requester, nearly all critics to the bill withdrew their opposition. (LH 347; LH:198, para.5.) The author's statements and the agency statements are aligned. Both support the City's statutory construction that "extraction" means taking out information from an electronic record, and that the associated costs in preparing a record for production, such as compiling records, are to be borne by the requester.

The most important thing to understand about the legislative history is this— these statements made by the bill author and by agencies are factual accounts of how AB2799 was swayed and fashioned. There are no logical leaps, no strained or hidden interpretations, the record just is what it is, a reflection of why the Legislature enacted AB2799 and the §6253.9(b) cost bearing provision.

B. This Court's Analysis of §6253.9 in *Sierra Club* Concerns Accidental Disclosure of Exempt Information when Producing Databases as well as the Allocation of Personnel to Compile and Edit Records and Does not Directly Address Cost Reimbursement

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." (OB p.51, 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. (*Ibid.*) This Court was not considering whether that staff time redacting records could be charged to a requester.

It is true that bill opposition "remained in effect through the final enrolled bill," and that the complaint of staff diversion and accidental disclosure remained issues of debate. (*Ibid.*) Even though the June amendment addressed agency concerns regarding extraction costs, 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 [Questions and answers] (*emphasis added*); *See also*, LH:1102 [Similar description of "withdrawn opposition" provided in Senate Judiciary Committee Bill Analysis].)

Orange County did not withdraw its opposition even though amendments were drafted to address its cost concerns. Until the bill was signed into law, Orange County continued to voice opposition based on the considerable time it takes to gather, copy and edit electronic records. (LH:280, [Bill Analysis: "The 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 AB2799 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."]; LH:222, [Sponsor letter, stating that "the single remaining opponent to AB 2799 (Orange County), has decided to oppose any version of legislation."]; *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.)

It is understandable that one could confuse 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 diversion and accidental disclosure. Even though, indirectly, staff time and accidental disclosure were addressed by the integration of §6253.9(b), they were never directly addressed by the Legislature. Under §6253.9(b), agencies may be reimbursed for specified compilation and extraction costs, but agencies are still required to divert staff to compile and edit the requested records, and accidentally disclosing exempt information is still a possibility despite the June amendments. The *Sierra Club* decision does not directly contradict §6253.9(b) and the reimbursement of costs associated with compiling, extracting, or programming electronic records.

The NLG uses *Sierra Club* to claim that the Legislature did not intend to encompass "redacting electronic records" within the term "extraction" and that no such inference can be made. (OB, p. 50-51) This is an improper reading of *Sierra Club*, as well as an improper construction of the term "redaction," as shown below.

VI. THE DIFFERENCE BETWEEN "REDACTION" AND "EXTRACTION" IS THAT THE DEFINITION OF "REDACTION" FOCUSES ON THE REMOVAL OF TEXT, WHILE THE DEFINITION OF "EXTRACTION" CAN BE APPLIED TO MULTIPLE ELECTRONIC MEDIUMS SUCH AS IMAGES, SOUND, AND ELECTRONIC TEXT.

Over the course of the several briefs submitted to the trial court and Court of Appeal, just as in the briefing here before this Court, the parties agree that "extraction" means taking something out. (OB, p. 41, JA:24.13.) But in addition to taking something out, the NLG believes that §6253.9(b)(2)'s use of the term "extraction" only applies to situations where a record is enlarged through the process of extraction, rather than reduced. The NLG claims that "[a]n extraction is used to create, construct, or produce; a redaction, on the other hand, is something that results in reduction." (OB, p. 42.) Context, of course, matters. The NLG's position ignores the context in which "extraction" is placed within the PRA. When the term "extraction" is used when in reference to editing or manipulating electronic records in §6253.9(b)(2), "extraction" means taking out information, and was likely used by the legislature because the term is applicable to the myriad of electronic mediums that exist. Unlike the definition of "extraction," the definition of "redaction" does not encompass all electronic mediums.

"Redaction" is defined as "the process of editing *text* for publication."15 (*emphasis* added) Important in distinguishing "extraction" from "redaction" is the idea that "redaction" is focused on editing *text*, while "extraction" is a word used to describe taking out something generally. This is why we do not say "redacted a credit card from a wallet"— "redaction" is

15 Oxford Dictionaries, 'definition of redaction', https://en.oxforddictionaries.com/definition/redaction (accessed of March 13, 2019); *See also*, Cambridge Dictionary, 'definition of redaction' ["the process of removing words or information from a text before it is printed or made available to the public, or the text itself after this has been done"] https://dictionary.cambridge.org/us/dictionary/english/redaction (accessed of March 13, 2019); *Compare with*, Techopedia, 'definition of redaction', ["Redaction is a form of editing of a physical document by means of censoring, but not necessarily omitting, specific words, sentences or entire paragraphs. The portions that need to be redacted are simply blacked out so that they cannot be read." "If redaction is applied to electronic documents, however, it simply means the permanent removal of information and not the obscuring of it."] https://www.techopedia.com/definition/30529/redaction (accessed of March 13, 2019) (Source cited by NLG, JA:24.13)

defined as applying to the removal of text from a document while "extraction" has wider application. (*See*, OB, p.42)

For electronic records, a more general concept rather than a text specific concept best captures the purposes of §6253.9(b)(2) because electronic records are not always text based. Electronic records can range from images, to sound, to video. For example, in a video, there is no text, so the term "redaction" which focuses on the removal of text does not perfectly align. A video requires a broader, more encompassing word. Hence, the legislature adopted a word that allows for the removal of information spanning numerous electronic mediums, and thus, the inclusion of the word "extraction," as opposed to "redaction," is appropriate.

It is also important to note that "extraction" encompasses the process of "redaction," as "redaction" is just a form of "extraction," focusing on the removal of text specifically, as opposed to removing information generally. The concepts are not mutually exclusive.

The confusion of this term by the NLG, believing "extraction" was integrated to mean something other than "redaction," is a misreading of the statute. We agree that the definition of "extraction" is not identical to the term "redaction." Multiple definitions of "redaction" focus on editing text. (*See*, fn. 15) Across the board, in every reference book or dictionary, "extraction" means taking something out. But again, the terms are not mutually exclusive. The manipulation of an electronic record can be both "extraction" and "redaction" as was the case in *Fredericks,* whereby the agency removed electronic text.16 Or, as here, an electronic record which is not text based, like video, will require "extraction" since it is not text that is being taken out but rather video and sound that is removed from the record. The legislature chose the word "extraction" and not "redaction," not because it meant to exclude the concept of "redaction," but because it is better suited to the process of removing material from multiple electronic mediums, such as the body-camera videos at issue here. Confusing these terms and failing to recognize the distinction between "redaction" and "extraction," is one of the critical errors made by the NLG.

But even with all this said, and even though the NLG improperly construes the statute to mean that "extraction" requires creating a new record, the City's editing of the body-camera videos here would fall into the NLG's definition. (*See,* JA:268, [Declaration of Dr. Su: "Microsoft Movie Maker uses the following basic steps to edit digital videos – importing a video/audio file, decompressing and rendering the video/audio, modifying or extracting video/audio, and re-compressing and exporting the video/audio into a new file."].) The literal digital functions taking place within Microsoft Movie Maker is

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16 *Fredericks,* at 220 (Requester sought Calls for Service reports and Incident History Reports).

extraction of data and recompression of that data into a new file. But Courts have held that this process of creating a duplicate, redacted version of a record does not constitute "creating new records." (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 667 ["*Sander*"].) Instead, courts have viewed this process of producing an edited record as either redaction, segregation, or extraction of an existing record. (*Ibid.*)

Still, it is difficult to discern what the NLG would consider "extraction" in the context of video records. Even though the NLG claims that the video editing here by the City is not "extraction" as understood in §6253.9(b), the NLG never explains what forms of video "extraction" would fall into its definition. In the context of video files, it seems the NLG's concept of "extraction" requires an agency to splice together various clips from a video to make a new composition. This interpretation does not align with applicable case law nor the statute's legislative intent.

In the recent *Sander* decision, the Court of Appeal affirmed the "well-established" principle that public agencies do not have to "create new records" in response to PRA requests:

> "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.'

> (§6253.9, subd. (b).) But segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record'" (*Sander* at 665-666, & 669, para. 3, citing *Yeager v. Drug Enforcement Administration* (1982) 678 F.2d 315, 323.)

An agency "cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data." (*Ibid.*) This is precisely what the NLG believes "extraction" is meant to accomplish in §6253.9(b)(2). The NLG thinks "extraction" means constructing new "substantive content." The Legislature, just as the *Sander* court, also had a different interpretation from the NLG.

The Legislature makes clear that there is no duty to construct a record in the way conceptualized by the NLG. It did not even require agencies to create electronic records from existing paper records, let alone splice together records to form new and distinct records. (JA:199, [Regarding fold-out maps, the Legislature prescribed that "this bill would not impose a duty on the public agency to convert the records into electronic format."].) Furthermore, the Legislature sought to ward against the "release of a record in the electronic form in which it is held if its release would jeopardize or compromise the . . . integrity of the original record." (LH:248, citing §6253.9(f).) Spliced videos that do not depict actual events do exactly what the Legislature feared— they produce "altered and then retransmitted" records that are inaccurate representations of the originally stored information. (*Ibid.*) The Legislature only sought to expand the production of existing electronic records, allowing agencies to recoup costs if "extraction" is required.

If an agency must take out something from an electronic record in order to prepare that record for production, whether "redaction" of electronic text or "extraction" of sound and images, the requester bears the cost to produce the record, including the ancillary tasks associated with production. Nothing whatsoever in the Legislative record, nor any case law or anything within the PRA, suggests that "extraction" used in the context of electronic records means anything other than taking out information. The NLG's prescription that "extraction" requires a distinct creation, and "redaction" is the only word that can be used by the Legislature to include taking out exempt content, is not supported by applicable case law or anything within the legislative history. There is no authority supporting the NLG's strained definitions.

Because the NLG is left without any meaningful support, a default to the plain language of the statute is appropriate, and when considered in the context of electronic records, "extraction" and "redaction" act as synonyms— the terms are used synonymously in the legislative record and in applicable case law. The terms are easily understood and seek the same result, to protect confidential information, which is what the

City has done here. Through "extraction," the PRA's privacy interests have been upheld.

Conclusion

And privacy exemptions are not without meaning. They exist because we believe some situations require protection. For example, §6254(f), regarding security measures, exists because we believe that above transparency that it is important to keep people safe. For the medical information exemption in §6254(c), our Legislature declares that medical record privacy is paramount for those possibly experiencing their worst life moment. If a record concerns a child, an exemption exists. Sex crime victims are properly afforded protection. Essentially, when we are most vulnerable, the Public Records Act steps in.

At the center of this matter is a protest where people gathered in Berkeley to illuminate the senseless killings of Michael Brown and Eric Garner. Protests, if captured on body-camera video, create copious amounts of exempt, private information. The security procedures utilized to preserve public safety at a protest are unlike nearly all other police activities. The time spent on the editing of the videos here, along with the associated compilation of information, is not reflective of body-camera videos generally. It is only reflective of the unique burdens that the NLG's PRA request placed on the City in this specific situation. This is why the Legislature integrated

§6253.9(b)— it hoped to allay the economic strain for these types of burdensome requests.

Public viewing of body-camera video is essential, yes, this is indisputable, but as essential are the exemptions provided in §6254. Ignoring the privacy protections present in the PRA ignore one of its foundational mandates— mindfulness to the right to privacy. Video is not the only thing that was produced to the NLG. The City also made public certain insights into the lives of people. Actual people. People who deserve protection.

On the ultimate issue of privacy versus transparency, the parties are not far apart. Transparency is essential to a virtuous society. But privacy should not be forgotten, placed in the shadows, or given a back seat. It deserves our attention, just as Eric Garner, and Michael Brown, and so, so many others.

Dated: March 31, 2019

/s/ Justin Nishioka
Justin Nishioka
Assistant City Attorney
Attorney for Defendants and
Appellants

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Dated: March 31, 2019

/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 April 1, 2019, I served the document(s) described as:

- **ANSWER BRIEF ON THE MERITS**

on the interested parties in this action as follows:

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[X] (BY ELECTRONIC MAIL) Pursuant to the parties stipulation for email service, I served the above documents to the email listed in the service caption above.

[X] (STATE) Under the laws of the State of California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on April 1, 2019, at Hayward, California.

Morgan Cahee