

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

FILED
San Francisco County Superior Court
MAY 17 2019
CLERK OF THE COURT
BY: _____
Deputy Clerk

FIRST AMENDMENT COALITION; KQED
INC.,

Case No. CPF-19-516545

Plaintiffs,

vs.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR WRIT OF MANDATE**

XAVIER BECERRA, ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA; CALIFORNIA
DEPARTMENT OF JUSTICE,

Defendants.

Recent revisions to Penal Code §832.7 provide greater access to police misconduct records. The new law opens “for public inspection” “records maintained by any state or local agency” relating to: “discharge of a firearm at a person,” “use of force” that “resulted in death, or a great bodily injury” or a “sustained finding” of “sexual assault” or “dishonesty.” (Id.) In requests to California’s attorney general and its department of justice,¹ the First Amendment Coalition and KQED Inc. sought inspection of such records for 2014-2018. The attorney general refused to disclose the records. This motion followed.

Each of the attorney general’s three grounds for refusing to disclose the records (Opp. 7:22-8:3) is unavailing, so the motion is granted and a peremptory writ of mandate shall issue.

¹ Because the attorney general heads the department, this order refers to defendants as the “attorney general.” It is also noted that writ proceedings often use the term “petition” rather than “motion,” and “petitioners” and “respondents” rather than “plaintiffs” and “defendants.” Both sides in this matter use the same set of labels and they do not seem to matter. All emphasis in this order has been added.

First, the attorney general argues that the records must be sought from the law enforcement agencies that employ the officers, not him. This issue turns on the meaning of “records maintained by any state or local agency” in Penal Code §832.7(b)(1).

Statutory interpretation begins with the statutory language itself. (*MacIsaac v. Waste Management Collecting & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082-83.) “If the statutory language is clear and unambiguous,” a court’s “task is at an end.” (*Id.*) So here. Nothing in Penal Code §832.7 suggests that only an employing agency can “maintain” records – a restriction the California legislature could easily have imposed had it so intended. Rather, “maintain” in this context means “to continue in possession of” or “care for” – what the attorney general is doing with these records. (Black’s Law Dictionary p. 1039 (9th ed. 2009); *City of San Jose v. Sup. Ct.* (2017) 2 Cal.5th 608, 622 (California Public Records Act “encompasses writings” an agency “owns, uses, or retains, regardless of authorship”).) Further bolstering the point is the legislature’s use of the broad term “any state or local agency.” (Pen. Code §832.7(b)(1); see also *City of San Jose*, 2 Cal.5th at 617 (“constitutional imperative” that a California statute “shall be broadly construed if it furthers the people’s right of access and narrowly construed if it limits the right of access,” citing Cal. Const., art. I §3(b)(2).)

The attorney general argues that Penal Code §832.7(a)’s final sentence supports him. It does not; it merely means that, when the attorney general investigates police misconduct, he may access records without a court order. (*Fagan v. Sup. Ct.* (2003) 111 Cal.App.4th 607, 617.) The attorney general also says it would burden him to disclose records that an employing agency could disclose. But the legislature could not have been oblivious to the cost of its §832.7 revisions, and the people will likely be agnostic as to which tax-funded agency foots the bill. (See *County of Santa Clara v. Sup. Ct.* (2009) 170 Cal.App.4th 1301, 1327 (“nothing...to

suggest that a records request must impose no burden on the government agency”).) As to the attorney general’s concern that he may lack “knowledge of issues relating to the records,” he is expressly authorized to consult with employing agencies. (Gov’t. Code §6253(c)(3).)

The attorney general further asserts that a Government Code §6255 “balancing test” allows him to refuse to disclose the records. Whether the test applies to Penal Code §832.7 is debated. In any event, the attorney general’s terse, conclusory and speculative declaration would not pass the test.


Second, the attorney general argues that pre-2019 records need not be disclosed because the Penal Code §832.7 revisions are not retroactive. He says “no controlling Court of Appeal decision *on the merits* has resolved that issue.” Actually, in *Walnut Creek Police Officers’ Association v. City of Walnut Creek* (2019) 33 Cal.App.5th 940, our First District Court of Appeal expressly rejected this same argument as “*without merit*.”

Third, citing Government Code §6254, the attorney general says records will need redaction “to preserve attorney-client privilege and attorney work product.” (Opp. 8:1-3, 19:11-14.) This may be so, but it is not a proper ground for entirely refusing to disclose the records.

* * * *

Counsel are to meet and confer regarding (1) a form of the writ of mandate, (2) logistics of the attorney general’s compliance with the writ and (3) any additional court orders or decisions felt necessary. A hearing in this court is set for 9:30 a.m. June 21, 2019, with a joint written report on the meet and confer to be filed by June 14.

Dated: May 17, 2019



Richard B. Ulmer Jr.
Judge of the Superior Court

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on May 17, 2019 I served the foregoing on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: May 17, 2019 By: ERICKA LARNAUTI

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