

Case Nos. S282937 and S282950

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LAW FOUNDATION OF SILICON VALLEY
Petitioner/Plaintiff

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
SANTA CLARA
Respondent

CITY OF GILROY
Real Party in Interest

After a Decision by the Court of Appeal, Sixth Appellate District, Case
Nos. H049552, H049554
Superior Court, Santa Clara County,
Case No. 20-CV-362347

**APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF
LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA
SPECIAL DISTRICTS ASSOCIATION AS AMICI CURIAE IN
SUPPORT OF THE CITY OF GILROY**

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APPLICATION TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 8.520, subdivision (f) of the California Rules of Court, the League of California Cities (Cal Cities) and the California Special Districts Association (CSDA) respectfully request leave to file the accompanying brief in support of the City of Gilroy.

This brief was entirely drafted by counsel for the Amici and no part of counsel for a party in the pending case authored the proposed amicus brief in whole or in part or made any monetary contribution intended to fund its preparation. See Cal. Rules of Court, rule 8.520, subd. (f).

INTEREST OF APPLICANTS

Because California cities and special districts are subject to the California Public Records Act (CPRA, Gov. Code, §7920.000 *et seq.*) and must regularly ensure compliance with the CPRA, any decision affecting the application of the CPRA has an impact on California public agencies. Amici have a significant interest in this action in particular. If the Court adopts a new requirement to place a “litigation hold” on records that are potentially responsive to a CPRA requests but exempt from disclosure, it will place a heavy burden on local agencies that will now have to monitor and track large volumes of records outside of the existing statutory retention scheme. Further, allowing declaratory relief where there is no current controversy could lead to significant increased costs to taxpayers.

Amici believe that this brief will provide additional background and context regarding the importance of this matter and its potential impact on government resources and effectiveness.

The League of California Cities (Cal Cities) is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its

Legal Advocacy Committee, comprised of 25 city attorneys from all regions of the State. The Committee monitors litigation of concern to Cities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

California Special Districts Association (CSDA) is a non-profit corporation with a membership of more than 1,000 special districts throughout California that was formed to promote good governance and to improve core local services through professional development, advocacy, and membership services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities, including irrigation, water, recreation and parks, cemetery, fire protection, police protection, library, utilities, harbor and port, healthcare, and community-service districts. CSDA is advised by its Legal Advisory Working Group, comprised of 25 attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA monitors litigation of concern to special districts and identifies those cases that are of statewide significance. CSDA has identified this case as having statewide significance for special districts.

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AMICUS CURIAE BRIEF IN SUPPORT OF
THE CITY OF GILROY

I. INTRODUCTION

The California Public Records Act (CPRA) was enacted to support the essential goal of governmental transparency. Amici recognize the importance of the CPRA to “safeguard the accountability of government to the public.” (*Coronado Police Officers Association et al. v Carroll*, (2003) 106 Cal.App.4th 1001, 1015; *The People’s Business, A Guide to the California Public Records Act* (2022) p. 5,

<https://www.cacities.org/resource/the-people%27s-business-a-guide-to-the-california-public-records-act> (retrieved September 19, 2024).)

However, the City of Gilroy is not unique in receiving hundreds of CPRA requests each month. As acknowledged by this court, public agencies throughout the state receive “thousands and thousands of public records requests each year with the number of requests increasing each year to staggering proportions.” (*Ardon v. City of Los Angeles*, (2016) 62 Cal.4th 1176, 1189.)

In responding to and reviewing CPRA requests, agencies and courts are called on to weigh multiple competing, yet fundamental interests. “The Public Records Act balances [the] rights of privacy, public access, and the need for governmental efficiency and effectiveness.” (Cal. Municipal Law Handbook (Cont.Ed.Bar. 2023.) §2.204 pp. 232-233.) The CPRA achieves this balance, in part, by facilitating prompt disclosure of public records, providing a process for agencies and requesters to reasonably identify responsive records, providing an extensive set of exemptions to protect

privacy and government effectiveness,¹ and providing for speedy resolution if the agency and requester cannot reach an agreement on whether a record is subject to disclosure.

In this case, the Law Foundation is asking the court to establish new legal standards, which fall squarely within the legislative domain. Further, the relief requested would place impossible burdens on local public agencies that would cripple their ability to manage records. The Sixth District Court of Appeal thoughtfully considered the plain language of the law. Any change to the law should be addressed through the legislature. Amici urge the Court to uphold the Court of Appeal's decision.

II. ARGUMENT

- A. The CPRA does not require agencies to place a destruction hold on exempt records, and retaining such records would create a significant and unnecessary burden on public agencies.

In this case, the Law Foundation argues that the CPRA requires agencies to place a "litigation hold" on broad categories of records following a CPRA request, regardless of whether the requester has sought judicial review of the agency's determination. Nothing in the CPRA suggests that this is the intent of the statute.

CPRA litigation is extremely rare. California local public agencies collectively receive many thousands of public records requests each year. However, few of those requests result in any dispute, and an even smaller number end up being reviewed by a court. For example, in Santa Clara County where Gilroy is located, there have been four CPRA writs filed

¹ Law enforcement records are among the most frequently requested, and those records often require careful balancing between the right to privacy under Article I, section 1 of the California Constitution, and the right of public access to government information in Article I, section 3.

against cities in the past three years. All four of those have been filed against the City of San Jose. (See <https://portal.scscourt.org/>, searched on September 13, 2024). None of the remaining fourteen cities have received a single CPRA lawsuit. Placing a hold on records that are withheld under the CPRA would not only significantly increase document and information storage costs to local public agencies, such an expanded retention mandate is wholly unnecessary in nearly every case.

Long-term document storage places a burden on local public agencies, both to manage and to store large volumes of records in various physical and electronic forms. Agencies cannot recover the costs of document storage and maintenance from records requestors. In recognition of this burden, the legislature has enacted various statutes, including Government Code section 34090 *et seq.*, Government Code sections 60201, and Government Code section 53160, which control when local agencies may destroy records. These statutes are outside of and independent of the CPRA. The CPRA itself is not a records retention statute. It is a records disclosure statute. Nothing in the CPRA addresses records retention, and the CPRA should not be read to override the considerations in Sections 34090 *et seq.*, 60201, or 53160.

- B. A lengthy retention period for undisclosed records is inconsistent with the CPRA's mandate for prompt disclosure and early resolution of disputes.

Prompt and early resolution of disputes over the CPRA is necessary both to promote governmental transparency and to preserve governmental effectiveness. In most cases, documents are provided and/or disputes are resolved very quickly. A lengthy retention period is unnecessary and is not required by statute.

There is no prescribed method for making a CPRA request. (See *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88

Cal. App.4th1381, 1392.) While agencies may ask requesters to provide a written description of the records or recommend the use of a standard form, agencies cannot impose such requirements. (Cal. Municipal Law Handbook (Cont.Ed.Bar. 2023) §2.212 pp. 237-238.) While many agencies have online forms that may be used, requests are frequently made in person at public counters, by phone, or by e-mail. Often records can be provided immediately—particularly if the request is focused and complies with the requirement to reasonably identify the record or records sought. Other times, a request will require a more detailed search and review. Where a request is ambiguous, agencies must attempt to assist the requester in making a more focused request. (Gov. Code, § 7922.600.)

1. Agencies must respond to requests that “reasonably describe” an identified or identifiable record.

Under the CPRA, agency staff must respond to a request that “reasonably describes an identifiable record or records.” (Gov. Code, § 7922.530.) Under most circumstances, an agency must notify the requester whether records will be disclosed within ten days of the request. (Gov. Code, § 7922.535.) Litigation-style requests, such as the ones at issue in this case, are overbroad and do not reasonably describe an identifiable record. This is significant to local public agencies – particularly the smallest local agencies with limited revenues – because the CPRA does not require or anticipate legal review of requests for records. Many of the nearly 500 cities and over 2,000 independent special districts in California contract for city attorney services, and many of the thousands of special districts have no dedicated legal counsel at all. As such, a reasonable request should be understandable to any agency employee tasked with responding to the request.

As in this case, a request that seeks “any and all public records, constituting, reflecting, or relating to” numerous categories of records is not

sufficiently focused to allow a reasonable agency employee to understand the specific nature or scope of the request. The use of the terms “reflecting” and “relating” creates ambiguity such that a local agency employee who is not versed in legal phrases and terms of art would have difficulty understanding the actual scope of the request and identifying responsive records.

2. An agency’s obligation to assist a requester in making a focused and effective request is satisfied when the agency produces records, and/or is unable to elicit additional clarifying information to identify additional records.

While a vague and ambiguous request does not reasonably describe an “identifiable record,” it is sufficient to trigger an agency’s responsibility to “[a]ssist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.” (Gov. Code, 7922.600.)

“Under section [7922.600], [a public agency] has the duty to assist the public in formulating reasonable requests and then to respond accordingly, by communicating the scope of the public information requested to the custodians of its records. The purposes of the CPRA should be honored through such a reasonableness standard, so that not only an agency response, but the request that generates it, are within reasonable boundaries that are appropriate in light of the statutory scheme.” (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 228 (disapproved of on other grounds by *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488).)

Where an agency has assisted the requester to identify specific responsive records and has either produced those records or withheld them based on an identified exemption, the agency has satisfied its responsibility to comply with its requirement to respond under Government Code section

7922.535. Further, the agency’s duty to assist is deemed satisfied “if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.” (Gov. Code, § 7922.600 subd. (b).) Where an agency has produced those records that the requester has been able to identify but has been unable to identify any additional information based on attempts to clarify a request, the agency’s responsibility should also be deemed satisfied.²

While finality is essential for prompt disclosure, speedy resolution, and governmental effectiveness, it does not prevent a requester from making additional document requests if they seek additional information (as appears to have happened in the instant case). Further, to the extent that any disputes remain, a requester is able to seek prompt judicial review.

3. The CPRA is designed to promote the expeditious resolution of disputes over withheld records.

The CPRA requires agencies to make requested public records “promptly available” following receipt of any fees. (Gov. Code, § 7922.530, subd. (b).) Similarly, a judicial action taken to resolve a dispute over disclosure is entitled to expedited resolution. “The times for responsive pleadings and for hearings in [such] proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.” (Gov. Code, § 7923.005.) A challenge to a trial court determination is available only by “a petition to the appellate court for the issuance of an extraordinary writ.” (Gov. Code, § 7923.500,

² Even in the context of litigation discovery, the parties are required to meet and confer over the scope of the requests and make a good faith attempt to resolve differences. (Code Civ. Proc. § 2016.040.) Here, while agencies are required to assist requesters, requesters are not required to accept assistance, even when the requests are ambiguous, and assistance will ensure that they receive the records they are seeking.

subd. (a).) Such a petition must be filed within 20 days after service of the order. (Gov. Code, § 7923.500, subd. (b).)³

The expedited process applies not just to prevent agencies from delaying disclosure, but also to bring speedy resolution to disputes for both parties. “The legislative objective was to expedite the process and make the appellate remedy more effective. Indeed, the [CPRA] provision regarding a public agency’s obligation to act promptly upon receiving a request for disclosure, the provision directing the trial court in a proceeding under the [CPRA] to reach a decision as soon as possible, and the provision for expedited appellate review all reflect a clear legislative intent that the determination of the obligation to disclose records requested from a public agency be made expeditiously.” (*MinCal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal.App.4th 259, 265 [citing *Filarsky v. Superior Court*, (2002) 28 Cal.4th 419, 426-427, internal citations omitted].)

The three-year record retention period proposed by the Law Foundation in the lower court is not found in existing law and is inconsistent with the legislative priority of expeditious resolution of CPRA requests. This is particularly true when requests are cumbersome and/or vague and the agency believes the production to be complete.

C. Courts can and should consider the burden on public agencies under the CPRA

In balancing the competing imperatives of public access and the need for governmental efficiency and effectiveness, courts should be mindful of the financial and administrative burden on local public agencies. The legislature recognized this burden in adopting the CPRA. The CPRA contains numerous exemptions to support effective governmental operation

³ The record in this case indicates that the trial court granted a stipulation by the parties to extend the deadline by an additional 20 days.

in the public interest.⁴ Had the legislature intended the CPRA to place additional burdens on public agencies to retain records, beyond the times required under retention statutes such as Government Code sections 34090, *et seq.*, 53160, or 60201, they would have included that requirement in the statute. Inasmuch as the legislature was mindful of the need for effective and efficient government, they did not include a requirement to place a “litigation hold” on records prior to the actual threat of litigation. There is no indication that such a retention requirement was intended.

The rule the Law Foundation seeks to establish would be contrary to the CPRA’s objective of early disclosure and dispute resolution, and it would significantly undermine governmental efficiency and effectiveness, placing a significant financial and administrative burden on local public agencies – without a clear roadmap in the CPRA on how a such a judicially imposed records retention requirement would comport with the rest of the Act. Managing hundreds of simultaneous retention holds in the off-chance that a requester may seek judicial review years after an agency completes its response to a CPRA request (as happened here) is not reasonable or feasible.

- D. Declaratory relief should be granted only for the purpose of determining the rights and responsibilities of the parties, not for the purpose of punishment.

Amici are concerned about the improper issuance of declaratory relief when the parties have no remaining legal rights or duties towards each other.

⁴ See *The People’s Business, A Guide to the California Public Records Act* (2022) p. 7-8, <https://www.calcities.org/resource/the-people%27s-business-a-guide-to-the-california-public-records-act> (retrieved September 19, 2024).)

1. A declaratory relief judgment is not intended to redress past grievances, or for punishment.

Government Code section 7923.000 authorizes declaratory relief in CPRA litigation, but it does not expand the scope of the CPRA to allow relief where there is no current controversy. Declaratory relief is limited to “cases of actual controversy relating to the legal rights and duties of the respective parties....” *SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1061)).

“Declaratory relief operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.” (*SJJC Aviation Services, Supra* at p. 1062). Even when “the question addressed was at one time a live issue in the case” declaratory relief is not appropriate when, as here, the question “has been deprived of life because of events occurring after the judicial process was initiated.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 (citing *Younger v. Superior Court* (1978) 21 Cal.3d 102, 120).)

While CPRA litigation is rare, many of the cases that are brought are filed for the sole purpose of obtaining attorneys’ fees. For example, one plaintiff brought more than thirty similar writ petitions against public agencies in a ten-month period between October 2019 and August 2020. (*Austin v. City of Burbank* (2021) 67 Cal.App.5th 654, 656.) Extending declaratory relief to include past allegations, where no records are at issue, would only serve to increase this type of “gotcha” litigation, contrived for the purpose of seeking attorneys’ fees.

Here, the Law Foundation waited more than two years before alleging any violation related to its 2018 CPRA request. The declaratory

relief at issue here was granted by the trial court, in part, based on the City's alleged failure to perform an adequate search for records in response to a series of CPRA requests made more than two years before the Law Foundation first alleged a violation. Declaratory relief was also granted on the grounds that the City's response to "the November 2018 CPRA request was not timely, occurring 33 days after the request was received." (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818, 829, as modified on denial of reh'g (Nov. 20, 2023).) In other words, the Law Foundation waited two years to complain that the City had been nine days late responding to their request. The only purpose for declaratory relief at that point is punishment for alleged past wrongdoing.

Declaratory relief on the grounds at issue here does nothing to resolve a controversy between the parties. The Sixth District Court of Appeal appropriately determined that the City's "obligation to disclose public records [was] not at issue" and ordered the trial court to deny the Law Foundation's petition for writ of mandate. (*Id.* at p. 835.)

2. Declaratory relief should not be available based on a public entity's failure to preserve records while a request was pending.

Nothing in the CPRA or the retention statutes require a local public agency to preserve all records responsive to a broad and ambiguous request while the request is pending. Video footage, such as the body-worn camera video at issue in this case, is often set to automatically be overwritten when the required retention period has expired. The Law Foundation argues that "all it would take to retain the records in this case and many others is to digitally flip a switch to preserve the files on a server." (Petitioner Law Foundation's Reply Brief on the Merits ("Reply Brief") p. 46.) For most local agencies it is not that simple.

Local public agencies rely on various systems to retain and manage digital storage. These systems are often costly, and agencies are managing more and more digital records every year. Digital material is not limited to body-worn camera videos. Other records, such as e-mail and voicemail, are automatically overwritten to reduce the cost of data storage. Police agencies regularly receive requests that could arguably implicate exempt body-worn camera footage, but broad requests for e-mail correspondence are even more frequent. For example, in 2023, dozens of cities throughout the San Francisco Bay Area received similar requests for all e-mail messages sent to each of their respective councilmembers, their city manager, and other public officials for a three-year period. For many agencies, the request implicated hundreds of thousands of e-mail messages. On top of other routine requests for e-mail correspondence, a requirement to retain records responsive to such a broad request for e-mail correspondence would both undermine the purpose of the records retention statutes and impose significant and unmanageable costs on local public agencies.

Amici agree with the Law Foundation that “the Legislature surely did not intend that agencies could destroy records with impunity to escape public accountability.” (Reply Brief, p. 34.) In fact, the legislature set out specific criteria and a detailed process that local agencies must follow before destroying records. (Gov. Code, §§ 53160, 60201, and 34090 *et seq.*) An agency following a published retention schedule, adopted under the statutory requirements, cannot reasonably be described as destroying records “with impunity.” As addressed by the City, there are remedies outside of the CPRA for the willful or corrupt destruction of records outside of an agency’s approved retention schedule. But there is no allegation that such willful or corrupt destruction occurred in the instant case.

Here, there was no current controversy. The City engaged in multiple discussions with the requester to determine the scope of the

request, and they believed they satisfied the request after producing all of the non-exempt records identified. The video recordings later sought by the requester—but not understood to be the subject of the original request—had been destroyed in accordance with the City’s published retention schedule at the time the underlying action was commenced. Therefore, the issue of whether the City should have reviewed and retained the video recordings in response to the original CPRA request was moot, and not the proper subject of declaratory relief.

3. Expanding declaratory relief to include past violations, where there is no current controversy will lead to wasteful and unnecessary litigation.

Allowing declaratory relief under the CPRA, when there are no records at issue, would only serve to incentivize unnecessary litigation. Given the volume of records maintained by local public agencies, and the number of requests they receive, inadvertent mistakes happen. If declaratory relief was granted for purposes of punishing an agency for a past mistake, it would open the floodgate to litigation. Any time an agency was even a day late in responding to a request, a requester could petition the court for declaratory relief and receive attorneys’ fees, whether or not records were produced, withheld, or whether they even existed to be produced.

This court recognized in *Ardon* the challenge that public entities face in responding to frequent and voluminous requests. In light of this challenge, human error will occur. (*Ardon, supra*, 62 Cal.4th at 1189.) A declaratory relief judgment under the CPRA that does not involve the disclosure of records does nothing to increase transparency. The legislature appropriately limited relief under Government Code section 7923.100 to the question of whether “certain public records are being improperly withheld from a member of the public . . .”

III. CONCLUSION

The CPRA appropriately balances the important objectives of governmental transparency, personal privacy, and the need for effective and efficient government. The three-year record preservation period advocated by the Law Foundation is not found in the CPRA and was never intended so by the legislature. As CPRA requests continue to become more and more frequent, an extended retention period on any records that are withheld from a CPRA request or determined to be non-responsive would be unmanageable and crippling to local public agencies. Further, allowing declarative relief where there is no current controversy would only encourage unnecessary litigation, burdening agencies and courts alike. The decisions by the Sixth District Court of Appeal should be upheld.

Dated: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court Rule 8.204 (c)(1), counsel for Amici Curiae exclusive of this certification, the cover, and the tables, this Application to File Amicus Curiae Brief and Amicus Curiae Brief of League of California Cities and California Special Districts Association in Support of Respondent contains 3634 words, as determined by the word count of the computer program used to prepare the brief.

Dated: September 20, 2024

Respectfully submitted,

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