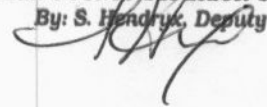


FILED

SEP 06 2023

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hendryk, Deputy**



THEO EMISON,
Petitioner/Plaintiff,

)
)
) Case No. CV 0000039

v.

) **ORDER GRANTING MOTION FOR
PEREMPTORY WRIT**

CITY OF SAN RAFAEL, and ROB
EPSTEIN, in his official capacity as City of
San Rafael City Attorney,

)
)
) HON. ANDREW E. SWEET

Respondents/Defendants.

CALIFORNIA NEWSPAPERS
PARTNERSHIP, a Delaware General
Partnership, dba BAY AREA NEWS
GROUP and THE MARIN INDEPENDENT
JOURNAL,

)
)
) Case No. CV 0000041

Petitioner/Complainant

) **ORDER GRANTING MOTION FOR
PEREMPTORY WRIT**

v.

) HON. ANDREW E. SWEET

CITY OF SAN RAFAEL,
Respondent/Defendant.

TYLER LARSON,
Petitioner/Plaintiff,

)
)
) Case No. CV 00000135

v.

) **ORDER GRANTING MOTION FOR
PEREMPTORY WRIT**

CITY OF SAN RAFAEL,
Respondent/Defendant.

)
)
) HON. ANDREW E. SWEET

1
2 Petitioners' Motions for Peremptory Writs are GRANTED. The City of San Rafael ("City") is
3 ordered to disclose the requested public records to each Petitioner after redacting information
4 pursuant to Penal Code §§ 832.7(b)(6) and 832.7(b)(7). The City may provide a set of proposed
5 redactions for the Court's review prior to public disclosure.
6

7
8 **I.**
9 **INTRODUCTION**

10 At 6:52 p.m. on July 27, 2022, San Rafael Police Department Officer Daisy Mazariegos
11 observed Julio Lopez and two other men drinking beer in a public place. Officer Mazariegos decided
12 to contact the three men to investigate what appeared to be a criminal infraction pursuant to Business
13 and Professions Code § 25620(a).¹ Numerous beer bottles were on the ground near the three men.
14 Officer Mazariegos was alone.

15 Officer Mazariegos approached the three men and directed them to put their beers down and
16 sit on the street curb. All three men put their beers down and sat on the curb. While Officer
17 Mazariegos talked to the men about the potential infraction, Officer Brandon Nail arrived on scene.
18 Officer Nail arrived on scene less than two minutes after Officer Mazariegos arrived on scene.
19 After Officer Nail arrived, Officer Mazariegos asked the men for their identifications. Mr. Lopez
20 stood up to retrieve his identification from his pant pocket. Officer Nail aggressively stated, "sit the
21 fuck down." Mr. Lopez sat back down on the curb.

22
23 Officer Mazariegos again told Mr. Lopez to take out his identification. Mr. Lopez explained
24 that he had to stand in order to retrieve his identification from his pant pocket and then he stood up.
25

26
27 ¹ Business and Professions Code § 25620(a) states in full, "Any person possessing any can, bottle, or other receptacle containing any
28 alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed, in any city, county, or
city and county owned park or other city, county, or city and county owned public place, or any recreation and park district, or any
regional park or open-space district shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that
prohibits the possession of those containers in those areas or the consumption of alcoholic beverages in those areas."

1 Officer Mazariegos commanded Mr. Lopez three times to sit back down. Simultaneously, Mr. Lopez
2 attempted to explain that he needed to stand up in order to produce his identification. Mr. Lopez was
3 argumentative and appeared under the influence of alcohol. He did not sit down.

4 When Mr. Lopez did not sit down after the third command, Officer Mazariegos and Officer
5 Nail aggressively placed hands on Mr. Lopez in order to place him in handcuffs. A struggle ensued.
6 During the struggle, Mr. Lopez was taken to the ground where his head and body hit the pavement.
7 When he was on the ground, Officer Nail punched Mr. Lopez in the face with a closed fist. Mr.
8 Lopez was handcuffed approximately 60 seconds after the officers placed hands on him.

9 Once Mr. Lopez was handcuffed, he was face first on the pavement. He had labored
10 breathing. He was bleeding heavily from the nose. His face was covered in abrasions. He complained
11 of pain to his back, knees and face. He had contusions and abrasions on his knees. The police
12 summoned medical attention. Mr. Lopez was arrested and taken by ambulance to the hospital.

13 At the hospital, Mr. Lopez was treated emergently. He had a CT scan, X-rays and an MRI. He
14 was diagnosed with:

- 15 • Broken nose [“bilateral nasal bone fractures mildly depressed on the left”];
- 16 • Head injury; [Mr. Lopez’s discharge papers indicate he was diagnosed with a concussion,
17 but the actual diagnosis does not appear in the medical record]; and
- 18 • Shoulder contusion. [His MRI was negative, but he was given a sling in case there was an
19 injury to his rotary cuff and he was advised to seek follow up care].

20 Mr. Lopez was discharged the same day. He was prescribed pain medications.

21 On September 2, 2022, Officers Mazariegos and Nail were placed on paid administrative
22 leave. On September 9, 2022, the City hired retired police Lieutenant Paul Henry to conduct an
23

1 internal affairs investigation of the incident. On April 28, 2023, the City completed its internal affairs
2 investigation.

3 On May 9, 2023, Marin Independent Journal² reporter Adrian Rodriguez requested from the
4 City access to records related to the incident pursuant to Article 1, § 3(b) of the California
5 Constitution and the California Public Record Act, Gov. Code § 7920.000 et. seq. (“CPRA”).
6 Specifically, Mr. Rodriguez asked the City “to inspect/copies of all records related to the
7 investigation of police conduct and/or police reporting in connection with the July 27, 2022 arrest of
8 Julio Lopez, including but not limited to:

- The investigation report conducted and completed by Paul Henry.
- Transcripts of all interviews conducted in connection with said investigation;
- Recordings of all interviews conducted in connection with said investigation;
- Copies of all disciplinary records relating to or arising from the July 27, 2022 arrest of Julio Lopez.

14 Petitioner Emison made a similar request on May 8, 2023. Petitioner Larson made a similar
15 request.

16 On May 19, 2023, the City, through the City Attorney, wrote Mr. Rodriguez indicating that
17 the City had records responsive to the May 9, 2023, public records request, and of its intent to release
18 responsive records by June 2, 2023. The City wrote, “the City is willing to stipulate for purposes of
19 the PRA requests that Mr. Lopez did experience a ‘great bodily injury’ cause it is possible that a
20 Court might make such a ruling.”

21 On May 24, 2023, the City emailed Mr. Rodriguez a letter from the City to Mr. Lopez’s
22 attorney regarding his records request. The City confirmed its disclosure decision:

23 The City has already notified you that it is agreeing to produce the requested records
24 under the “great bodily injury” exception to the Penal Code Section
25 832.7(b)(1)(A)(ii), based on the prima facie evidence you submitted in your May 9,
2023 request; therefore, it is unclear why you intend to file a petition for writ of
26 mandate.

27 By June 12, 2023, the City had not produced the records and reversed course. The City sent
28 Mr. Rodriguez a letter stating “after further review the City has determined that the records sought by

² Petitioner California Newspapers Partnership does business as the Marin Independent Journal.

1 your Request are confidential, pursuant to Penal Code section 832.7(a), and is therefore withholding
2 them. ¶ The City therefore considers this Request complete.” The email also attached a June 12,
3 2023, letter from the City to Mr. Emison similarly stating that after further review the City would not
4 be releasing the requested records regarding Mr. Lopez. In that more detailed letter, the City stated
5 that after notifying the subject police officers, through their attorneys, that the records were being
6 sought, the officers “threatened the City with misdemeanor liability pursuant to Government Code
7 Section 1222....” As further justification for its complete reversal of its disclosure position, and after
8 admitting that Mr. Lopez’s evidence presented at least a “prima facie” case of great bodily injury, the
9 City now contended that the CPRA and the five-year-old police transparency law “provide[s] the City
10 with no guidance as to how it is supposed to evaluate the admissibility and probative value of the
11 evidence that you have provided.”

12
13 These actions ensued.³ Petitioners filed Petitions for Writ of Mandate and Complaints for
14 Declaratory and Injunctive Relief. The Petitions plead causes of action alleging the City unlawfully
15 withheld the confidential police records. Petitioners pray for a traditional writ of mandate under Code
16 of Civil Procedure § 1085, declaratory relief under Code of Civil Procedure § 1060, and injunctive
17 relief.
18

19 II. 20 ANALYSIS

21 Viewed through the proper procedural lens, this is not an ordinary writ of mandate where the
22 underlying record is reviewed with deference to an agency’s determination or under an abuse of
23 discretion standard. Instead, this proceeding is governed by the CPRA as the “exclusive means ... for
24 litigating the question whether the requested records must be disclosed...” (*Filarsky v. Superior*
25 *Court* (2002) 28 Cal.4th 419, 435.) Under the CPRA, the City has the burden to establish that a
26

27
28 ³ This Order concurrently addresses three actions that all involve the same issues. (*Theo Emison v. City of San Rafael et seq.*, #CV0000039; *California Newspapers Partnership v. City of San Rafael*, #CV0000041; and *Larson v. City of San Rafael*, #CV 0000135). Notwithstanding slight procedural difference, all parties agree that the issues raised are satisfactorily addressed by this one order.

1 specific statute prohibits disclosure of public records. (Gov. Code, §§ 7927.705, 7922.00.) The City
2 relies on Penal Code § 832.7(a) as the statute that prohibits disclosure. Upon a full review of the
3 record, the Court finds that the City has not met its burden because Penal Code § 832.7(a) is subject
4 to an exception that the City has not shown is inapplicable. (Penal Code, § 832.7(b)(1)(A)(ii) [“great
5 bodily injury” exception discussed more fully below].) Stated another way, the record here shows
6 that the City did not meet its burden to prohibit disclosure because it failed to show that Mr. Lopez
7 did not suffer great bodily injury.

8
9 Even if ordinary mandate procedures apply, on this record, the City abused its discretion by
10 acting arbitrarily when it first agreed to stipulate that Mr. Lopez did suffer great bodily injury, and
11 found a prima facie case of great bodily injury under Penal Code § 832.7(b)(1)(A)(ii), and therefore
12 agreed to produce the records at issue here, but then later changed course based on what it claimed
13 was a further review of the same evidence, lack of clarity how to evaluate the evidence it had already
14 reviewed and found a prima facie case of great bodily injury, and because the officers threatened to
15 hold the City liable if the records were disclosed.

16 **A. CPRA and Penal Code § 832.7**

17 The CPRA “enshrines the value this state has long placed on government transparency and
18 public access to information concerning the conduct of the people's business.” (*Becerra v. Superior*
19 *Court* (2020) 44 Cal. App. 5th 897, 909.)

20
21 Penal Code § 832.7(a) generally provides that personnel records of peace officers are
22 confidential and shall not be disclose except pursuant to the rigors of Evidence Code §§ 1043 and
23 1046.⁴

24 Any constraint Penal Code § 832.7(a) had on public access to police records in certain cases
25 was addressed by the California legislature in 2018.
26

27
28

⁴ The procedures for the public to obtain officer personnel records are explained in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 and its progeny.

1 “[I]n acknowledgment of the extraordinary authority vested in peace officers and the serious
2 harms occasioned by misuse of that authority, the Legislature amended Penal Code section
3 832.7 to recognize the right of the public to know about incidents involving shootings by an
4 officer or the use of force by an officer that results in death or great bodily injury, as well as
5 sustained findings of sexual assault or dishonesty by an officer. As amended, section 832.7
6 specifies that records pertaining to such incidents and findings are not confidential and must
7 be made available for public inspection pursuant to the CPRA.”

8 (*Becerra, supra*, 44 Cal.App.5th at pp. 909–910.)

9 Specifically, Penal Code § 832.7(b) was amended to provide a means for the public to oversee
10 and hold accountable public agencies and public servants for serious incidents of peace officer
11 misconduct and use of force resulting in death or great bodily injury or involving sustained findings
12 of sexual assault or dishonesty. In enacting this legislation, the Legislature declared:

13 The public has a right to know all about serious police misconduct, as well as about
14 officer-involved shootings and other serious uses of force. Concealing crucial public
15 safety matters such as officer violations of civilians’ rights, or inquiries into deadly use
16 of force incidents, undercuts the public’s faith in the legitimacy of law enforcement,
17 makes it harder for tens of thousands of hardworking peace officers to do their jobs,
18 and endangers public safety.

19 Penal Code § 832.7(b) now specifies that certain categories of police records “shall be
20 made available for public inspection pursuant to the California Public Records Act...”

21 Specifically, as relevant here, it requires disclosure of “records relating to the report,
22 investigation and findings of...¶ (iii) [a]n incident involving the use of force against a person
23 by a peace officer or custodial officer that results in ... great bodily injury.” (Penal Code, §
24 832.7(b)(1)(A)(ii).)

25 Both the CPRA and Penal Code § 832.7(b) should be broadly construed to further the
26 public’s right to access, and mandate a strong presumption in favor of disclosure.

27 The CPRA has long recognized that “access to information concerning the conduct of
28 the people’s business is a fundamental and necessary right of every person in this state.” (Gov.
Code, § 7921.000.) In California, “access to government records has been deemed a

1 fundamental interest of citizenship.” (*International Federation of Professional and Technical*
2 *Eng. v. Superior Court* (2007) 42 Cal.4th 319, 328, quoting *CBS Inc. v. Block* (1986) 42 Cal.3d
3 646, 652 n.5.) By promoting prompt public access to government records, the CPRA is
4 “intended to safeguard the accountability of government to the public.” (*Register Div. of*
5 *Freedom Newspapers Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.)

6
7 As stated above, in enacting Penal Code § 832.7(b), the Legislature specifically
8 intended to mandate public access to police records in specific scenarios such as this one,
9 where a peace officer used force and inflicted great bodily injury.

10 **B. This is Not an Ordinary Writ Proceeding**

11 The City argues that this is an ordinary writ proceeding where the underlying record is
12 reviewed with deference to the City’s determination or under an abuse of discretion standard.
13 The Court disagrees. The plain language of the CPRA, and case law interpreting it, make clear
14 that §§ 7923.000-7923.105 of the Government Code set forth the “exclusive means ... for
15 litigating the question whether the requested records must be disclosed... .” (*Filarsky, supra,*
16 28 Cal.4th at p. 435.)

17
18 Under the CPRA, “[a]ny person may institute proceedings for injunctive or declaratory
19 relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to
20 inspection or to receive a copy of any public record...” (Gov. Code, § 7923.000.) A court
21 must order disclosure of withheld records or issue an order to show cause “[w]henver it is
22 made to appear by verified petition to the superior court ... that certain public records are
23 being improperly withheld from a member of the public...” (Gov. Code, §7923.100.) The
24 court “shall decide the case after examining the record in camera, ... papers filed by the parties
25 and any oral argument and additional evidence as the court may allow.” (Gov. Code, §
26
27
28

1 7923.105.) The California Supreme Court has expressly acknowledged that the “special
2 statutory procedures under the [CPRA] are significantly different from the procedures
3 applicable in an ordinary action” for equitable relief under the Code of Civil Procedure.
4 (*Filarsky, supra*, 28 Cal.4th at 428.)

5
6 The special procedures applicable under the CPRA (not those applicable in an ordinary
7 writ proceeding) were recently applied by the First District Court of Appeal in *Becerra v.*
8 *Superior Court* (2020) 44 Cal.App.5th 897, involving a CPRA request for public records under
9 the exact disclosure provision at issue here—Penal Code § 832.7(b). Reviewing the express
10 language of § 832.7(b)(1), the court stated that “[r]ead together with its subparts, section
11 832.7(b)(1) deems as nonconfidential—and subject to public inspection pursuant to the
12 CPRA—all records maintained by a state agency relating to reports, investigations, or findings
13 from incidents involving an officer’s discharge of a weapon; and officer’s use of deadly force
14 or force resulting in great bodily injury; and incidents involving sustained findings of a sexual
15 assault or dishonesty by an officer.” (*Becerra, supra*, 44 Cal.App.5th 897, 918.) The court
16 stated that “[b]ecause section 832.7(b)(1) specifies that the identified officer-related records
17 are now nonconfidential public records that ‘shall be made available for public inspection
18 pursuant to the [CPRA],’ we look to the CPRA provisions governing the disclosure of public
19 records.” (*Ibid.*, internal quotations omitted.)

20
21
22 Under the CPRA, unlike in ordinary writ proceedings, *no deference* is given to either
23 an agency’s interpretation of law or policy, or its own determination with respect to disclosure.
24 (*International Federation of Professional of Professional & Technical Eng. v. Superior Court*
25 (2007) 42 Cal. 4th 319, 336 [“[w]hether or not a particular type of record is exempt should not
26 depend upon the particular practice of the government entity at issue—otherwise, an agency
27
28

1 could transform public records into private ones simply by refusing to disclose them over a
2 period of time.”]) Similarly, the court in *Sacramento County Employees’ Retirement System v.*
3 *Superior Court*, rejected an agency argument that the court in a CPRA action should “grant
4 deference to an agency’s interpretation of the statutes it is charged with administering....”
5 (*Sacramento County Employees’ Retirement System v. Superior Court* (2011) 195 Cal.App.4th
6 440, 466-67.) While recognizing that “courts will at times grant deference” to an agency’s
7 interpretation of such statutes “*that deference is not granted in Public Records Act cases.*” (*Id.*
8 at p. 466, emphasis added.) The First District Court of Appeal in *American Federation of*
9 *State, County and Municipal Employees v. The Regents of Univ. of Cal.*, discussing the right of
10 access under the CPRA in an analogous context, public employee wrongdoing, specifically
11 cautioned that under the CPRA “[c]ourts should not be bound by a contrary determination of
12 the public agency, for if that were so the Act’s decree that ‘access to information concerning
13 the conduct of the people’s business is a fundamental and necessary right of every person in
14 this state’ would be largely frustrated.” (*American Federation of State, County and Municipal*
15 *Employees v. The Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 918.),
16
17
18

19 In short, the City’s argument that this matter is subject to ordinary writ proceedings
20 where it can determine that the records are exempt from disclosure is unavailing.

21 **C. The City Bears the Burden to Establish a Specific Statute Prohibits Disclosure**

22 The CPRA includes a strong presumption in favor of public access to agency records.
23 (*CBS, Inc., supra*, 42 Cal.3d at p.665.) To overcome the “strong presumption in favor of
24 disclosure of public records, any refusal to disclose public information must be based on a
25 specific exception to that policy.” (*California State Univ., Fresno Ass’n v. Superior Court*
26 (2001) 90 Cal.App.4th 810, 831.) Unless the public records are specifically exempt from the
27
28

1 provisions of the CPRA, they must be made available for public inspection. (See *ACLU v.*
2 *Superior Court* (2017) 3 Cal.5th 1032, 1038-1039 (“*ACLU I*”).)

3 Here, to prevent public disclosure, the City has the burden to show the records are
4 exempt from disclosure under Penal Code § 832.7(b) because the police did not use force and
5 inflict great bodily injury. On this record, the City has not met its burden.⁵
6

7 **D. Great Bodily Injury**

8 Penal Code § 832.7(b) fails to define the term “great bodily injury.” However, the
9 phrase “great bodily injury” is found elsewhere in the Penal Code and is defined in case law.⁶
10 The parties agree that the Legislature intended the term “great bodily injury” to have the same
11 meaning as that term is defined in the sentencing enhancement under Penal Code § 12022.7
12 applicable when a criminal defendant personally inflicts great bodily injury during the
13 commission of a felony.
14

15 Penal Code § 12022.7(f) states that “great bodily injury” “means a significant or
16 substantial injury.” Recently, the California Supreme Court addressed this somewhat general
17 definition and noted the statute provided no further specification, and the approved standard
18 jury instruction CALCRIM No. 3160 adds only that great bodily injury is “greater than minor
19 or moderate harm.” (*In re Cabrera* (2023) 14 Cal.5th 476, 484.) The Court explained that the
20 determination of “great bodily injury” is a question of fact for which,
21

22
23 There is a fine line between injuries that qualify as great bodily injury and those that do not
24 quite meet the description, and where to draw that line is for the jury to decide. For instance,
25 juries may evaluate a broken bone along a continuum from a small hairline fracture, needing
26 no medical intervention, to the compound fracture of a major bone, requiring surgical repair.”
27 It is the jury's responsibility to determine where along that continuum it believes the harm
28 becomes a significant or substantial physical injury rather than a moderate or minor one.

⁵ Use of force is not contested in this proceeding; only infliction of great bodily injury.

⁶ The Legislature is presumed to adopt previous judicial constructions of terms it uses. (*Hughes v. Pair* (1985) 46 Cal.4th 1035, 1046.)

1 [E]very bone fracture is not great bodily injury as a matter of law but instead may be found by
2 a jury to be great bodily injury as a matter of fact.

3 (*In re Cabrera, supra*, 14 Cal.5th at pp. 484-485, internal quotations and citations omitted.)

4 Case law is replete with factual scenarios that can aid support to both parties. Cases uphold
5 fact finders' conclusions that injuries more severe than those suffered by Mr. Lopez do not amount to
6 great bodily injury and also uphold fact finders' conclusions that injuries less severe than those
7 suffered by Mr. Lopez do amount to great bodily injury. As *In re Cabrera* points out, a bone
8 fracture may or may not be great bodily injury. It depends on a case-by-case analysis based on the
9 specific facts at issue. Here, having reviewed the evidence, the Court finds that the City has not
10 established that Mr. Lopez did not suffer great bodily injury.
11

12 Officers Mazariegos and Nail aggressively initiated the physical contact with Mr. Lopez. He
13 was grabbed and taken to the ground where his head and body hit the pavement under the weight of
14 the two officers. While he was on the ground, Mr. Lopez was punched in the face with a closed fist
15 by Officer Nail. Mr. Lopez had labored breathing. He bled heavily from the nose. His face was
16 covered in abrasions. He complained of pain to his back, knees and face. He had contusions and
17 abrasions on his knees. The injuries were apparent to the officers who summoned medical attention.
18
19 Mr. Lopez was taken by ambulance to the hospital.
20

21 At the hospital, he was taken directly to the emergency room and treated. Mr. Lopez had a CT
22 scan, X-rays and an MRI. He had a head injury. He was diagnosed with bilateral nasal bone fractures
23 mildly depressed on the left. Bilateral abrasions to his knees were noted but he was ambulatory. His
24 MRI was negative, but he was given a sling in case there was an injury to his rotary cuff that could
25 not be observed on film and he was advised to seek follow up care. The notes show that Mr. Lopez
26 complained of shoulder pain. Mr. Lopez was prescribed pain medications and discharged.
27
28

1 In the Court's view, on these facts, the City falls short of showing that Mr. Lopez did not
2 suffer great bodily injury. He was taken to the ground by two police officers where his head and body
3 hit pavement. He was punched in the face with a closed fist. He had a head injury. He had trouble
4 berating. His nose was broken and depressed and bled heavily. His face and knees were contused. He
5 had medical attention at the scene and was taken by ambulance to the Emergency Room where he
6 underwent significant and serious diagnostic testing. He required prescribed pain medications. In full
7 context, on this record, the City did not show Mr. Lopez did not suffer significant or substantial
8 injury. (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047-48 ["some physical pain or
9 damage, such as lacerations, bruises, or abrasions" constitutes great bodily injury]); *People v. Jung*
10 (1999) 71 Cal.App.4th 1036, 1042 ["Abrasions, lacerations, and bruising can constitute great bodily
11 injury"]; *People v. Wallace* (1993) 14 Cal.App.4th 651, 665- 666 [cuts and burns from being flex-
12 tied, burning sensation from an insecticide-like substance were great bodily injury]; *People v. Bustos*
13 (1994) 23 Cal.App.4th 1747, 1755 [multiple abrasions, lacerations, and contusions were great bodily
14 injury]; *People v. Corona* (1989) 213 Cal.App.3d 589 [swollen jaw, bruises to head and neck and
15 sore ribs were "great bodily injury"].) Great bodily injury does not require permanent, prolonged, or
16 protracted bodily damage. (See *People v. Cross* (2008) 45 Cal.4th 58, 64.) It does not even require
17 that one receive medical treatment for the injury. (*People v. Wade* (2012) 204 Cal.App.4th 1142,
18 1149-1150.)⁷

22 **E. Ordinary Writ Analysis**

23 Even if ordinary mandate procedures apply, on this record, the City abused its discretion by
24 acting arbitrarily when it first agreed to stipulate that Mr. Lopez did suffer great bodily injury, and
25

26
27 ⁷ Petitioners claim that Mr. Lopez also suffered a concussion and months later had surgery on his shoulder for a traumatic
28 glenoid labral tear attributed to this incident. The Court has not considered these claims in its analysis because the
evidence is uncertain that Mr. Lopez suffered a concussion and without sufficient foundation that the surgery was
attributable to this incident.

1 found a prima facie case of great bodily injury under Penal Code § 832.7(b)(1)(A)(ii), and therefore
2 agreed to produce the records at issue here, but then later changed course based on what it claimed
3 was a further review of the same evidence, lack of clarity how to evaluate the evidence it had already
4 reviewed and found a prima facie case of great bodily injury, and because the officers threatened to
5 hold the City liable if the records were disclosed.
6

7 Although mandate will not lie to control the exercise of discretion in a particular way, it will
8 issue to correct an abuse of discretion. (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 562 [“mandamus
9 will lie to correct an abuse of discretion or the actions of an administrative agency which exceed the
10 agency’s legal powers”]; *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265,
11 279 [“court may issue a writ when a public agency has abused its discretion in carrying out a
12 discretionary function”].)

13
14 To establish an abuse of discretion, the Petitioner must show the official acted arbitrarily,
15 beyond the bounds of reason or in derogation of the applicable legal standard. (*Ochoa v. Anaheim*
16 *City School District* (2017) 11 Cal.App.5th 209, 223 n3.) An abuse of discretion occurs if an agency
17 did not apply or properly interpret the governing law or consider all relevant factors, or if there was
18 no rational connection between the relevant factors, the choice made, and the purposes of the
19 enabling statute or regulation. (*Manderson-Saleh v. Regents of University of California* (2021) 60
20 Cal.App.5th 674, 693.)
21

22 Here, the City reviewed the evidence and agreed to stipulate the records at issue were
23 disclosable because Mr. Lopez suffered great bodily injury. It later admitted that the evidence
24 established a prima facie case of great bodily injury. Then the City changed its mind and
25 claimed the records at issue were confidential. The only material change was that the officers
26
27
28

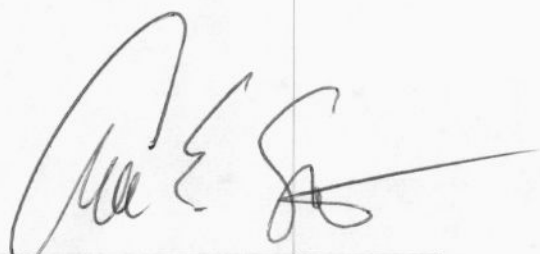
1 threatened to hold the City liable under Government Code § 1222⁸ if the City released the
2 records. The City did not consider additional evidence. The legal analysis remained the same.
3 Changing course because the officers at issue threatened the City with liability for complying
4 with its duty to disclose the records at issue is an abuse of discretion.

5
6 **III.**
7 **CONCLUSION**

8 The City is ordered to disclose the requested public records to each Petitioner after redacting
9 information pursuant to Penal Code §§ 832.7(b)(6) and 832.7(b)(7). The City may provide a set of
10 proposed redactions for the Court's review prior to public disclosure. The City must disclose the
11 requested public records or provide a set of proposed redactions for the Court's review by September
12 25, 2023 at 4:00 p.m.

13
14 **IT IS SO ORDERED.**

15 Dated: September 6, 2023

16
17 
18 _____
19 ANDREW E. SWEET
20 Judge of the Superior Court
21
22
23
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25
26

27 ⁸ Government Code § 1222 states in full, "Every willful omission to perform any duty enjoined by law upon any public officer, or
28 person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is
punishable as a misdemeanor."