



FILED
San Diego Superior Court
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Clerk of the Superior Court
By: T. Crandall, Deputy

Second Amended Decision on Merits

Castanares v. City of Chula Vista, Case No. 2021-17713

Argued: May 16, 2025, 9:00 a.m., Dept. 2004

1. Overview and Procedural Posture.

In this mandamus/declaratory relief action, petitioner/plaintiff claims the City has violated the California Public Records Act (CPRA) by failing to turn over “video footage from all CVPD drone flights conducted between March 1 and March 31, 2021.” Petitioner/plaintiff, who is a pilot and a newspaper publisher, demanded these materials in writing on April 5, 2021. Nine days later, the City provided some information about how the records are kept, but refused to turn over video records from drone flights claiming they are “investigative record[s] exempt from disclosure” under former Gov. Code 6254(f). The petition/complaint was filed less than a week later. ROA 1. The City answered seasonably. ROA 9.

The case is before this court for a merits hearing for the second time, following the earlier reversal and remand [*Castanares v. Superior Court*, 95 Cal. App. 5th 295 (2023)]. In a matter of first impression, the Court of Appeal did not think much of this court’s employment of a “bright line” test; the Court ordered a “more nuanced approach.” *Ibid.* at 312. The court incorporates the minutes for April 11, 2025 (ROA 165) for further post-remand background. The present merits hearing was to have occurred that day (ROA 150), but it first became necessary for the court to resolve the City’s objection to the court conducting an *in camera* review of the disputed videos of 37 incidents (down from 356). The court did so in a detailed ruling, ordered further briefing, and received the disputed videos for *in camera* review. ROA 165.

The court has now reviewed all of the disputed video footage (Ex. 1 to this hearing, and see ROA 163),* as well as the supplemental briefing (ROA 167, 169). The court published a tentative ruling on April 25, and specifically ordered “no further submissions are authorized.” (ROA 170, top of page 2). The City blithely ignored this directive and filed, *in response to the tentative ruling*, a “motion for witness testimony at trial.” ROA 171. Petitioner filed a brief objection to this motion. ROA 172. The City filed extensive reply and supplemental papers (again contrary to the court’s express order). ROA 173-175. The court heard spirited argument on May 16, 2025. This is the court’s decision.

2. Applicable Standards.

A. The court incorporates parts 2, 3A and 3B of the minutes for April 11, 2025 (ROA 165).

B. Justice Huffman and his colleagues held:

“Under the California Constitution, the CPRA must be “broadly construed” because its statutory scheme “furthers the people’s right of access.” (Cal. Const., art. I, § 3, subd. (b)(2).) Nevertheless, the act does not confer an absolute right of access. As part of the CPRA, the Legislature included a provision declaring it was “mindful of the right of individuals to privacy.” (§ 7921.000.) This express policy declaration “ ‘bespeaks legislative concern for individual privacy as well as disclosure.’ [Citation.] ‘In the spirit of this declaration, judicial decisions interpreting the [CPRA] seek to balance the public right to access to information, the government’s need, or lack of need, to preserve confidentiality, and the individual’s right to privacy. [Citations.]’ ” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282, 48 Cal.Rptr.3d 183, 141 P.3d 288 (*Copley Press*).)

“The CPRA balances the dual concerns for privacy and disclosure by providing for various exemptions that permit public agencies to refuse disclosure of certain public records. (See, e.g., §§ 7927.200–7927.500.) For example, the CPRA does not require agencies to permit public inspection of records that are exempted or prohibited from public disclosure pursuant to federal or state law, including Evidence Code provisions relating to privilege. (§ 7927.705.) Also, as discussed *post*, law enforcement investigatory files typically are categorically exempt from the CPRA’s general requirement of disclosure. (§ 7923.600.) “ ‘In large part, these exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession.’ ” (*Copley Press, supra*, 39 Cal.4th at p. 1282, 48 Cal.Rptr.3d 183, 141 P.3d 288.) CPRA exemptions are narrowly construed (*American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1042, 221 Cal.Rptr.3d 832, 400 P.3d 432 (*ACLU Foundation*)), and the agency opposing disclosure bears the burden of proving an exemption applies. (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 70, 172 Cal.Rptr.3d 56, 325 P.3d 460; *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 63, 149 Cal.Rptr.3d 324.)”

Castanares v. Superior Ct., supra, 98 Cal. App. 5th at 304–05 (2023).

C. The Category 2 videos now at issue are not part of an “investigatory file.” 98 Cal. App. 5th at 306 (text accompanying footnote 7). Although it is clear investigatory records may nonetheless be “investigatory” even if not included in an investigatory *file*, Justice Huffman took pains to note that the City could not just label a drone video as “investigatory” and expect this court to rubber stamp it: “[I]t now appears well established that ‘information in public files [becomes] exempt as “investigatory” material only when the prospect of enforcement proceedings [becomes] concrete and definite’”].) “Such a qualification is necessary to prevent an agency from attempting to ‘shield a record from public disclosure, *regardless of its nature*, simply by placing it in a file labelled “investigatory.” *Ibid.* at footnote 7, citations omitted. After analyzing the

Supreme Court's decision in *Haynie*, Justice Huffman provided the following "guidelines in considering such footage": The records of investigation exempted under section [7923.600, subd. (a)] encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." 98 Cal. App. 5th at 306, 307.

But Justice Huffman was not finished. He went on to address petitioner's reliance on *Am. Civ. Liberties Union Found. v. Superior Ct.*, 3 Cal.5th 1032 (2017)(*ACLU Foundation*). That court noted it "may not always be an easy task to identify the line between traditional 'investigation' and the sort of 'bulk' collection at issue here[.]" but it was "clear that [the] ... ALPR process falls on the bulk collection side of it." 98 Cal. App. 5th at 308–09, quoting 3 Cal. 5th at 1092. But Justice Huffman was "not persuaded that *ACLU Foundation* is instructive" because of a critical factual distinction: in our case, the drones are only deployed following an act of discretion by a police officer following a call for service. 98 Cal. App. 5th at 309.

Justice Huffman gave the following examples of "investigatory" drone dispatches: "a possible assault, a claim of someone causing a disturbance, or a suspected break in." He also provided examples of a non-investigatory dispatch: "a 911 call about a mountain lion roaming a neighborhood, a water leak, or a stranded motorist on the freeway." 98 Cal. App. 5th at 310.

D. In seeking to withhold the Category 3 videos based on the so-called "catchall" provision, the City is required "to demonstrate a clear overbalance on the side of confidentiality." *Am. Civ. Liberties Union Found. v. Superior Ct.*, 3 Cal.5th 1032, 1043 (2017)(*ACLU Foundation*). In the related context of sealing court records, courts have required a showing that secrecy is "necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *In re Marriage of Burkle*, 135 Cal.App.4th 1045, 1063 (2006). The "narrow tailoring," in our context, means (in part) inquiring whether redaction is feasible consistent with Govt. Code section 7922.525(b). And as the court held in *ACLU Foundation, supra*, 3 Cal.5th at 1046, the "critical point is that a court applying section 6255(a) [now Section 7922.000] cannot allow vague safety concerns to foreclose the public's right of access." The City bears the burden of proof, as Justice Huffman made clear. 98 Cal. App. 5th at 313.

E. The City has argued that the court has broad discretion to allow oral testimony at a merits hearing on a writ petition. ROA 171 at 3:23, citing *American Federation of State, County, & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 263; *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 485 [court "vested with discretion to receive" testimony]. The court's discretion "must be exercised within the confines of the applicable legal principles." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) Judicial discretion "is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 364, p. 420.) "The legal principles that govern the subject of discretionary action vary greatly with context. [Citation.] They are derived from the common law or statutes under which discretion is conferred." (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-

1298.) The reviewing court must consider the legal principles and policies that should have guided the trial court's actions to determine if it abused its discretion. (See *People v. Carmony* (2004) 33 Cal.4th 367, 377.)

3. Discussion and Rulings.

A. The court exercises its discretion to deny the City's request to examine Captain English. The petitioner (and the court) had the right to expect that the City would put its best foot forward in its several rounds of briefing. Compare *San Diego Watercrafts, Inc. v. Wells Fargo Bank*, 102 Cal. App. 4th 308, 316 (2002)(due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail). As petitioner points out, the City designated a person other than Capt. English as PMK (Captain Foxx). Capt. Foxx was deposed by petitioner, and earlier in the case she filed a declaration (ROA 87). Her previous declaration covers many of the areas the City now wants to explore with Capt. English; the Court of Appeal was unmoved.

More recently, Capt. English filed his own declaration. ROA 163. There was nothing to stop the City from including in Capt. English's April 10 declaration (or even in a second English declaration filed contemporaneously with the City's April 18 brief) the information he now proposes to testify about (3:10-17 of ROA 171). By failing to do so, the City prejudiced petitioner by foreclosing his opportunity to respond. And petitioner is not the only one prejudiced: the court's interest in resolving this long-running case at the trial level would also be impinged if it allowed the testimony as requested and then is met with an inevitable request for yet another round of briefing from petitioner.

The City has made several errors since the remand and remittitur in this case. The first designation was filled with mistakes because no one from the City took the time to proofread it. See ROA 145. It opposed *in camera* review – a position that stood zero chance of prevailing. See ROA 165. More recently, ROA 175 reflects the City's apparent concession that it misidentified incidents CVL25300/CVL25302, which was addressed by the court on page 14 of the April 25 tentative ruling (ROA 170). The court insisted that the City fix the first set of errors last fall, and as set forth below is allowing the more recent error to be corrected. Another error, which the City now wants the court to allow it to fix, was the failure to backstop its assertions of fact with sworn statements by Capt. English. The court is not persuaded that justice requires this sort of tardy error correction.

Further, the City's tactics, if countenanced, would disincentivize courts from publishing early, detailed tentative rulings to assist parties in directing their arguments at a merits hearing. Said another way, parties should not be permitted to misuse a tentative ruling to backfill evidentiary shortcomings identified by an adversary in a surreply brief.** Finally, there is nothing in the City's offer of proof to suggest that Capt. English can accurately portray the "suspicions" or other actual thought processes of the 911 dispatchers and drone pilots in March of 2021. Counsel acknowledged at the hearing he did not personally dispatch the drones in March of 2021. It seems clear to the court that the most he could do is speculate about what those persons may have been thinking based on the training they receive, or offer hearsay about what they told him they were thinking four years ago.

B. Category 3 videos.***

B1. As to five of the seven Category 3 videos, the City's main contention is that the wholesale withholding of them is justified by rights of privacy generally, and specifically privacy in "patient medical information" under Civil Code section 56 *et seq.* The City's citation to Civil Code section 1708.8(a) casts far too wide a net. While "physical invasion" of "airspace above the land of another" can give rise to liability, this is only true if the "invasion occurs in a manner that is offensive to a reasonable person." Given the altitudes and speeds at which the drones typically fly from the bases**** enroute to the location to which they are dispatched, no "reasonable person" would find a transitory overflight offensive – particularly if they knew the overflight was necessitated by an effort to locate a suspect or to help an elderly, infirm person who had fallen (or a resident in some other form of distress). This, of course, is no doubt part of what informed the Legislature's enactment of subsection (g) to section 1708.8. The en route overflight altitude and speed also typically makes it impossible to see faces, license plates, street addresses, and other identifying information. To the extent geographical landmarks and buildings and billboards can fleetingly be identified, the drone camera arguably engages in the "bulk collection" of data (images) the *ACLU Foundation* court spoke about; but it is hard to imagine how these images could be used for law enforcement purposes (perhaps other than by happenstance). After the drone arrives on scene as dispatched and the zoom feature of the drone camera is used, a different conclusion may become appropriate (as will be seen).

March 4, 2021 – Elderly woman down in school driveway. The video shows a 14:43***** liftoff, the ensuing overflight, and the arrival of a CVPD unit around 14:45 and CVFD engine about a minute later. The elderly female was standing when the drone arrived, and being assisted/steadied by a male not employed by the City. All persons visible in the footage (the elderly woman, the good Samaritan(s), the passerby, the police officer and the firefighter/paramedics) are all wearing medical masks common during the COVID pandemic. The video depicts the elderly woman being treated very respectfully by all concerned. The City's main contention (ROA 157, 12:7-23) relates to the elderly lady's privacy, but this is minimized by the fact that she is masked. Further diminishing the privacy interest of the elderly woman is the distant nature of much of the footage. For the portions of the video where the camera zooms in on the group in the driveway, it is at least arguable that, notwithstanding the fact she is wearing a mask, her identity could possibly be discerned. In light of these factors, the court orders this video produced with the following redactions:

14:43-14:45:35 must be produced with no redaction
14:45:35 – 14:46:39 must be redacted by blurring of the faces*****
14:46:40 – 14:47:07 must be produced with no redaction
14:47:08-14:47:45 must be redacted by blurring of the faces
14:47:46 to the end must be produced with no redaction

No "medical information" is disclosed by the video thus redacted, because the nature of the treatment afforded the victim by the paramedics is not disclosed (other than the fact that basic first aid was going to be rendered). The court finds this ruling strikes the appropriate balance

described by Justice Huffman as excerpted in part 2B above. As to the unredacted portions, the court finds the City has not carried its burden as described in section 2D above.

March 5, 2021 – Man collapsed out of wheelchair on sidewalk. The City initially asserted this video did not exist, and thus did not brief this incident (ROA 175, 12:4-24). The City later conceded there is such a video, and indeed there is. The court assumes the City's arguments are similar to those made for the March 4 incident; the court's conclusions are similar to those it reached with respect to the incident the day before. The collapsed man was located only a short distance from the drone's rooftop base, so the overflight enroute to him is comparatively brief. When the camera zooms in, the fact that all concerned are wearing medical masks becomes apparent. The subject is depicted motionless, then stirring as firefighters and a policeman arrive. He is assisted back into his wheelchair, and then later (after paramedics arrive) onto a gurney and into an ambulance. The City must turn over this video, but only after all zoomed views are redacted by blurring the faces. In addition, because the address on the house in front of which the man had collapsed is also visible in some of the footage, the house number must be blurred to guard against any inferential association of that house with the man who needed assistance. No "medical information" is disclosed by the video thus redacted, because the nature of the treatment afforded the victim by the paramedics (other than basic first aid) is not disclosed.

The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above. As to the unredacted portions, the court finds the City has not carried its burden as described in section 2D above. To the extent the City asserts the "catchall" exemption with respect to the March 4 and March 5 videos, the court notes the public interest will actually be *served* by allowing the public to view how respectfully (and indeed, with regard to the March 5 video, how downright tenderly) the first responder public servants treated the residents in distress.

March 21, 2021 – missing developmentally disabled woman. The City does not argue this was a suspected kidnapping; rather, it concedes the subject wandered away from her home and was located about a block away. This event is broken down into two videos. The first (longer) video depicts liftoff and enroute overflight. [Several swimming pools are seen in this and other overflight segments; not one depicts any backyard sunbathers or skinny dippers (one of the City's parade of horrors)]. At 13:43, the drone arrives on scene after CVPD squad cars 52 and 61 are already present, and as the camera zooms in, the subject is seen seated in the shade on a red curb near a fire hydrant. She is engaging in a calm discussion with one of the officers; she occasionally gestures with her right arm and hand. License plates cannot be read, but street signs can. The backup officer, who is wearing a medical mask, engages in a discussion with a passerby in a vehicle. Given these facts, and the undisputed proximity to the subject's home, video A is ordered produced after redacting by blurring of the subject's face on all zoomed shots and the blurring of the street signs on all views where they can be read. Video B simply shows the balance of the return to base, and momentarily depicts swimmers in the Hotel Ayres swimming pool (the drone base is on the roof of the hotel). None of the swimmers can be identified. Video B is ordered disclosed. The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above. As to the unredacted portions, the court finds the City has not carried its burden as described in section 2D above.

March 21, 2021 – attempted suicide with deadly weapon. Again, broken down into two videos. The first is as the City describes it: the drone arrives well before the six officers, who parked some distance away and set up a tactical perimeter before advancing toward the premises *with weapons drawn*. There are several zoomed-in shots of the premises, two of which depict a neighbor working in her yard and others of which depict the premises (including shots into an outbuilding which show the interior of same). The house number is visible. The court agrees with the City this video was properly withheld; given the potential for violence toward others when a threatened suicide with a weapon is reported,***** this video qualifies as “investigatory” because the court’s review of the video makes clear that the six officers dispatched to the location feared that “a violation of the law may occur” within the ambit of Justice Huffman’s analysis in part 2 above. Even if the video does not qualify as investigatory, the several privacy factors mentioned (as well as the difficulty associated with redaction) convince the court that petitioner is entitled to no relief as to video A. Video B merely shows a zoom out and return to base. It is ordered turned over after redaction by blurring of any faces visible at the outset. The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above. As to the unredacted portions of video B, the court finds the City has not carried its burden as described in section 2D above.

March 27, 2021 – elderly man who fell. This video depicts a 14:30 liftoff, overflight of San Diego Country Club and other portions of the city toward San Miguel Mountain, and arrival at 14:33 over a Chevron gas station near Interstate 805. A fire engine is already on site, and paramedics are seen assisting the victim near the entrance to the convenience store. The fall evidently occurred quite close to the entrance to the store, as the subject is under an awning or overhang and only his legs are visible (clad in light trousers). At 14:35, the ambulance arrives, and the drone returns to base. There is no possible privacy violation implicated, as only the subject’s legs can be visualized. The City must turn over this video, because there is no legitimate privacy concern. The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above. The court finds the City has not carried its burden as described in section 2D above.

B2. As to the two remaining category 3 videos, the City invokes only the “catchall” exemption, Govt. Code section 7922.000. This exemption may only be employed when the public interest served by withholding the records clearly outweighs the public interest served by disclosure.

March 5, 2021 – DUI checkpoints. Unlike all the other disputed Category 2 and 3 videos, this one was taken at night. The City’s contention that disclosure could interfere with prosecutions arising from the DUI checkpoint is borderline frivolous. Under Penal Code section 802, a misdemeanor DUI offence under Vehicle Code section 23152 would have to have been issued by March 5, 2022, and under section 801, a felony charged by March 5, 2024. The speedy trial rules associated with criminal prosecutions render it highly unlikely that any arrests at the DUI checkpoint on the **2021** night in question remain unresolved in **2025**. Certainly the City identifies no such case. Because of the elevation and the nighttime conditions, no license plates can be read. The City’s argument that “planning for future checkpoints” may be inhibited (ROA 157 at 14:13) is easily addressed by redacting (blurring) the two street signs and any commercial signs that are briefly visible. As so redacted, the video must be turned over. The public interest served by withholding the records clearly does not outweigh the public interest served by

disclosure. The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above. Finally, the court does not agree with the City's argument that the court should pretend it is ruling on this video in May of 2021 instead of May of 2025. While it is true that different considerations may be apt in the weeks immediately following a DUI checkpoint, the court is called upon to rule on this request today, not four years ago.

March 24, 2021 – reported traffic hazard. The video depicts a 15:31 liftoff, and en route overflight above San Diego Country Club toward San Miguel Mountain. The drone arrives near Interstate 805, and after some searching finds what looks like a piece of furniture on the northbound shoulder of the freeway near the Olympic Parkway exit. The City attempts to justify withholding this video because it “exposes individual dwellings” and therefore “has the *potential* of violating” rights of privacy. ROA 157 at 14:15. The court's *in camera* review of the video reveals that the height of the drone renders this “potential” risk something other than actual risk. Indeed, essentially no risk at all. Several swimming pools are briefly shown in the overflight; none are occupied by sunbathers or anyone else the court could discern. This video must be turned over. The public interest served by withholding the records clearly does not outweigh the public interest served by disclosure. The court finds this ruling strikes the appropriate balance described by Justice Huffman as excerpted in part 2B above.

C. Category 2 videos.

March 1, 2021 – welfare check. The drone never located the reported subject, and never descended below 300-400 feet (except when lifting off and landing). There are no privacy implications due to the elevation and speed of the flight. The flight is really no different from a test flight in terms of what it discloses; the drone failed to locate anyone needing a welfare check, and thus the welfare of the putative subject was never investigated. The overflight is akin to an officer diving a squad car on a routine patrol; said another way, the prospect of enforcement proceedings had not become concrete and definite. The “suspected violations of the law” in the City's April 18, 2025 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. The City is ordered to turn over this video, because it failed to carry its burden of establishing the applicability of the exemption.

March 1, 2021 – fire alongside Interstate 805. Video A must be turned over. The drone never reached the fire, flew only at elevations and speeds removing any serious privacy concerns, and never facilitated any investigation. Like the previous March 1 video, the flight depicted on video A is really no different from a training flight in terms of what it discloses. Video B was, on the other hand, properly withheld as investigatory. Given the location of the fire (next to Interstate 805 near Telegraph Canyon Road, and less than 50 yards from residential structures, under eucalyptus trees *on a windy day*), it was clearly proper for the City to dispatch the drone to investigate a possible violation of Penal Code section 451 (arson). The video includes thermal imaging and depicts firefighters and CVFD equipment on scene fighting the smoky blaze; the resulting footage may very well have been used in a restitution hearing against an arsonist or in a potential civil claim against the government had the fire not been controlled and instead spread

to the nearby homes. In that sense, the dispatch was focused on the prospect of enforcement proceedings which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to video B.

March 1, 2021 - person down. Videos A and B contain no content or data and thus are not responsive to petitioner's CPRA request. As to video C: This video depicts a 12:02 liftoff and enroute overflight toward Otay Lake. At 12:07 the drone arrives at the scene, and the subject (a male) is seen prone on his back and motionless. Infrared frames are shot (presumably to determine if the man was still warm). Moments later, a squad car arrives, and only then is the subject seen twitching. (Because the video has no sound, it is impossible to tell for certain if the twitching came after the officer in the squad car activated a bullhorn or otherwise made noise.) The officer walks toward the man, and the drone returns to base. The CVPD may very well have been investigating a homicide or a fatal drug overdose; the drone operator and the responding officer had no way of knowing until the subject began twitching. Thus, the court finds the dispatch was focused on the prospect of enforcement proceedings which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to video C.

March 1, 2021 – fire. The drone lifts off at 13:41 and flies toward National City and downtown San Diego. It stops its westward progress near the Sweetwater River Channel and SR 54. Fire engines are briefly seen, and the thermal imaging function of the camera is briefly used. The fire was already out, and the drone returned to base by 13:47. The elevation and speed is such that no personal identifying information is discernable. Swimming pools are distantly seen on the overflight, but no one is in or around them. Notwithstanding the fact that the fire had already been extinguished, the dispatch was focused on the prospect of enforcement proceedings which had become concrete and definite. This was not bulk data collection. Petitioner is entitled to no relief as to this video.

March 4, 2021 – welfare check – COVID mask. The drone lifts off at 10:14 and flies toward San Miguel Mountain over shopping malls, a school, and apartments under construction. At 10:17, the zoom feature is used, and the drone operator is clearly searching for the subject of the inquiry. At 10:20, the drone turns around, flies over Eastlake HS, and returns to base. Because of the evidence of a specifically targeted search for the person habitually refusing to wear a mask at bus stops and thereby creating a disturbance, the court concludes this deployment was investigatory in nature and not bulk data collection. Petitioner is entitled to no relief as to this video.

March 4, 2021 – collision. The drone lifts off at 14:25 and flies toward San Diego Bay. Following a fire engine, it arrives on scene where paramedics and a CVPD squad car are already present. The site is a narrow street between Interstate 5 and the trolley tracks. The accident was apparently a head-on collision, but (as it turned out) one at relatively slow speeds as the fire trucks are almost immediately cleared from the scene (and the paramedics soon thereafter). Neither driver can be seen, as they remained in their vehicles. The drone returns to base around 14:29. Inasmuch as municipalities are often sued for perceived safety defects in road design, and inasmuch as the dispatch was in response to a report of a head on traffic accident at a specific

site, the court concludes this deployment was investigatory in nature and not bulk data collection. Petitioner is entitled to no relief as to this video.

March 7, 2021 – officer needs cover (two videos). In video A, the drone departs the base at 14:02 and makes a brief flight toward Tijuana and then hovers over a McDonald's drive-thru where a homeless person with two shopping carts jammed with personal property appears to be sleeping adjacent to the restaurant and on a city sidewalk. The person cannot be identified. At 14:05, the drone then resumes flight toward San Ysidro, and focuses on a Target shopping center with a *different* McDonald's restaurant. The drone locates and hovers over a silver Nissan sedan parked in a clearly marked fire lane. At 14:12, CVPD unit 40 arrives. The Nissan driver attempts to leave, but the officer (wearing a mask) motions the driver to stop and then makes contact through the opened driver's side door. The Nissan driver cannot be seen, except for a couple of hand gestures. Video A ends with the officer still contacting the driver. Video B picks up at this time. At 14:19, a backup unit (40) arrives; the second officer exits the squad car and is also masked. The drone then departs and returns to base, the Nissan driver never having left the vehicle. With the exception of the initial focus on the sleeping homeless person at the wrong McDonald's [which appears to have been an honest mistake but would still arguably qualify as investigatory for a violation of Penal Code section 647(f)], these videos are clearly focused on a single subject (said by the City later to have been the subject of a felony arrest). The court concludes they were properly characterized as investigatory in nature, as the prospect of enforcement proceedings had become concrete and definite. Petitioner is entitled to no relief as to these videos.

March 7, 2021 – person down. The drone deploys at 14:21 and flies towards Eastlake. Pools are seen, but no sunbathers or swimmers. The drone operator is clearly searching for the subject of the call. A child is seen in a park with an adult, and they seem to notice the drone which then pulls back the zoom. At last a person in dark blue/green clothing is located, sleeping on the bench of a concrete picnic table in the same park with a backpack under his/her head (14:29). Supervised children playing can be seen, but not identified. The sleeping person cannot be identified as (s)he is wearing a hood. No patrol officer is shown arriving. The drone returns to base at 14:38. This video is not on the 2/21/25 log (ROA 154). Based on the court's review, the court determines that this video was erroneously claimed to be investigatory, and the City has not carried its burden to establish any other exception. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. It must be turned over. While this was not bulk data collection, the prospect of enforcement proceedings had not become concrete and definite. It is akin to something an officer might encounter on a routine patrol and decide not to pursue.

March 8, 2021 – person down. After liftoff at 13:04, the drone flies toward San Miguel Mountain. At 13:07, before reaching I-805, the drone zooms in on a four way signalized intersection where an apparently homeless man is sleeping on the sidewalk next to a vacant lot and near his shopping cart. A pool in the backyard of a nearby residence is seen, but there are no sunbathers. Firefighter/paramedics are already present when the drone arrives. As the firefighters (4) walk away, the man stirs briefly. The fire engine departs at 13:09. The man

remains sleeping on his side, and never could have been identified via the drone footage. The drone returns to base. Based on the court's review, the court determines that this video was erroneously claimed to be investigatory, and the City has not carried its burden to establish any other exception. It must be turned over. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. While this was not bulk data collection, the prospect of enforcement proceedings had not become concrete and definite.

March 8, 2021 – car fire. Liftoff at 14:55; flight toward Gunpowder Point, then veering south over trolley tracks and I-5, then veering north toward National City and the 32d Street/shipyard facilities and the SR54/I-5 interchange. Then back south. Then back north. No car fire was ever seen, and the drone returned to base. Given that the dispatch was based on second-hand information (according to the City's February log), the prospect of enforcement proceedings had not become concrete and definite. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. This video was erroneously designated as investigatory and must be turned over.

March 11, 2021 – water leak. Liftoff at 11:18. Drone flies toward Mexico, Otay Mesa and San Miguel Mountain. At 11:19 a 20 foot geyser of water is visualized in an apartment parking lot. It appears a fire hydrant had been toppled. A child plays in the water briefly; he cannot be identified, and neither can other passersby. The drone returns to base. Justice Huffman used "a water leak" as an example of a drone deployment that would not be considered categorically exempt as investigatory. 98 Cal. App. 5th at 312. Inasmuch as the "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review, this court is bound by Justice Huffman's pronouncement. *Auto Equity Sales v. Superior Court*, 57 Cal. 2d 450, 455 (1962); see also part 2B of ROA 165 (discussing the law of the case doctrine). The City has established no other exemption. The petitioner prevails on this one.

March 13, 2021 – possible vehicle fire. 9:53 liftoff. Cloudy day; rain had fallen earlier. Flight toward east over Mater Dei HS. At 9:55, the subject vehicle is visualized via zoom camera with the hood open, parked along the side of the road. There is no smoke and no fire. The driver steps under a tree and cannot be seen. Firefighters arrive in unit E-57 around 9:57 and examine the vehicle. The drone returns to base. Based on the court's review of the video and the description in the City's log (ROA 154), the court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 14, 2021 – person down. Liftoff at 9:44. Flight in direction of the South Bay salt flats. After a short flight, the subject is readily located on the sidewalk in front of a liquor store with his legs extending into Broadway. He stirs as CVPD unit 63 arrives (possibly after the officer keyed the mic on the bullhorn). Two officers approach the subject. A second unit (40) arrives; by now, the subject is sitting up. At this point, the drone camera zooms out. Fire engine 55 arrives at 9:49. At 9:51, the ambulance arrives. The subject is placed on a gurney. The court concludes this drone deployment was properly characterized as investigatory in nature, as the prospect of first aid provision primarily and enforcement proceedings secondarily had become concrete and definite. Petitioner is entitled to no relief as to this video.

March 14, 2021 – no detail collision. Two videos. Video A shows liftoff at 9:25, and the drone flies in the direction of San Miguel Mountain. As the drone approaches the 805 freeway, the accident site is visualized with paramedics already on scene and their gurney unloaded in front of a damaged pickup truck which has left the roadway and severed a fire hydrant or other water utility. The subject is initially down on the ground, and appears to be combative with paramedics and passersby. A fire engine arrives on scene. A second fire engine arrives. The drone traces the fresh tire tracks of the pickup truck as it left the roadway coming down the offramp from the southbound 805 at eastbound Bonita Road and struck a ditch. CHP arrives at 9:33 (two units initially, then another). The drone zooms in on the license plate of the pickup truck. At 9:38 the subject is loaded onto the gurney and placed in the ambulance. The drone begins its return flight. Video B is merely the end of the return to base. Video B must be turned over, because it is in no way investigatory. As to video A, the court concludes it was properly characterized as investigatory in nature, as the prospect of enforcement proceedings had become concrete and definite. There was ample reason to believe the subject was impaired or was driving recklessly; at a minimum, the City was entitled to investigate and collect information for later civil cost recovery actions given the damage to property, the waste of water, and the substantial presence of law enforcement and firefighters/paramedics. Criminal prosecution is not the only form of “law enforcement.” Petitioner is entitled to no relief as to video A.

March 14, 2021 – traffic hazard. Liftoff at 10:33, with the drone following a flight path over SDCC and then toward Otay Mesa. Pools are visualized, but no sunbathers. No traffic hazard, canine or otherwise, is detected despite a thorough search. Based on the court’s review of the video and the description in the City’s log (ROA 154), the court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 16, 2021 – traffic hazard. Liftoff at 14:05 (not 14:55 as stated in the City’s logs), and the drone flies in the direction of the South Bay Boatyard and the old Rohr facility. Three pools are seen – no sunbathers. The camera exhaustively examines Broadway south of F Street, but no traffic hazard is identified. Based on the court’s review of the video and the description in the City’s log (ROA 154), the court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA

167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 17, 2021 – welfare check of a woman walking in the middle of the street. 10:17 liftoff, with flight toward Silver Strand/IB, then toward San Ysidro. Drone focuses on an intersection and surrounding streets. No subject is ever located, and the drone returns to base. Pools are seen with no sunbathers visible. The court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 19, 2021 – car on tracks. Liftoff at 13:57. Drone flies toward the Chula Vista Marina. The “tracks” in question are the trolley tracks adjacent to Interstate 5; the other tracks in the area formerly served the old Rohr facility and are abandoned (judging from the weed growth). Contrary to the statement in the log (ROA 154), the drone made it to the tracks and indeed hovered over them for some time. No “car on tracks” is ever identified, and the drone returned to base. The court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 22, 2021 – traffic hazard. Liftoff at 9:59, followed by flight in the direction of San Miguel Mountain. Pools are seen with no sunbathers. At 10:01, the drone focuses on a white pickup truck in a left turn lane, apparently disabled, with orange cones out. Close-up shot of an unoccupied swimming pool behind a nearby residence as drone returns to base at a lower than usual elevation. The court concludes the prospect of enforcement proceedings had not become concrete and definite. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. This video was improvidently designated as investigatory and must be turned over. It is akin to a routine patrol in a squad car.

March 22, 2021 – no detail collision. Liftoff at 10:02, with ensuing brief flight toward Otay Mesa. Upon reaching the dispatch intersection at 10:05, the drone camera is zoomed on a severely damaged vehicle leaking fluid and with a broken windshield. Then a second vehicle is also shown, with doors open and airbags deployed. At 10:06, fire engine 55 arrives. The City’s log accurately describes the collection of license plate data. Police officers arrive at 10:08. Orange cones are deployed. Officers and firefighters are masked. Inasmuch as municipalities are often sued for perceived safety defects in intersection design, and inasmuch as the dispatch was in response to a report of a serious traffic accident at a specific site, the court finds the dispatch was focused on the prospect of rescue/first aid activities primarily, and accident

investigation secondarily, which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to this video.

March 22, 2021 – welfare check. Liftoff at 13:07, flight toward San Ysidro. The drone operator struggles to locate the subject under numerous trees (at one point using infrared view). He is finally located at 13:12, awake but wrapped in a blanket on the public sidewalk. Squad cars 47 and 25 arrive at 13:14; three officers contact the subject. The drone pulls back and returns to base. Penal Code section 647(f) is still on the books, though its enforcement is inconsistent at best and its validity has been questioned over the years. Given the visual evidence of a search for the subject, the court finds the dispatch was focused on learning the status of the subject primarily, and enforcement proceedings secondarily, both of which had become concrete and definite. It was not bulk data collection. This video was properly categorized as investigatory. Petitioner is entitled to no relief as to this video.

March 23, 2021 – person down. Liftoff at 10:03; flight toward National City. At 10:05, a person is seen on his hands and knees with his head down on the 4th Street Bridge over the Sweetwater River channel, leading to the National City Mile of Cars. Moments later, a NCPD unit arrives and assists the subject. The drone remains on scene but with zoom pulled back, then returns to base. The subject could have been praying facing Mecca; he could have been gravely ill or contemplating self-harm (*i.e.*, jumping off the bridge). He was blocking a narrow sidewalk in a public way. The court finds the dispatch was focused on the prospect of rescue/first aid activities primarily, and enforcement proceedings secondarily, which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to this video.

March 24, 2021 – overdose. Drone lifts off at 17:08, and ensuing flight is toward San Ysidro. As the drone nears the South Bay salt production facility, the camera zooms in on a park. The subject is on the sidewalk between a parking lot and the park, near a porta-potty, being given artificial respiration by a passerby. Two squad cars arrive at 17:13, lights flashing. CVFD unit 55 arrives at 17:16; paramedic at 17:17. At 17:19, the subject is assisted onto a gurney. The drone returns to base. The court finds the dispatch was focused on the prospect of rescue activities primarily, and enforcement proceedings secondarily, which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to this video.

March 25, 2021 – fire. Liftoff at 12:30, followed by a brief flight northeast upon which the operator visualizes two squad cars (one a k-9 unit) arriving at a Bank of America branch. Then the drone turns about 180 degrees and proceeds toward the South Bay Boatyard and San Diego Bay where smoke is clearly visible. Upon arrival and employment of the zoom feature, a fire is seen burning near the trolley tracks and Interstate 5, under some eucalyptus trees. There is some evidence the fire may have been associated with a homeless encampment. Firefighters are on scene with hoses. It is another breezy day. The court reaches the same conclusion it did with respect to the March 1 fire, video B. The City properly categorized this video. Petitioner is entitled to no relief as to this video.

March 26, 2021 – person down. Liftoff at 17:33; the drone flies toward San Miguel Mountain. In the vicinity of Castle Park HS, the drone operator searches the sidewalks for a “person down.”

At 17:38, the person is located on the sidewalk near a gas station, motionless in a fetal position. He stirs and then sits up and then (with some difficulty) rises and thereafter takes a few unsteady steps. The drone returns to base. The court finds the dispatch was focused on the prospect of enforcement proceedings which had become concrete and definite. It was the furthest thing from bulk data collection. Petitioner is entitled to no relief as to this video.

March 27, 2021 – car fire. Liftoff at 12:48. The drone flies somewhat haltingly, but not a long distance. The City’s log (ROA 154) correctly describes this incident. The vehicle’s license plate can be read and persons identified. The CVFD arrives with no lights or siren at 12:53. Infrared photography is used, showing a cooling engine compartment after use of the fire extinguisher. CVFD personnel never deploy hoses or extinguishers. Given that the citizen’s use of a fire extinguisher solved the immediate problem and allowed CVFD to downgrade their response, the court concludes this was a focused deployment, not routine data collection, and the designation as “investigatory” was appropriate. Petitioner is entitled to no relief as to this video.

March 28, 2021 – traffic hazard. Drone liftoff at 12:28, and it flies toward Otay Mesa. No traffic hazard was located. Swimming pools are visible but no one is in or around any of them. The court concludes the prospect of enforcement proceedings had not become concrete and definite. The flight was akin to a police officer on the ground, driving a squad car on a routine patrol. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 28, 2021 – no detail collision. Drone liftoff at 12:43, flies toward National City and the Coronado Bridge. Pans and zooms the SR 54 - Interstate 5 transition road and the Sweetwater River channel and the National City swap meet. No evidence of any “collision” is ever seen. The drone then briefly examines what appears to be a homeless encampment, and returns to base. The court concludes the prospect of enforcement proceedings had not become concrete and definite. This video was improvidently designated as investigatory and must be turned over. The “suspected violations of the law” in the City’s 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

March 28, 2021 – initially identified as “person down” and now correctly identified as “Domestic Violence.” The video begins at 14:25 with the drone having already lifted off and reached a position over Interstate 5. The drone heads toward the salt flats, San Ysidro and Tijuana. Pools are seen with no sunbathers. At 14:27, the drone focuses on a small 1960s era apartment house. No “person down” is seen. At 14:34, two police officers are seen (unit 29). They contact two occupants of the ground floor rear apartment. The female occupant is contacted by one officer while the male occupant is placed in handcuffs by the other officer and the drone returns to base while taking pictures of the Chula Vista Marina, Point Loma, downtown San Diego, Mt. Helix in the distance, and other aspects of San Diego on a beautiful “Chamber of Commerce” spring day. This video was misidentified in the NOL which

accompanied the original thumb drive (Ex. 1), and in the City's most recent log (ROA 167). The video is identified in the City's amended log (ROA 154) as "domestic violence," and petitioner did not challenge that designation. The City has conflated this with a video taken five minutes earlier, logged as "person down." This is the designation petitioner challenged. The video depicting the incident in CVL25302 was clearly investigatory.

Turning now to the tardily offered video referenced in the second NOL (Ex. 2, ROA 175): The drone lifts off and flies initially toward the Silver Strand and *Los Islas Coronados*. Around 14:23, the camera zooms toward the cleared area near the Chula Vista Marina. A swimming pool is seen with no persons present. Two squad cars can be discerned from afar on a freeway overpass near the trolley station. The zoom function never provides a close enough shot to discern whether there was a "person down" or to allow analysis of the officers' interactions with him/her (if there were any). The court concludes the prospect of enforcement proceedings had not become concrete and definite (although there was no mass data collection). The City failed to carry its burden to establish the applicability of the exemption. This video was improvidently designated as investigatory and must be turned over. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review. No privacy interests are implicated due to the altitude involved.

March 30, 2021 – traffic hazard. Drone liftoff at 18:05. Hazy day. Drone flies over SDCC then north. The only "traffic hazard" the drone operator focused on appears to be two boys playing catch in the street. One of them seems unlikely to start at shortstop. They cannot be identified. The court concludes the prospect of enforcement proceedings had not become concrete and definite (although there was no mass data collection). This video was improvidently designated as investigatory and must be turned over. The "suspected violations of the law" in the City's 4/18/25 table (ROA 167) are not attested to under oath by the person who dispatched the drone or any other officer of the City, and are neither obvious from review of the video nor discernable from reasonable inferences arising from such review.

The City's position at the May 16 hearing was that the only point in time at which a dispatcher/drone operator's mindset – *i.e.*, the reason behind the decision to deploy the drone – is relevant is the moment of drone launch/liftoff. Under this theory, it does not matter what the drone found or did not find, and it does not matter what the drone operator did with the drone once it arrived on scene; according to the City, the only relevant inquiry in answering the question whether a particular video is "investigatory" is what the dispatcher was thinking when the drone was initially ordered to take to the skies. The court disagrees. This position undervalues the drone operators' decisions when the drone arrives on scene. Above the court has outlined several such decisions; examples include to return to base, to zoom in on a subject, to employ thermal imaging. These are examples of police work, the exercise of discretion while in the field. They can be equated to an officer's decision in a squad car on the ground: to return to routine patrol because there is nothing to be investigated, or conversely a decision to get out of the car and investigate further; to request backup; or even to request drone coverage. The City's complaints about Monday morning quarterbacking and 20/20 hindsight are really arguments that

the Court of Appeal was wrong to reverse this court in 2023. This is not an exercise available to the undersigned.

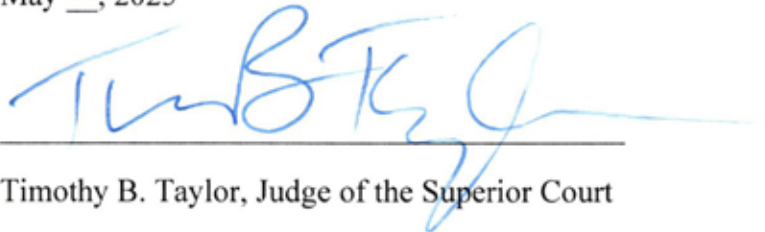
To the extent the court has not addressed the City's alternative privacy and "catchall" arguments with regard to the Category 2 videos above (as presented on pp. 8-10 of the April 18 brief), the court rejects those arguments and incorporates the discussion in part 3A1 above.

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Petitioner must forthwith prepare a judgment consistent with the foregoing, leaving blank spaces for cost and fees awards, which may be filled in following future cost memoranda and motions/hearings. **In light of the undersigned's imminent retirement from the Court, the judgment must be delivered to Dept. 2004 not later than May 23, 2025.** The court thanks counsel for their work on this matter over the last four years.

IT IS SO ORDERED.

May ¹⁶, 2025



Timothy B. Taylor, Judge of the Superior Court

*The court's review of the videos on the thumb drives -- taking notes and rewinding frequently -- took a little less than 3 trial days. This does not include the court's review of the parties' briefs or the drafting of this decision.

**This is an important point. The City has accused the court of repeatedly finding "the suspected violations of law the City identified in its Supplemental Merits Brief are not attested to under oath," but it was *petitioner* who pointed this *lacuna* out in the surreply brief. ROA 169 at page 1, text accompanying footnote 1, and 3:8. So in effect, the City asked the court to allow Capt. English to supply verbally a surreply to the surreply -- something clearly not contemplated anywhere in the CCP or the CRC.

***The court addresses category 3 first simply because it was the first category fully briefed.

****There are evidently four drone bases: the roof of the CVPD headquarters, the roof of Bayview Hospital, the roof of a building at Southwestern College, and the roof of the Ayres Hotel. Generally, the dispatches seek to match the geographical location of the bases and the location of the incident in question.

*****All hour/minute counter times in this ruling are approximate. The counter is in the upper left corner of each video.

***** The City nowhere contends redaction by blurring is technologically infeasible, and Justice Huffman and his colleagues were unimpressed with the evidence of redaction burden supplied by the City the first time this court considered the matter on the merits. 98 Cal. App. 5th at 314-315. The court adds that it recently learned Justice Huffman will soon retire from the Court of Appeal after a long and distinguished career, and the court wishes him well in retirement.

*****The "suicide by cop" scenario comes readily to mind. This has been described as a suicide method in which a suicidal individual deliberately behaves in a threatening manner -- often with a deadly weapon -- with intent to provoke a lethal response from a law enforcement officer.