

No. F090114

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
FIFTH APPELLATE DISTRICT**

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA,
Plaintiff and Appellant,

v.

CITY OF FRESNO,
Defendant and Appellee.

On Appeal from Judgment of the Superior Court, County of
Fresno, Denying Statutorily Mandated Attorneys' Fees,
Honorable W. Kent Hamlin, Judge
Superior Court Case No. 24CECG01635

APPELLANT'S OPENING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to the California Rules of Court, Rule 8.208, the undersigned counsel of record certifies that there are no persons or entities with either (1) an ownership interest of 10 percent or more in the Plaintiff and Appellant; or (2) a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves.

Dated: December 17, 2025

Respectfully Submitted,

By: */s/ Nicolas Hidalgo*

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INTRODUCTION

This appeal arises from the Defendant and Appellee City of Fresno’s (“Fresno” or the “City”) unlawful refusal to produce non-privileged public records concerning the Fresno Police Department’s use of police canines—records that are public and subject to disclosure under the California Public Records Act (“PRA”). Plaintiff and Appellant, the American Civil Liberties Union of Southern California (“ACLU”), submitted its records request in response to mounting community concern over the Fresno Police Department’s egregious and racially disproportionate use of police canines.

The use of police canines is a matter of urgent public interest, particularly given the grave physical harm these dogs have inflicted on civilians—including unarmed individuals and innocent bystanders. The deployment of attack dogs by law enforcement is deeply rooted in a legacy of racialized violence, a legacy that continues to manifest today in unjustified and excessive uses of force against communities of color.¹ Fresno is not immune from this pattern. Its own canine unit has been implicated in a series of disturbing incidents that underscore the critical need for transparency, including an incident involving a

¹ See *Weaponizing Dogs: The Brutal and Outdated Practice of Police Attack Dogs* (Jan. 2024) ACLU California Action at pp. 12–15 <https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf> (as of Feb. 22, 2024) (hereafter *Weaponizing Dogs*).

child attending a police demonstration.² The public has a right to know when, how, and under what circumstances law enforcement officers are using police canines, especially when those deployments result in individuals sustaining injuries.

In response to ACLU's PRA request, Fresno improperly withheld entire categories of responsive public records, applied blanket redactions to hide disclosable information in canine use of force and accidental bite reports, and refused to release the remaining responsive records. Fresno's failure to produce these public records is in direct violation of its statutory and constitutional obligations, both of which support the public's right to access. (*See e.g., Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467 [the PRA "embodies a strong policy in favor of disclosure of public records"]; Cal. Const., art. I, § 3, subd. (b), par. (2) ["A statute, court rule, or other authority . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."].)

To assert its rights under the PRA and California Constitution, the ACLU filed a petition for writ of mandate and complaint for injunctive and declaratory relief. After multiple rounds of briefing and oral argument, the Superior Court granted ACLU's petition for a writ, finding that Fresno has a duty to

² Miracle, *Fresno Police K-9 Attacks Innocent Bystander* (May 20, 2015) ABC30 <<https://abc30.com/hanley-sell-jerry-dyer-k-9-attack/733733/>> (as of Feb. 24, 2022); *Weaponizing Dogs*, *supra*, at p. 19; *Fresno Police K9 Fatally Shot After Biting Officer* (Jan. 5, 2022) ABC30 <<https://abc30.com/fresno-police-k9-killed-officer-shot-odin-department/11425605/>> (as of Feb. 24, 2022).

produce all responsive records that evidence a canine deployment that resulted in great bodily injury, as well as records reflecting a sustained finding on complaints alleging unreasonable or excessive force through canine deployment.

Although the ACLU prevailed in its request to enforce the PRA, the Superior Court *sua sponte* denied the ACLU's request for attorneys' fees. This denial was erroneous and contrary to the law. The PRA requires that the prevailing party in a PRA action be awarded reasonable attorneys' fees. The ACLU is plainly a prevailing party under the statute and is therefore entitled to its fees as a matter of law.

The ACLU therefore appeals *solely* from the portion of the Superior Court's order denying its statutorily mandated right to attorneys' fees under the PRA and respectfully requests that this Court reverse that portion of the order and remand with instructions to award reasonable attorneys' fees.

STATEMENT OF APPEALABILITY

An order denying attorneys' fees is appealable both as a post-judgment order (Code Civ. Proc., § 904.1, subd. (a)(2)) and as a collateral order (*Garcia v. Bellflower Unified School Dist. Governing Bd.* (2013) 220 Cal.App.4th 1058, 1063, n. 3 [holding that “[a]n order granting an attorney fee award under [Government Code] [7923.115, subdivision (a)] is appealable under the collateral order doctrine as a final determination on a collateral matter severable from the merits of the litigation and directing the payment of money”].)

ISSUE ON APPEAL³

Whether the Superior Court erred in denying the ACLU's request for attorneys' fees, contrary to Government Code section 7923.115, subdivision (a), which mandates an "award of court costs *and* reasonable attorney's fees" to any party who prevails in litigation to enforce their rights under the California Public Records Act. (Gov. Code § 7923.115, subd. (a), emphasis added). ACLU does not challenge or seek appellate review of any other portion of the Superior Court's order. This appeal is limited solely to the court's legal error in denying statutorily mandated attorneys' fees under Government Code section 7923.115, subdivision (a). Accordingly, the sole issue presented is a straightforward question of statutorily mandated attorneys' fees.

STATEMENT OF THE CASE

On March 27, 2023, the ACLU submitted a PRA request to the Fresno Police Department seeking public records to understand the scope and impact of its use of police canines. The PRA request sought, in relevant part: "(1) any completed use of force forms or use of force reports concerning use of a police canine;" "(2) use of force reports documenting police canine bite(s) and/or injur(ies);" "(3) records, including reports, concerning accidental police canine bite(s) and/or injur(ies);" and "(4) all records relating to the report, investigation, or findings of a police canine incident involving use of force resulting in death or serious

³ Fresno has separately petitioned this Court for a Writ of Mandate challenging the Fresno Superior Court order directing the City to produce records. (Case No. F08997.)

bodily injury, unreasonable or excessive force, failure to intervene against another officer using unreasonable or excessive force, dishonesty about a police canine incident, or discriminatory use of a threat of police canine force.” [1 AA 24, 49 70–72.]⁴

Fresno delayed any substantive response to the ACLU’s request for more than a month, and ultimately produced only a limited set of records on June 2, 2023—many of which were heavily redacted. [1 AA 49, 63–64, 87–141.] On June 30, 2023, Fresno sent a supplemental response purporting to address each request and asserting that withheld or redacted materials were exempt from disclosure based on attorney-client privilege, attorney work product doctrine, the constitutional right to privacy, the investigatory records exemption, and the statutory exemption for confidential peace officer personnel records. [1 AA 50; 1 AA 64–65, 148–151.]

After Fresno made no further production, the ACLU sent a letter on November 17, 2023 reiterating its request and explaining the inapplicability of each of Fresno’s claimed exemptions. [1 AA 50, 65, 155-160.] When Fresno again failed to respond, the ACLU sent a follow-up email on December 4, 2023, requesting a discussion to resolve the matter. [1 AA 50, 65, 162.] Nearly a month after the November letter, on December 12, 2023,

⁴ Unless otherwise indicated, all citations to the Appellant’s Index (“AA”) refer the Fresno Appendix of Exhibits in Support of Petition for Writ of Mandate filed in Fresno’s related Petition for Writ. (Case No. F089987.) ACLU can provide copies of these background materials if they would be helpful to the Court.

Fresno responded by reaffirming its prior justifications and explicitly asserting that it had complied with the PRA and considered the matter closed. [1 AA 50–51, 65, 164–166.]

To assert its rights under the PRA and California Constitution, the ACLU filed a Verified Complaint and Petition for Writ of Mandate on April 22, 2024 in the Fresno County Superior Court, seeking to compel disclosure of records responsive to its PRA request. [1 AA 16–28.] In its prayer for relief, the ACLU requested, among other remedies, “reasonable attorneys’ fees pursuant to Code of Civil Procedure, section 1021.5 and Government Code, section 7923.115(a).” [1 AA 26.]

The Superior Court held an initial hearing on January 8, 2025, and directed the parties to submit supplemental briefing on several issues including the applicability of the investigatory records exemption and the exception requiring disclosure of records relating to incidents involving “great bodily injury.” [5 AA 1271–1275.] Following supplemental briefing, the Court held further oral argument on March 21, 2025. [6 AA 1576–1577.]

On May 19, 2025, the Superior Court issued a Judgment Granting Peremptory Writ of Mandate and Statement of Decision, granting full relief to the ACLU. [1 CT 4–13.] The Court found that Fresno had improperly withheld and redacted records, and had applied an incorrect definition of “great bodily injury” in determining which incidents and associated records were disclosable. [1 CT 12.] Despite granting full relief, the Court *sua sponte* denied the ACLU’s request for attorneys’ fees—a ruling

that directly conflicts with Government Code section 7923.115, subdivision (a), which mandates that a prevailing PRA requester be awarded reasonable attorneys' fees. [1 CT 13.]

STANDARD OF REVIEW

In reviewing a superior court's order under the PRA for attorneys' fees, the appellate court applies an abuse of discretion standard. (*Garcia*, supra, 220 Cal.App.4th at 1064.) An abuse of discretion is shown where a superior court applies the wrong legal standard (*Waterwood Enterprises, LLC v. City of Long Beach* (2020) 58 Cal.App.5th 955, 968.)

ARGUMENT

In its Verified Petition for Writ of Mandate, the ACLU sought an award of attorneys' fees and costs pursuant to Gov. Code section 7923.115, subdivision (a). [1 App., Ex. 1 at p. 26.] Without affording the ACLU an opportunity to submit a properly noticed motion following the grant of a peremptory writ of mandate, the Superior Court misapplied controlling statutory law mandating a fee award to the ACLU as the prevailing PRA requester, and *sua sponte* denied such relief—while awarding costs—without notice or an opportunity to be heard. The denial of the ACLU's attorneys' fees constituted an abuse of discretion and legal error.

Accordingly, the Court should direct the Fresno Superior Court to set aside its May 19, 2025 Order *solely* with respect to its denial of ACLU's request for attorneys' fees, and to enter a new order awarding the ACLU its reasonable attorneys' fees as

the prevailing party in a PRA action pursuant to Government Code section 7923.115, subdivision (a).

I. Attorneys’ Fees Are Mandated by Statute for the Prevailing Party in a PRA Action

Government Code section 7923.115, subdivision (a) is unequivocally clear: “the court *shall* award court costs and reasonable attorneys’ fees to the requester who prevails in litigation filed pursuant to this division.” (Gov. Code, § 7923.115, subd. (a), emphasis added.) The statutory language is mandatory, not discretionary. Once a requester prevails in a PRA litigation, the court must award reasonable attorneys’ fees and costs. (Gov. Code, § 7923.115, subd. (a); *Filarsky v. Super. Ct.* (2002) 28 Cal.4th 419, 427 [“[a]n award of costs and attorney fees pursuant to this provision is mandatory if the plaintiff prevails.”]; *Bernardi v. County of Monterey*, (2008) 167 Cal.App.4th 1379, 1393 [same].) The Superior Court’s failure to do so here constitutes reversible legal error.⁵

The error is compounded by the fact that the Superior Court did award costs—implicitly acknowledging the ACLU’s prevailing party status—yet inexplicably declined to award fees, despite their mandatory nature under the statute. The Legislature enacted the PRA’s mandatory fees provision to

⁵ In Fresno’s related Writ Petition, the City conceded that prevailing parties in PRA actions are entitled to attorneys’ fees. [Fresno Informal Reply Brief at p. 23 (“Accordingly, the City does not dispute that, *if* ACLU was the prevailing party in this matter, it would be entitled to court costs and reasonable attorney fees as the CPRA requester”).]

promote public oversight and transparency by removing financial barriers to judicial enforcement. As the Court of Appeal emphasized in *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 349, “[t]hrough the device of awarding fees, citizens can enforce [the CPRA’s] salutary objectives.” That intent would be severely undermined if courts were permitted to deny attorneys’ fees arbitrarily, or without adherence to the statute’s requirements. (See also *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392 [explaining that the failure to award fees would discourage members of the public from pursuing future PRA requests to obtain access to small yet critical portions of documents unlawfully withheld by public entities.])

The ACLU is indisputably the prevailing party. [See *infra* Section II.] The Superior Court granted its Verified Petition for Writ of Mandate and compelling Fresno to disclose public records that had been improperly withheld or redacted. [1 CT 12–13.] The relief ordered by the court was neither minimal nor insignificant; it involved the production of substantial, substantive public records previously denied to the public. [See *infra* Section III.]

II. ACLU is a Prevailing Party, and Compelled the Disclosure of Documents or Information

A requestor prevails under the PRA when their litigation causes the public agency to disclose records that were previously withheld or improperly redacted. (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390.) Under well-established: a requestor need not obtain every

record sought; it is sufficient if the litigation “motivated the agency to provide the primary relief sought,” caused the agency to change its behavior, or “substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result.” (*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901–902; *Bernardi, supra*, 67 Cal.App.4th at 1393; *Pacific Merchant Shipping Assn. v. Bd. Of Pilots Comrs.*, (2015) 242 Cal.App.4th 1043, 1061; *Galbiso v. Orosi Pub. Utility Dist.*, (2008) 167 Cal.App.4th 1063, 1085.)

Here, the ACLU easily meets this standard. In 2023, it submitted a PRA request to the Fresno Police Department seeking records related to its use of police canines. [1 AA 24, 49, 70–72.] The Superior Court found that Fresno “provided a limited number of responsive documents, many with significant redactions. After several unsuccessful attempts to obtain [Fresno’s] compliance, [the] ACLU filed the instant petition[.]” [1 CT 5.] As a direct result of this litigation, the Court granted a peremptory writ of mandate, compelling Fresno to disclose records that had been improperly redacted and withheld. [1 CT 4–13.] The Court found that Fresno had applied an unduly narrow interpretation of “great bodily injury”, improperly limiting its production of responsive records. [1 CT 7–13.] In ordering disclosure, the Court confirmed that Fresno “has a duty to produce *every* responsive record that evidences a canine deployment that caused great bodily injury, as defined in Penal Code section 12022.7, subdivision (f) and reported court cases interpreting the term, as well as records reflecting a sustained

finding involving a complaint that alleges unreasonable or excessive force by means of a canine deployment (Pen. Code, § 832.7, subd. (b)(1)(A)(iii).)” [1 CT 12 (emphasis added).] The Superior Court’s ruling clarified and enforced the scope of Fresno’s obligations under the PRA, potentially requiring the disclosure of additional records Fresno had withheld.

Crucially, Fresno’s compliance under the PRA is neither complete nor voluntary. Key records—including 2021 records and those reflecting disputed “great bodily injury” incidents—have not been produced because they are subject of ongoing appeals. The ACLU’s litigation, however, remains the necessary and driving force that will compel Fresno to fulfill its statutory obligations once those matters are resolved.

Accordingly, ACLU is indisputably the prevailing party within the meaning of Government Code section 7923.115, subdivision (a). The Superior Court’s denial of attorneys’ fees constitutes clear legal error. By refusing fees, despite the ACLU’s prevailing party status and the PRA’s mandatory fee provision, the Court abused its discretion, frustrating the Legislature’s intent to promote private enforcement of public records rights.

III. The Documents the Superior Court Ordered Fresno to Produce Were Neither Minimal Nor Insignificant

Even partial success in PRA litigation supports a mandatory award of attorneys’ fees, so long as the litigation results in access to documents that were not previously disclosed. (*Bernardi*, supra, 167 Cal.App.4th at 1395.) That threshold is easily met here. The records the ACLU secured were substantive and directly responsive to the original request, addressing the

Fresno Police Department’s deployment of canines in incidents involving great bodily injury—a matter of high public interest and importance.

The Superior Court’s order compelled Fresno to disclose responsive records that had been improperly withheld or redacted, including those involving canine deployments resulting in great bodily injury as defined by Penal Code section 12022.7, subdivision (f). The Court’s ruling not only rejected Fresno’s unduly narrow interpretation of “GBI,” but affirmed the Legislature’s intent that such records must be made public. [1 CT 7–13.] This relief was meaningful, and far from minimal or insignificant.

The Court-ordered records will provide the public with critical insight into the Fresno Police Department’s use of police canines, advancing transparency and accountability. As such, the Court-ordered records are not trivial; they were central to the purpose of the PRA.

Accordingly, ACLU’s success in compelling disclosure of these records compels an award of attorneys’ fees under Government Code section 7923.115, subdivision (a). Denying fees under these circumstances would contravene both the statute’s plain language and the well-established body of case law interpreting it.

CONCLUSION

For the reasons stated above, ACLU respectfully requests that this Court reverse the Superior Court’s order *solely* as to its denial of ACLU’s right to attorneys’ fees under the California

Public Records Act, Government Code section 7923.115, subdivision (a). ACLU further requests that this Court issue an order holding that the Superior Court erred in denying ACLU's attorneys' fees and directing it to enter a new order and judgment awarding attorneys' fees to ACLU as the prevailing party in a PRA action. ACLU also requests that Fresno be ordered to pay ACLU's costs and attorneys' fees associated with this petition under Government Code section 7923.115, subdivision (a), and that the Court grant such other relief as is proper and just.

Dated: December 17, 2025

Respectfully Submitted,

By: /s/ Nicolas Hidalgo

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CERTIFICATE OF WORD COUNT (8.204)

The text of this Opening Brief comprises 2,973 words as counted by the Microsoft Word program used to generate it. This includes footnotes but excludes the tables of contents and authorities, the cover information, any certificate of interested entities or persons, the signature blocks, the verifications, this certificate, any proof of service, and any attachment. *See* Rules of Court 8.204(c), 8.486(a)(6).

By: /s/ Nicolas Hidalgo
Nicolas Hidalgo

PROOF OF SERVICE

I, Angelina Alas, declare that I am a resident of the State of California. I am over the age of eighteen years and not a party to the within action; my business address is 39 Drumm Street, San Francisco, CA 94111.

On December 17, 2025, I caused the following documents to be served:

OPENING BRIEF

via ELECTRONIC TRANSMISSION OR U.S. MAIL. An attorney's registration with TrueFiling to participate in EFS constitutes consent to service or delivery of all documents by any other party in a case through the system. (California Rules of Court, Rule 8.71.) This document generated by the Court will be served only through the EFS or by e-mailed notification to the following parties:

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Counsel for City of Fresno, Defendant and Petitioner

The Opening Brief is being served on the court by placement in a sealed envelope with postage thereon fully prepaid, in the United States mail at Novato, California addressed as set forth below:

Superior Court of California, County of Fresno

B.F. Sisk Courthouse

The Honorable W. Kent Hamlin

1130 O Street

Fresno, CA 93721

I declare under penalty of perjury, under the laws of the United States of America and the State of California, that the above is true and correct. Executed on December 17, 2025, at Novato, California.

By: /s/ Angelina Alas