

Fifth Civil Number 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 Respondent.*

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Appeal From the Superior Court of the State of California  
For the County of Fresno,  
Case No. 24CECG01635  
The Honorable W. Kent Hamlin, Dept. 53

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**RESPONDENT'S BRIEF**

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ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: Tony M. Sain, SBN 251626; Abigail J.R. McLaughlin, SBN 313208 FIRM NAME: LEWIS BRISBOIS BISGAARD & SMITH LLP STREET ADDRESS: 633 W. 5th Street, Suite 4000 CITY: Los Angeles STATE: CA ZIP CODE: 90071 TELEPHONE NO.: (213) 358-6041 FAX NO.: (213) 250-7900 E-MAIL ADDRESS: tony.sain@lewisbrisbois.com; abigail.mclaughlin@lewisbrisbois.com ATTORNEY FOR (name): Defendant and Respondent, CITY OF FRESNO		SUPERIOR COURT CASE NUMBER: CECG01635
APPELLANT/ AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA PETITIONER: RESPONDENT/ CITY OF FRESNO REAL PARTY IN INTEREST:		
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>		
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>		

1. This form is being submitted on behalf of the following party (name): Defendant and Respondent, City of Fresno
2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

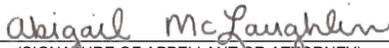
Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 14, 2026

Abigail J.R. McLaughlin  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF APPELLANT OR ATTORNEY)

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**INTRODUCTION**

Defendant and Respondent City of Fresno (the “City”) does not dispute that, *if* Plaintiff and Appellant American Civil Liberties Union of Southern California (the “ACLU”) is the prevailing party regarding its peremptory writ of mandate requesting disclosure of records requested by the ACLU via the California Public Records Act (“CPRA”), it would be entitled to court costs and *reasonable* attorney fees as the CPRA requester.

Specifically, it cannot be reasonably disputed that the law is clear that pursuant to Government Code § 7923.115(a), “If the requester prevails in [CPRA] litigation . . . , the court *shall* award

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court costs and reasonable attorney’s fees to the requester.” (*See Garcia v. Bellflower Unified School Dist. Governing Bd.* (2013) 220 Cal.App.4th 1058, 1065 (emphasis added).)

A requester “prevails” in a CPRA action where they “succeed[] on any significant issue in the [CPRA] litigation and achieve[] some of the benefit sought in the lawsuit.” (*Id.* at p. 1065 [also holding that the terms “prevailing party” and “successful party” are synonymous under California law].) Along these lines, “[a] plaintiff is considered the prevailing party if this lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior.” (*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-902.)

However, the City is currently appealing the underlying order granting ACLU’s peremptory writ of mandate and directing disclosure of the withheld police records via the City’s earlier-filed Petition for Writ of Mandate. (Cal. Ct. Appeal, 5th App. Dist., Case No. F089987.) If the City’s Petition for Writ of Mandate is granted, then the ACLU would no longer be the prevailing party and it would remain unentitled to reasonable attorney fees.

Significantly, as the City’s Petition for Writ of Mandate has been fully briefed as of December 5, 2025, with the filing of the City’s Reply to Return to Petition for Writ of Mandate or Other Appropriate Relief (both incorporated here by reference), the City would respectfully request that this Court wait to issue an

Opinion in this Appeal, as such may be mooted by the Court's Opinion regarding the City's Petition for Writ of Mandate.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The City agrees with much of the ACLU's Statement of the Case in its Opening Brief for the purposes of this particular Appeal. [AOB at pp. 9-11.] Of relevance to this appeal,<sup>1</sup> specifically, the City concurs that the ACLU served a CPRA request on the City seeking records related to police K-9 use of force, that the ACLU sought a writ alleging that the City had not fulfilled its obligations under the CPRA and seeking disclosure of certain responsive records, and that the Superior Court granted ACLU's writ and ordered the City to produce further records in response to the ACLU's CPRA request. [1 AA 16–26, 70-72; 6 AA 1616–1638; 1 CT 4–13.]

That being said, for the Court's clarity and ease, the City provides a few corrections and clarifications to the ACLU's Statement of the Case.

First, the ACLU fails to note that the City's June 30, 2023 supplemental response included additional disclosure/production. In total, the City produced/disclosed 991 pages of police records in response to the ACLU's CPRA request, including 788 pages of Use of Force Reports, related to use of K-9s and 12 pages of

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<sup>1</sup> The City notes that a detailed factual and procedural history was included in its Petition for Writ of Mandate and incorporates such herein by reference. (Cal. Ct. Appeal, 5th App. Dist., Case No. F089987, Pet. at pp. 14-26.)

Accidental Bite Reports: which were redacted pursuant to applicable exemptions. [2–5 AA 310, 315–1257.] Such records included a summary of complaints with K-9 related allegations closed from January 1, 2019 to May 19, 2023; the date, location, and certain factual details as to accidental K-9 bites; and the date, case number, incident location, and use of force details regarding K-9 uses of force – *i.e.* reason for using force, whether the citizen was injured, and locations of injury sustained by the citizen. [2–5 AA 315–1257.]

In essence, the withheld-undisclosed records were police use of force records from 2019 to 2023 that, upon review by the City, did *not* involve K-9 force causing death or, applying the City’s appropriately narrow definition thereof, causing GBI. [2 AA 310–311; 5 AA 1387–1388.]

Second, to provide further detail regarding the Superior Court’s Judgment Granting Peremptory Writ of Mandate and Statement of Decision: in its Statement of Decision, the Superior Court focused on the Parties’ disagreement on whether the requested records were investigatory reports exempt from disclosure by Government Code § 7923.600 and, if so, whether some or all of those records are nevertheless required to be produced pursuant to Penal Code § 832.7(b)(1)(A)(ii). [1 CT 4–13.] The Superior Court found that the language of Penal Code § 832.7 was “unambiguous” because “great bodily injury” had a well-accepted meaning under the Penal Code – a “significant or substantial physical injury” as defined by Penal Code § 12022.7,

which included some physical pain and/or damage: such as lacerations, bruises, or abrasions.<sup>2</sup> [*Ibid.*] Based on this, the Superior Court found that City of Fresno had a duty to disclose-produce every responsive record that evidenced a K-9 deployment which caused its (the Superior Court’s) version of great bodily injury, as defined in Penal Code § 12022.7(f) and by reported court cases interpreting that term, as well as records reflecting a sustained finding involving a complaint that alleges unreasonable or excessive force by means of a canine deployment. [*Ibid.*]

The Superior Court thus ordered that a peremptory writ of mandate shall issue directing the City to promptly provide the ACLU with responsive records, and granting ACLU’s request to recover costs; however, the Superior Court *denied* ACLU’s request for attorney’s fees, which is now at-issue in this Appeal.<sup>3</sup> [*Ibid.*]

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<sup>2</sup> The City believes that the Court’s interpretation of “great bodily injury” was erroneous based on a plain text reading of Penal Code § 832.7 and other legal definitions in the context of police use of force that supported a more narrow definition, which is the subject of the City’s earlier-filed Petition for Writ of Mandate.

<sup>3</sup> The City believes that both of these decisions were error by the Superior Court. But the City’s appellate writ is focused only on the error causing prejudice to the City. (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 970-71 [“[I]n order for appellants to have standing . . . to appeal from [a] judgment, they have been ‘aggrieved’ by the judgment.”]; see Code Civ. Proc. § 902.)

Third, in relation to the City’s pending and earlier-filed Petition for Writ of Mandate (Cal. Ct. Appeal, 5th App. Dist., Case No. F089987), the City notes that, under Government Code § 68081, this Court directed the parties to brief the issue of whether the trial court abused its discretion in denying real party in interest’s request for attorney fees under Government Code § 7923.115(a). [*Id.*, August 12, 2025 Order.] The Parties briefed this issue via the ACLU’s Informal Response and the City’s Informal Reply. [*See id.*] Additionally, this Court granted the City’s request for stay, ordering that further proceedings in the underlying matter were stayed pending determination of the writ proceeding or until further ruling of this Court. [*Id.*, October 6, 2025 Order to Show Cause.]

## LEGAL ARGUMENT

### I. Standard of Review.

A trial court’s decision to deny an award of attorneys’ fees is reviewed for abuse of discretion. (*See Riskin v. Downton Los Angeles Property Owners Association* (2022) 76 Cal.App.5th 438, 445.) “[A]n abuse of discretion is shown where a trial court . . . applies the wrong legal standard.” (*Id.* at p. 446 [internal citations omitted].) “The burden is on the party complaining to establish an abuse of discretion.” (*Denham v. Superior Court* (1970) 2 Cal.2d 557, 566 [cleaned up].)

## II. The CPRA Requires Courts to Award Costs and Reasonable Attorneys' Fees if the CPRA Requester Prevails.

The CPRA requires courts to award costs and reasonable attorneys' fees "[i]f the requester prevails in litigation filed pursuant to [the CPRA]." (Gov. Code § 7923.115(a); *Filarksy v. Superior Court* (2002) 28 Cal.4th 419, 427 ["An award of costs and attorney fees pursuant to this provision is mandatory if the plaintiff prevails."].)

"A plaintiff prevails within the meaning of [Gov. Code § 7923.115] when he or she files an action which results in defendant releasing a copy of a previously withheld document." (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1085 [cleaned up] [quoting *Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1391; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898].) However, when the CPRA disclosure was not motivated or caused by the plaintiff's CPRA action, then the plaintiff is not a prevailing party for purposes of recovery of fees/costs as to those disclosed records. (*Valenti v. City of San Diego* (2023) 94 Cal.App.5th 218, 228 [for a plaintiff to prevail in CPRA litigation, "the litigation must have resulted in the release of records that would not otherwise have been released"] [quoting *Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 463].)

**A. Unless the Trial Court's Erroneous Order is Reversed, the ACLU Would Remain the Prevailing Party in this Litigation as to Some of the Requested Records and It Would Thus Be Entitled to Costs and Reasonable Attorney Fees.**

The City does not dispute that, under the Superior Court's erroneous Judgment Granting Peremptory Writ of Mandate, the ACLU is currently the prevailing party in this litigation, as the Superior Court ordered the City to provide to the ACLU certain police K-9 records that had been previously withheld. (*See Galbiso, supra*, 167 Cal.App.4th 1063.) Thus, if the Superior Court's Judgment is upheld, then the ACLU is entitled to an award of costs and *reasonable* attorney fees associated with disclosure of the disputed K9 use of force records. (Gov. Code § 7923.115(a).)

**B. Whether the ACLU Remains Entitled to Costs and Reasonable Attorney Fees is Dependent on the Outcome of the City's Petition for Writ of Mandate.**

However, as referenced above, the City has a pending Petition for Writ of Mandate that respectfully requests that this Court issue a writ directing the Superior Court to vacate its judgment granting peremptory writ of mandate and to instead enter a new order denying such peremptory writ and the ACLU's request for attorney fees and costs. If this Court issues such requested writ, then the ACLU would no longer be the prevailing party and it would no longer be entitled to costs and reasonable attorney fees.

Specifically, if the City prevails on its earlier-filed Petition for Writ of Mandate, then it would correctly be determined that the City properly redacted and withheld canine (“K9”) use of force and bite reports pursuant to the proper definition of “great bodily injury” – a physical injury that causes a substantial risk of death, extended loss or impairment of a body part or function, or permanent disfigurement – and the ACLU is thus not entitled to production/disclosure of any additional police K-9 use of force records.

Therefore, in such an event, as the underlying litigation would no longer result in the City releasing a copy of a previously withheld document, the ACLU would no longer be considered the prevailing party and their entitlement to attorney fees and costs pursuant to Government Code § 7923.115(a) no longer exists. (See *Pacific Merchant Shipping Assn. v. Board of Pilot Commissioners etc.* (2015) 242 Cal.App.4th 1043, 1053 [a plaintiff prevails “when he or she files an action which results in defendant releasing a copy of a previously withheld document] [cleaned up].)

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## CONCLUSION

For all of the above reasons, the City respectfully requests that this Court wait to determine the outcome of this appeal until the City's earlier-filed Petition for Writ of Mandate is decided. If the City's Petition for Writ of Mandate is granted, then this appeal is moot, as the ACLU is no longer the prevailing party and entitled to attorney fees and costs.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH RULE 8.204**

I, the undersigned, Abigail J.R. McLaughlin, declare that:

1. I am a partner of the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for defendant and petitioner City of Fresno.
2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.
3. This informal reply to the informal response to the petition for writ of mandate was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The petition contains 2,000 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, on January 16, 2026.

/s/ Abigail J.R. McLaughlin  
Abigail J.R. McLaughlin

**PROOF OF SERVICE**

*City of Fresno v. Superior Court of the State of California, County of Fresno*

Fifth Civil Number F090114

Superior Court Number: 24CECG01635

I, Corinne Taylor, state:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

On January 16, 2026, I served the following document described as **RESPONDENT’S BRIEF; CERTIFICATE OF INTERESTED ENTITIES OR PERSONS** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the electronic service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On January 16, 2026, I served the following document described **RESPONDENT’S BRIEF; CERTIFICATE OF INTERESTED ENTITIES OR PERSONS** by placing a true copy enclosed in a sealed envelope addressed as stated on the attached service list. I am readily familiar with the firm’s practice for collection and processing correspondence for regular and overnight mailing. Under that practice, this document will be deposited with the Overnight Mail provider and/or U.S. Postal Service on this date with postage thereon fully prepaid at Los

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Angeles, California to addresses listed below in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 16, 2026, at Los Angeles, California.

*/s/ Corinne Taylor*

Corinne Taylor

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**SERVICE LIST**

*City of Fresno v. Superior Court of the State of California, County of Fresno.*

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Superior Court Number: 24CECG01635

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