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February 18, 2025

VIA EMAIL & U.S. MAIL
Sheriff James Fryhoff
Ventura County Sheriff
800 S. Victoria Ave
Ventura, CA 93009
EMAIL: VCSO.CCW@ventura.org

Re: Opposition of Public Record Request - CCW Licensees in Ventura County

Dear Sheriff Fryhoff:

I write to you on behalf of the California Rifle & Pistol Association and its thousands of members, many of whom live in Ventura County and are current or prospective concealed carry licensees ("CCW") in the county. We understand that your office received a letter requesting information on the current CCW holders that you have in Ventura. This request was made through a valid California Public Records Request. While we understand that these types of requests are typically broad and must be responded to appropriately, we also know that there are certain positions that should be taken by your office to protect the personal information of individuals who did not approve of their private information disclosure in the name of government transparency.

California Public Records Act

The California Public Records Act ("Act") is the state's commitment to more open government. The Act gives members of the public access to information that allows the monitoring of government functions and offices. The main tenant of the Act is that governmental records shall be disclosed to the public upon request unless there is a legal basis not to do so. Any person may either request to view the government records or make copies of the records. The right to access is not unlimited and does not extend to records that fall under specific exceptions to public disclosure. Courts are more likely to prohibit the disclosure of private individual information like medical records. However, if the information is provided voluntarily in order to acquire a benefit, the information relates to serious wrongdoing, or the information is associated with an applicant's qualifications, a court is less likely to recognize a privacy right. Agencies must balance the right to privacy of individuals and the need for public access. We would argue that while a CCW holder provides their personal information for the purposes of

securing a CCW license, they have not given away all privacy rights to have that information released to the general public for any purpose they want to use it for.

All "persons" have the right to inspect and copy disclosable public records. The underlying purpose of the Act is to assure broad access to public records. Any grounds for denying access to public records must be found in the enumerated exemptions of the Act. The Act's general policy of disclosure can only be accomplished if the exemptions are narrowly construed. As a result, courts—both as a matter of statutory interpretation and now by constitutional mandate—construe exemptions under the Act narrowly. This means that in responding to a record request, a local agency must allow access to the record unless it can identify an exemption within the Act that would justify nondisclosure of the information. First, the Act exempts records that are otherwise exempt from disclosure under other statutes. Second, **the Act's "public interest" or "catchall" provision allows nondisclosure where the local agency demonstrates on the facts of a particular case that the public interest in nondisclosure clearly outweighs the public interest in disclosure.** Specific exemptions include architectural and official building plans, attorney-client communications and attorney work product of the agency attorneys, code enforcement records, draft documents not meant for the public, and some voter registration information. Identification of police informants, law enforcement records generally, disclosure of crime victim information and insurance carriers, trade secrets arrestee information, complaints and requests for assistance, medical privacy, juvenile records, pending litigation where the state is a party, and licensee financial information. All other information must be responded to by the agency. **Courts have also ruled that individuals have a substantial privacy interest in their personal contact information (i.e., name, address, county, profession, etc., and anything that is identifying).**

Application of a balancing test by the courts has yielded varying results, depending on the circumstances of the case. For example, courts have allowed nondisclosure of the names, addresses, and telephone numbers of airport noise complainants. In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision. In other situations, courts have ordered the disclosure of personal information contained in applications for licenses to carry concealed weapons (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646).

CBS v. Block is Outdated Law

CBS v. Block[1] is an older case that is pre-*Bruen* (more recent Supreme Court precedent). In *Block*, the court found that the individual privacy concerns of individuals who applied for a CCW in California could not possibly outweigh the public good for disclosure because being fearful of being identified as a gun owner was not enough. Unfortunately, the court in *Block* was around too early to see the vitriol and disdain that many in California have for the average law-abiding gun owner in today's political climate. Since the *Block* decision in 1986, the underlying reasons behind the balancing in this way by the court are gone. Specifically, because good cause of issuance of a CCW is no longer required and no longer needs to be monitored to ensure equal protection under the law, per the *Bruen* decision.

[1] (1986) 42 Cal.3d 646 [230 Cal.Rptr. 362, 725 P.2d 470]

It was just two years ago that the California Department of Justice "inadvertently" released the names, addresses, and other information of CCW holders in the state in a massive data leak. There are currently multiple lawsuits and a class action lawsuit against the state for this disclosure. This is the same information now being sought through public records requests. How is the disclosure of this private information by the DOJ any different than that being requested in the current public records request to the Ventura Sheriff's Department? The information requested should be segregated to provide for the transparency of the process in the department while protecting the privacy of the individual applicants and keeping their individual private information safe from public disclosure.

Privacy in California

California law treats information privacy very seriously, with numerous, overlapping laws designed to prevent and punish the dissemination of personally identifiable information. Because the right to privacy under the California state constitution is "much broader than its federal analog," the privacy claim theory under the California Constitution is more appealing. *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 325–26 (1997). The right of privacy protects the individual's reasonable expectation of privacy against a serious invasion. *Pioneer Elecs. (USA), Inc. v. Superior Court*, 40 Cal. 4th 360, 370 (2007). And important to this matter, "California courts recognize a constitutionally protected interest in a person's name, address, and phone number." *Padron v. Lara,* No. 1:16-cv-00549-SAB, 2018 U.S. Dist. LEXIS 80161, at *38 (E.D. Cal. May 11, 2018). *Padron* cites a handful of California state court decisions recognizing a cognizable privacy interest in home address information. See *Cty. of Los Angeles v. Los Angeles Cty. Employee Relations Com.*, 56 Cal.4th 905, 927-28 (2013), *Pioneer Elecs. (USA), Inc. v. Superior Court*, 40 Cal.4th 360, 372 (2007), *Puerto v. Superior Court*, 158 Cal.App.4th 1242, 1252 (2008).

Our situation is indeed more serious with an all-encompassing public records request. This information is made public that people are concealed carriers. For some with unique names, it is not difficult to determine who they are in the community. By definition, concealed carry is something meant to be done clandestinely, without anyone's knowledge. CCW holders are told to keep their firearm concealed and they should make sure not to imprint or show the firearm in public, yet the government is very willing to share their identity with anyone who asks for any purpose. But this request directly compromises the secretive nature of a CCW and exposes people to the hostility that pro-gun rights people in California have to deal with.

Additionally, it is extremely easy in our technological world to run a quick Google search with minimal personal information and locate everything about them, from where they live, to where their children go to school, to where they work, and what hobbies they participate in. Each of these data points can be directly derived from the simple release of personal data in a public records request, which has turned these types of releases into treasure troves for criminals.

There is, however, a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.)

The Act does not specifically identify the public interests that might be served by not making the record public, but the nature of those interests may be inferred from specific exemptions contained in the Act. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests. The requirement that the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. **Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality**.

Proposition 59

In the November 2, 2004, general election, the voters of California passed Proposition 59 which amended the California Constitution to include a public right of access to public records. The Constitution specifically provides: "The people have the right of access to information **concerning the conduct of the people's business**, and therefore the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Thus, after enactment of Proposition 59, the right of public access to documents is not simply statutory, but a basic right under the Constitution. In furtherance of that goal, the constitutional provision states that a "statute, court rule, or other authority, including, those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. It also provides that any statute enacted after its effective date that limits the right of access must be adopted with findings identifying the interest protected by the limitation and the need for protecting that interest. Cal. Const., art. I, § 3, subd. (b)(2). **What Proposition 59 did not do is state that the names and identification of individuals must be released in any information concerning the conduct of the people's business**. The Sheriff's office could comply with the current request for transparency in the process of issuing CCWs while still maintaining the anonymity of those holding a license.

What purpose does the release of thousands of individual citizens' information have in upholding the transparency of government? What the release of this type of personal and private information *will* do is have a chilling effect on citizens exercising their Second Amendment rights. The good thing weighing in favor of not releasing the information requested is that the right of access to public records under the CPRA is not absolute. (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282 [48 Cal.Rptr.3d 183, 141 P.3d 288].) The California Constitution contains an explicit right of privacy that operates against private and governmental entities. (Cal. Const., art. I, § 1; *Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 613 [7 Cal.Rptr.3d 692].

The privacy exemption, pursuant to section 6254, subdivision (c) of the CPRA disclosure of records is not required if they are "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an **unwarranted invasion of personal privacy**." In the trial court, considerable dispute arose regarding the nature of the AGT scores and whether documents containing them reflected "[p]ersonnel ... or similar files." The term "similar files" has been interpreted to "have a broad, rather than a narrow, meaning." *Department of State v. Washington Post Co.* (1982) 456 U.S. 595, 600 [102 S.Ct. 1957, 72 L.Ed.2d 358].) They need not contain

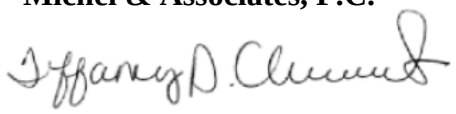
intimate details or highly personal information. They may simply be government records containing "information which applies to a particular individual." (*Id. at p. 602, 102 S.Ct. 1957*.)

The second exemption is the catchall provision set forth in section 6255 of the CPRA, which allows a government agency to withhold records if it can demonstrate that "on the facts of the particular case **the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.**" *(Id., subd. (a).)* The catchall exemption "contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality." (*Michaelis, supra,* 38 Cal.4th at p. 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194.) Where the public interest in the disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information. (*CBS, Inc. v. Block (1986)* 42 Cal.3d 646 [230 Cal.Rptr. 362, 725 P.2d 470] (Block).) Conversely, when the public interest in nondisclosure clearly outweighs the public interest in disclosure, the refusal to release records will be upheld. (*Times Mirror, supra,* 53 Cal.3d at p. 1325, 283 Cal.Rptr. 893, 813 P.2d 240; *Wilson v. Superior Court (1996)* 51 Cal.App.4th 1136, 1141 [59 Cal.Rptr.2d 537] (*Wilson*).) *Los Angeles Unified Sch. Dist. v. Superior Ct.*, 228 Cal. App. 4th 222, 239–40, 175 Cal. Rptr. 3d 90, 102 (2014).

Conclusion

The California Rifle & Pistol Association and our members hope that your department will continue to oppose requests that seek to attack the privacy and safety concerns of individual citizens. We would offer your department any assistance in dealing with these types of matters and coming to a sustainable solution for handling these types of requests in the future.

Sincerely,
Michel & Associates, P.C.



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