

1 THOMAS DEÁK, Senior Deputy (State Bar No. 183501)
2 Office of County Counsel, County of San Diego
3 1600 Pacific Highway, Room 355
4 San Diego, California 92101-2469
5 Telephone: (619) 531-4810
6 Facsimile: (619) 531-6005
7 E-mail: thomas.deak@sdcounty.ca.gov
8 *(Exempt from Filing Fees per Gov't Code § 6103)*

9 Attorneys for Respondent and Defendant County of San Diego

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/23/2021 at 09:21:00 AM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 PARI ZAHAU; MARY ZAHAU-LOEHNER
14 and DOUGLAS LOEHNER,

15 Petitioners,

16 v.

17 SAN DIEGO COUNTY SHERIFF'S
18 DEPARTMENT; WILLIAM D. GORE, in his
19 official capacity as Sheriff of San Diego
20 County; and DOES 1 through 20, inclusive,

21 Respondents.

Case No.: 37-2020-0024682-CU-MC-CTL
(Petition filed: February 20, 2020)

**COUNTY OF SAN DIEGO'S NOTICE OF
DEMURRER AND DEMURRER TO
PETITIONERS' VERIFIED PETITION
FOR WRIT OF MANDATE**

"IMAGED FILE"

Date: July 23, 2021
Time: 1:30 p.m.
Dept.: 72
Judge: Hon. Timothy B. Taylor

22 TO: PETITIONERS AND PLAINTIFFS AND TO THEIR ATTORNEYS OF
23 RECORD:

24 YOU ARE HEREBY NOTIFIED THAT at 1:30 p.m., on July 23, 2021, in Department
25 C-72 of this Court, located at 330 West Broadway, San Diego, California, Respondent and
26 Defendant County of San Diego ("the County"), erroneously sued herein as the San Diego
27 County Sheriff's Department and William D. Gore, will demur to the Verified Petition for Writ
28 of Mandate Pursuant to the California Public Records Act and the California Constitution and

1 Complaint for Declaratory Relief; Request for Attorneys' Fees and Costs ("Petition") filed in
2 this action by Petitioners and Plaintiffs Pari Zahau, Mary Zahau-Loehner, and Douglas Loehner
3 (collectively, "Petitioners"). The County demurs to the Petition, pursuant to Code of Civil
4 Procedure § 430.10(e), on the grounds the Petition fails to allege facts sufficient to state any
5 cause of action against the County. Specifically, the County will demur on the following
6 grounds: (i) the records that Petitioners seek to obtain under the California Public Records Act
7 ("CPRA") are law enforcement investigatory files, exempt from disclosure under the CPRA; (ii)
8 the disclosure of some investigatory files waives the exemption *only* as to those files disclosed;
9 (iii) no partial disclosure exemption waiver can occur under the CPRA as a matter of law; and
10 (iv) the County has not used the investigatory files exemption as a "sword" in this case because
11 it has not placed any such files in issue.

12 This demurrer will be based on this notice of demurrer and demurrer; the County's
13 memorandum of points and authorities in support of this demurrer; the declaration of Thomas
14 Deák and exhibit thereto; the complete files and records of this action; and all additional
15 documents and evidence that may be submitted to the Court at or before the hearing in
16 connection with this proceeding.

17
18 DATED: April 23, 2021

OFFICE OF COUNTY COUNSEL

19 By: s/*Thomas Deák*
20 Thomas Deák, Senior Deputy
21 Attorneys for Respondent and Defendant
County of San Diego
E-mail: thomas.deak@sdcounty.ca.gov

1 THOMAS DEÁK, Senior Deputy (State Bar No. 183501)
Office of County Counsel, County of San Diego
2 1600 Pacific Highway, Room 355
San Diego, California 92101-2469
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5 Attorneys for Respondent and Defendant County of San Diego
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and DOUGLAS LOEHNER,

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13 v.

14 SAN DIEGO COUNTY SHERIFF'S
15 DEPARTMENT; WILLIAM D. GORE, in his
official capacity as Sheriff of San Diego
16 County; and DOES 1 through 20, inclusive,

17 Respondents.

Case No.: 37-2020-0024682-CU-MC-CTL
(Petition filed: February 20, 2020)

**COUNTY OF SAN DIEGO'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
DEMURRER TO VERIFIED PETITION
FOR WRIT OF MANDATE**

"IMAGED FILE"

Date: July 23, 2021
Time: 1:30 p.m.
Dept.: 72
Judge: Hon. Timothy B. Taylor

22 Respondent and Defendant County of San Diego ("County"), erroneously sued herein as
23 San Diego County Sheriff's Department and William D. Gore, respectfully submits this
24 memorandum of points and authorities in support of its demurrer to the Petition filed in this
25 action by Petitioners and Plaintiffs Pari Zahau, Mary Zahau-Loehner, and Douglas Loehner
26 (collectively, "Petitioners"). The County demurs, pursuant to Code of Civil Procedure
27 § 430.10(e), on the grounds the Petition fails to allege facts sufficient to state any cause of action
28 against the County.

1 I.

2 INTRODUCTION

3 In this California Public Records Act (“CPRA”) case, Petitioners contend that Sheriff
4 William D. Gore and the San Diego County Sheriff’s Department (collectively, “the Sheriff”)
5 violated the CPRA because—in response to Petitioners’ request for records related to the
6 Sheriff’s investigation of the death of Rebecca Zahau (“the Zahau Investigation”)—the Sheriff
7 withheld some investigatory files as exempt while voluntarily disclosing others. Petitioners
8 contend that, by this “selective disclosure,” the Sheriff used the investigatory files exemption as
9 a “sword and shield” and thus waived the exemption as to *all* of the investigatory files. There is
10 no legal authority for Petitioners’ position, however, and it is contrary to established law.

11 A law enforcement agency’s partial disclosure of CPRA-exempt documents “waives [the]
12 exemptions *only for those documents released.*” *See, Mobil Oil Corp. v. United States EPA*, 879
13 F.2d 698, 701 (9th Cir. 1989). (*Emphasis in original.*) Moreover, because the CPRA statutes do
14 not provide for a partial disclosure exemption waiver, no such waiver can occur as a matter of
15 law. *See, Zumbrun Law Firm v. Cal. Legislature*, 165 Cal. App. 4th 1603, 1623 (2008). Finally,
16 the “sword and shield” waiver theory (a.k.a., the “*in issue* doctrine”) creates an implied waiver
17 of an exemption *only* where the party relying on the exemption places otherwise confidential or
18 privileged evidence in issue in a lawsuit by basing a claim or defense on it—*see, e.g., Rockwell*
19 *Internat. Corp. v. Superior Court*, 26 Cal. App. 4th 1255, 1268 (1994)—but the County has not
20 based any claim or defense in this case on the Zahau Investigation files.

21 For these reasons, and as explained in greater detail below, the Petition fails to state any
22 cause of action against the County as a matter of law. Because the Petition cannot be amended
23 to state any cause of action, the County requests that its demurrer be sustained without leave to
24 amend.

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1 **LEGAL ARGUMENT**

2 **II.**

3 **THE ZAHAU INVESTIGATION FILES ARE EXEMPT FROM DISCLOSURE**

4 Under the CPRA, a law enforcement agency is not required to disclose “[r]ecords of ...
5 investigations conducted by ... any state or local police agency, or any investigatory or security
6 files compiled by any other state or local police agency, or any investigatory or security files
7 compiled by any other state or local agency for ... law enforcement ... purposes.” Gov’t Code
8 § 6254(f). The Sheriff “is the chief law enforcement agency in San Diego County.” Petition ¶ 3.

9 As alleged in the Petition, the records that Petitioners seek are investigatory files exempt
10 from disclosure under § 6254(f). First, Petitioners allege the Sheriff “selectively disclosed
11 numerous documents which are exempt from disclosure under Gov’t Code § 6254(f) because
12 they reflect ‘the analysis or conclusions of the investigating officer.’” Petition ¶ 24. Petitioners
13 further allege:

14 “By this lawsuit, Petitioners seek a determination that it is improper for the Sheriff
15 to use the exemption privilege as a sword rather than a shield, by selectively
16 waiving the exemption privilege for documents and information that on the
17 surface support the Department’s published position, and then refusing to produce
18 documents to the contrary. [¶¶] Petitioners seek a determination that it is improper
19 for the Sheriff to use the exemption privilege as a sword rather than a shield, by
20 selectively waiving the exemption privilege for documents that support the
21 Department’s published opinion, and then refusing to produce documents to the
22 contrary.” *Id.* at ¶¶ 26, 35.

19 The Petition contains no allegation that any of the records that Petitioners seek to recover are *not*
20 exempt investigatory files.

21 Implicit in these allegations is the fact that the records Petitioners seek in this case
22 constitute investigatory files that would be exempt from disclosure per § 6254(f) *but for* the
23 Sheriff’s alleged “selective disclosure” of other exempt investigatory files, which Petitioners
24 contend waived the exemption. In short, Petitioners’ selective disclosure/waiver argument
25 would make no sense if the records they seek were not exempt in the first instance.¹

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28 ¹ In pre-demurrer “meet and confer” communications, Petitioners’ counsel confirmed that Petitioners do not by this lawsuit seek information *from* the investigatory files, as can in some circumstances be required under § 6254(f). *See*, Exh. A to Declaration of Thomas Deák in Support of County’s Demurrer to Petition, filed and served concurrently herewith.

1 **III.**

2 **THE SHERIFF DID NOT WAIVE THE EXEMPTION AS A MATTER OF LAW**

3 As explained above, Petitioners seek records that are exempt investigatory files under
4 § 6254(f). Petitioners thus contend the Sheriff waived the exemption by “selectively disclosing”
5 *other* investigatory files related to the Zahau Investigation. Petitioners’ waiver argument is
6 without merit, however, because: (i) voluntary disclosure of some exempt records waives the
7 exemption only as to the records disclosed, (ii) the CPRA does not provide for a partial
8 disclosure exemption waiver, so no such waiver can occur as a matter of law, and (iii) the
9 County has not used the investigatory files exemption as a “sword”—so as to trigger the *in issue*
10 waiver doctrine—because it has not placed any Zahau Investigation file in issue in this case.

11 **A. The Sheriff’s Disclosure of Some Exempt Records Did Not Waive the**
12 **Exemption as to Other Exempt Records.**

13 In California a public agency’s disclosure of some privileged records related to a
14 particular matter does not waive the privilege as to other privileged records related to the same
15 matter. *See, e.g., Ford v. City of L.A.*, 47 Cal. App. 5th 277, 281-283 (2020) (trial court properly
16 excluded as privileged city’s federal hazard elimination program application despite the fact the
17 city allowed the admission of the equally privileged *attachments* to the application).

18 *Mobil Oil, supra*, is dispositive on this point. In *Mobile Oil*, the plaintiff Mobil sued the
19 United States Environmental Protection Agency (“EPA”) under the federal Freedom of
20 Information Act (“FOIA”) seeking disclosure of certain documents related to an air pollution
21 violation at Mobil’s factory in Bakersfield.² The EPA withheld the documents on the grounds
22 they were statutorily exempt attorney work product and “investigatory records gathered for
23 enforcement purposes.” *Mobil Oil, supra*, 879 F.2d at 700. Mobil conceded the documents
24 were statutorily exempt, but argued “the exemptions were waived by EPA by its release of

25 _____
26 ² “The CPRA was modeled upon the FOIA (5 U.S.C. § 552 et seq.), and the two have a common purpose. As a
27 result, ‘federal legislative history and judicial construction of the FOIA’ may be used in construing California’s Act.
28 [Citation.]” *Cal. State Univ., Fresno Ass’n, Inc. v. Superior Court*, 90 Cal. App. 4th 810, 823-824 (2001), quoting *City of San*
Jose v. Superior Court, 74 Cal. App. 4th 1008, 1016 (1999). *See also, Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325,
1338 (1991) (“The legislative history and judicial construction of the FOIA thus ‘serve to illuminate the interpretation of its
California counterpart.” [quoting *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 447
(1982); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 651 (1986).])

1 related documents to a third party and EPA's release of related documents to Mobil during the
2 course of this litigation.” *Id.* The court rejected this argument, stating:

3 “Mobil cites no case and we have found none in which the release of certain
4 documents waived the exemption as to other documents. On the contrary, the
5 circuits that have addressed this issue generally have found that the release of
6 certain documents waives FOIA exemptions *only for those documents released*.
7 *Id.* at 701. (*Emphasis in original.*)

8 Under *Mobil Oil*, the Sheriff’s disclosure of some Zahau Investigation files did not waive
9 the exemption as to other undisclosed files.

10 **B. Partial Disclosure Does Not Waive the Exemption Because the CPRA**
11 **Does Not Provide for a Partial Disclosure Exemption Waiver.**

12 The CPRA does not provide for a waiver of the § 6254(f) investigatory files exemption
13 when a law enforcement agency discloses some files related to an investigation but withholds
14 others; as such, no such waiver can occur as a matter of law. *Zumbrun, supra*, is instructive.

15 In *Zumbrun*, the plaintiff requested records from the California Legislature pursuant to
16 the Legislative Open Records Act, Gov’t Code § 9070, et seq. (“LORA”) and the Legislature
17 disclosed some records but withheld others based on exemptions set forth in the LORA statutes.
18 *Zumbrun, supra*, 165 Cal. App. 4th at 1610-1611. As Petitioners do here, the plaintiff in
19 *Zumbrun* argued that the Legislature had waived the LORA disclosure exemptions by
20 “disclosure of some documents.” *Id.* at 1623. The court rejected this argument, reasoning:

21 “[W]e conclude that the [LORA] statutory exemptions from disclosure are not the
22 equivalent of evidentiary privileges, which may be waived by disclosure.
23 Privilege, as defined by the Evidence Code, relates to proceedings in which
24 testimony may be compelled by law to be given. (Evid. Code, § 901.) Plaintiff
25 cites no authority to support its claim that an exemption to LORA's open records
26 policy is to be treated as if it were an evidentiary privilege subject to waiver if
27 disclosed, and we are aware of no such authority.¶¶ LORA contains its own
28 enforcement mechanism. A person may institute proceedings to enforce the right
29 to inspect legislative records, and may obtain a contempt order if such records are
30 not disclosed pursuant to court order. (§§ 9076, 9077.) *LORA does not provide for*
31 *waiver of exemptions*. We will not engraft penalties onto the legislative scheme
32 that the statutes cannot fairly be read to contain.” *Id.* (*Emphasis added.*)

33 *Zumbrun* thus states three points of law that are of paramount importance in this case:
34 (i) a disclosure exemption in an open records law is not equivalent to an evidentiary privilege,
35 which only applies in an evidentiary proceeding; (ii) conduct that might waive an evidentiary

1 privilege does not—simply by virtue of that fact—also waive an open records law disclosure
2 exemption; and (iii) if an open records law does not provide a basis for waiver of statutory
3 exemptions, no such waiver can occur as a matter of law.³

4 Like the LORA, the CPRA contains its own enforcement mechanism. *See*, Gov’t Code
5 § 6258. Government Code § 6254.5 provides that a waiver of the CPRA investigatory files
6 exemption occurs when a public agency discloses an exempt “public record,” but it does *not*
7 provide that a waiver occurs as to *all* exempt files when an agency discloses *any* exempt file.
8 Because the CPRA does not provide for a partial disclosure waiver of exemptions no such
9 waiver can occur as a matter of law. This Court should not engraft penalties onto the CPRA
10 legislative scheme that the statutes cannot fairly be read to contain.

11 **C. The County is not using the Investigatory Files Exemption as a “Sword”**
12 **Because It Has Not Placed the Zahau Investigation Files in Issue in This Case.**

13 Petitioners contend that—by partially disclosing some investigatory files from the Zahau
14 Investigation—the Sheriff improperly used the exemption as a “sword” and, thus, impliedly
15 waived the exemption as to all Zahau Investigation files. *See*, Petition ¶¶ 31-33. As explained
16 in the previous section of this memorandum, the CPRA does not allow for a partial disclosure
17 exemption waiver. Even if it did, however, Petitioners’ implied waiver argument would fail on
18 its own terms because the County is not using the exemption as a “sword.”

19 Petitioners’ “sword and shield” waiver theory—which typically arises in the attorney-
20 client privilege context—is sometimes called the “*in issue* doctrine” because courts consider it
21 unfair to allow the holder of a privilege to place privileged evidence “in issue” in a case while
22 simultaneously asserting the privilege as a basis to withhold the same evidence from opponents.
23 *See, Rockwell, supra*, 26 Cal. App. 4th at 1268 (“The *in issue* doctrine creates an
24 implied waiver of the privilege *only* when the [holder of the privilege] tenders an issue involving

25
26 ³ Courts have routinely noted the distinction between an evidentiary privilege and a CPRA disclosure exemption.
27 *See, e.g., Amgen Inc. v. Cal. Corr. Health Care Servs.*, 47 Cal. App. 5th 716, 732-733 (2020) (holding that the trade secret
28 evidentiary privilege did not “bar[] the government from disclosing information outside of the context of [an evidentiary]
‘proceeding’” in response to a CPRA request); *Newark Unified Sch. Dist. v. Superior Court*, 245 Cal. App. 4th 887, 904 n.8
(2015) (noting the distinction between the CPRA exemption for Evidence Code privileges [Gov’t Code § 6254(k)] and “the
underlying evidentiary privilege”); *Regents of Univ. of Cal. v. Superior Court*, 20 Cal. 4th 509, 540 (1999), superseded by
statute on other grounds as stated in *Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 915 (2002) (same).

1 the substance or content of a protected communication” [*Emphasis in original.*]); *People v.*
2 *Daniels*, 52 Cal. 3d 815, 858 n.14 (1991) (“Some evidentiary privileges can be waived if the
3 holder of a privilege puts the content of a privileged communication ‘in issue.’”). *See also*,
4 *Mitchell v. Superior Court*, 37 Cal. 3d 591, 604 (1984) (“‘fundamental fairness’ may require
5 disclosure of otherwise privileged information or communications where plaintiff has placed in
6 issue a communication which goes to the heart of the claim in controversy.”).

7 The *in issue* doctrine comes into play when a party has made privileged material a core
8 evidentiary basis for the claims asserted in a complaint, cross-complaint, or affirmative defense.
9 *See, e.g., Mitchell, supra*, 37 Cal. 3d 591 (complaint); *Dalitz v. Penthouse Int’l*, 168 Cal. App.
10 3d 468 (1985) (cross-complaint); *Ford, supra*, 47 Cal. App. 5th 277 (affirmative defense). The
11 California Supreme Court explains: “We recognized this theory of an implied waiver
12 in *Mitchell* ... and established that the person or entity seeking to discover privileged
13 information can show waiver by demonstrating that the [holder of the privilege] has put the
14 otherwise privileged communication directly at issue and that disclosure is essential for a fair
15 adjudication of the action.” *S. Cal. Gas Co. v. Pub. Utils. Com.*, 50 Cal. 3d 31, 40 (1990).

16 Petitioners’ reliance on the *in issue* doctrine is misplaced because the County has not
17 placed the Zahau Investigation files in issue in this case. There is no suggestion in the Petition
18 that the County has asserted any claim or affirmative defense in this case that places the
19 substance or content of the Zahau Investigation files in issue or that it has any intention of doing
20 so. There is certainly no allegation that the County put the investigatory files “directly at issue
21 and disclosure is essential for a fair adjudication of the action.” That is because the relevant

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1 issue in this CPRA case is whether the County properly withheld the requested investigatory
2 files, not whether the Sheriff pursued the Zahau Investigation to Petitioners' satisfaction.⁴

3 **CONCLUSION**

4 For the foregoing reasons, the Petition fails to allege facts sufficient to state any cause of
5 action against the County as a matter of law and it cannot be amended to do so. The County
6 requests that the Court sustain its demurrer without leave to amend.

7
8 DATED: April 23, 2021

OFFICE OF COUNTY COUNSEL

9 By: s/*Thomas Deák*
10 Thomas Deák, Senior Deputy
11 Attorneys for Respondent and Defendant
County of San Diego
E-mail: thomas.deak@sdcounty.ca.gov

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27 _____
28 ⁴ Petitioners' reliance on *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645 (1974) and *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176 (2016) is misplaced, as both cases are inapposite. *Black Panther* involved the disclosure of the same records to some members of the public but not to others. *Ardon* involved the inadvertent disclosure of exempt records. Neither case considered the issue of waiver of an exemption by partial disclosure of exempt records.

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3 1600 Pacific Highway, Room 355
4 San Diego, California 92101-2469
5 Telephone: (619) 531-4810
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Respondents.

Case No.: 37-2020-0024682-CU-MC-CTL
(Petition filed: February 20, 2020)

**DECLARATION OF THOMAS DEÁK IN
SUPPORT OF COUNTY OF SAN
DIEGO'S DEMURRER TO VERIFIED
PETITION FOR WRIT OF MANDATE**

"IMAGED FILE"

Date: July 23, 2021
Time: 1:30 p.m.
Dept.: 72
Judge: Hon. Timothy B. Taylor

22 I, Thomas Deák, declare:

23 1. I am presently a senior deputy county counsel for the Respondent and Defendant
24 County of San Diego ("County"), and the attorney for the County in this action. I have personal
25 knowledge of the following facts and if called as a witness, could and would testify truthfully
26 thereto.

27 2. On March 19, 2021, I contacted Keith Greer, counsel for the Petitioners and
28 Plaintiffs in this action ("Petitioners"), by telephone, to commence a "meet and confer"

1 communication and we discussed the legal bases for the claims set forth in Petitioners' Petition
2 and the bases for the County's proposed demurrer to the Petition. On March 24, 2021, I
3 followed up our telephone call with an email to Mr. Greer which laid out the County's position
4 and supporting legal authorities with regard to its proposed demurrer to the Petition. Thereafter,
5 Mr. Greer and I further discussed the County's proposed demurrer by both telephone and email,
6 but we were unable to resolve our dispute over the County's proposed demurrer. A true and
7 correct copy of my complete email exchange with Mr. Greer concerning the County's proposed
8 demurrer is attached as Exhibit A to my declaration.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct, and that this declaration is executed on this 23rd day of April,
11 2021, at San Diego, California.

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13 s/ *Thomas Deák*
14 THOMAS DEÁK, Senior Deputy
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EXHIBIT A

From: [Deak, Thomas](#)
To: [Keith Greer](#)
Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41
Date: Sunday, April 18, 2021 9:27:00 AM
Attachments: [image001.png](#)

Mr. Greer. I just wanted to send this email to document the resolution of this “meet and confer” process, per our phone call last Thursday. As we discussed, the County believes the petition can only be read to be seeking investigatory files related to the Zahau investigation that would be exempt per section 6254(f) but for the Sheriff’s disclosure of some exempt files (which the petition asserts constitutes waiver of the exemption for the undisclosed files). You agreed that was the issue, but that you are not at this point prepared to concede that your clients are not seeking any files related to the investigation that are not exempt in the first instance. Again, we don’t believe the petition can be read to be seeking any non-exempt files. However, if your clients disagree or believe they can amend the petition to refer to records that are not exempt in the first instance, we ask that you notify us at your earliest convenience what specific such documents, or categories of documents, your clients are seeking, so that we may consider your position and, if appropriate, disclose the non-exempt records as soon as possible so as to narrow this litigation to only those records and issues that are legitimately in dispute. Thank you.

From: Deak, Thomas
Sent: Tuesday, April 6, 2021 12:40 PM
To: Keith Greer <keith.greer@greerlaw.biz>
Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Mr. Greer: In your March 24, 2021 email to me, below, you stated, in part: “I don’t think that the documents in question can be narrowly defined as merely the ‘investigatory files and records.’” During our March 29, 2021 telephone conversation you indicated that you would consider that point further and get back to me. Have you had a chance to consider that issue further? Again, the core issue is: Do all of the public records that your clients seek to obtain by this lawsuit constitute “investigatory files” that would otherwise be exempt from disclosure under Gov. Code § 6254(f) *but for* the fact that the Sheriff voluntarily – and in your words, “selectively” – publicly disclosed *some* of the records? Asked another way, do you contend that any of the records your clients seek to obtain would not be exempt under § 6254(f) in the first instance, regardless whether the Sheriff disclosed other records? Please let me know at your earliest convenience, as your response may determine whether the County’s proposed demurrer is worthwhile. Thank you.

From: Keith Greer <keith.greer@greerlaw.biz>
Sent: Friday, April 2, 2021 1:22 PM
To: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>
Cc: Montello, Tammy L <Tammy.Montello@sdcounty.ca.gov>; Bitts, Walter R <Walter.Bitts@sdcounty.ca.gov>
Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Dear Mr. Deak:

Yes, I hereby reconfirm our stipulation and concur that the new due date is April 23rd.

Best regards,

C. Keith Greer, Esq.

Greer & Associates, APC



16855 W. Bernardo Dr., Suite 255

San Diego, CA 92127

Office: (858) 613-6677

Facsimile: (858) 613-6680

Mobile: (858) 361-4640

GreerLawAPC.com

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From: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>

Sent: Friday, April 2, 2021 11:46 AM

To: Keith Greer <keith.greer@greerlaw.biz>

Cc: Montello, Tammy L <Tammy.Montello@sdcounty.ca.gov>; Bitts, Walter R <Walter.Bitts@sdcounty.ca.gov>

Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Hi Keith: As we discussed during our telephone call on Monday 3/29, the County will take you up on your offer to extend the time within which we must respond to the petition in the referenced matter by 15 days. The petition was served on the Sheriff on March 9, so our response deadline would have been April 8. With the 15-day extension, our response deadline will now be April 23.

Thank you.

From: Keith Greer <keith.greer@greerlaw.biz>

Sent: Wednesday, March 24, 2021 12:53 PM

To: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>

Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

10:00 works. Can you please resend me you cell number. Mine is (858)361-4640.

Thanks,

C. Keith Greer, Esq.

Greer & Associates, APC

greer-logo-final



16855 W. Bernardo Dr., Suite 255

San Diego, CA 92127

Office: (858) 613-6677

Facsimile: (858) 613-6680

Mobile: (858) 361-4640

GreerLawAPC.com

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From: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>

Sent: Wednesday, March 24, 2021 11:35 AM

To: Keith Greer <keith.greer@greerlaw.biz>

Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Thanks Keith. Shall we say 10 a.m. on Monday? You have my cell number.

From: Keith Greer <keith.greer@greerlaw.biz>

Sent: Wednesday, March 24, 2021 11:29 AM

To: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>

Subject: RE: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Good morning Mr. Deak:

I agree with most of your comments below. Where we differ is: (1) I cannot guarantee that we will

not file an amended complaint to address any parts of the complaint that are inadequately pleaded;
(2) While all of the requested documents relate to the Sheriff's handling of the Zahau matter, I don't think that the documents in question can be narrowly defined as merely the "investigatory files and records."

Unfortunately I am out of the office on Friday, but I am back and my calendar is clear on Monday the 29th. Please let me know if you need any additional time. I believe the 15-day extension without a court order is also available in writ proceedings, which I have no problem stipulating to.

Best regards,

C. Keith Greer, Esq.

Greer & Associates, APC



16855 W. Bernardo Dr., Suite 255

San Diego, CA 92127

Office: (858) 613-6677

Facsimile: (858) 613-6680

Mobile: (858) 361-4640

GreerLawAPC.com

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From: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>

Sent: Wednesday, March 24, 2021 9:21 AM

To: Keith Greer <keith.greer@greerlaw.biz>

Subject: Zahau v Gore - Demurrer Meet and Confer - CCP Section 430.41

Hi Keith. It was good speaking with you on Friday. I'm going to be pretty busy today and tomorrow. Can we plan to talk again on Friday? I am available pretty much anytime Friday.

In the meantime, based on our conversation last Friday, it is my understanding that your clients, by the referenced lawsuit, desire to obtain specified investigatory files and records only (i.e., your

clients are not seeking the disclosure of “information” *from* the records specified in their CPRA request, as may sometimes be required under Gov’t Code § 6254(f)). Also, there is no dispute that the records sought in your clients’ CPRA request are, in fact, investigatory files that would normally be exempt from disclosure, but for the fact that the Sheriff has publicly disclosed some of the investigatory files related to the subject investigation under circumstances which your clients contend violates the CPRA and Cal. Constitution. In short, the case is tightly focused on the legal issue of whether a public agency may disclose some files from an investigation while withholding other files from the same investigation as exempt under Section 6254(f). As there does not appear to be a dispute over any material facts, this issue may present a pure question of law that the court may consider by way of demurrer. If the County presents this question of law to the court by way of demurrer, your clients do not intend to amend the petition to seek to overcome the basis for the County’s demurrer. As such, I suggested that the County will demur to the petition as a means to get the legal question before the court at the earliest possible time.

If anything I have stated above is not accurate, please explain at your earliest convenience. And please let me know if there is a time on Friday that works for you to discuss these matters further.

Thank you.

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Very truly yours,

Thomas Deák, Senior Deputy
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
E-mail thomas.deak@sdcounty.ca.gov
Phone (619) 531-4810; Fax: (619) 531-6005

From: Keith Greer <keith.greer@greerlaw.biz>
Sent: Friday, March 19, 2021 3:16 PM
To: Deak, Thomas <Thomas.Deak@sdcounty.ca.gov>
Subject: Zahau v Gore

Dear Mr. Deak:

I look forward to speaking with you further next week.

Best regards,

C. Keith Greer, Esq.

Greer & Associates, APC



16855 W. Bernardo Dr., Suite 255
San Diego, CA 92127
Office: (858) 613-6677
Facsimile: (858) 613-6680
Mobile: (858) 361-4640

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County of San Diego
04/23/2021 at 09:21:08 AM
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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

PARI ZAHAU; MARY ZAHAU-LOEHNER
and DOUGLAS LOEHNER,

Petitioners,

v.

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT; WILLIAM D. GORE, in his
official capacity as Sheriff of San Diego
County; and DOES 1 through 20, inclusive,

Respondents.

Case No.: 37-2020-0024682-CU-MC-CTL
(Petition filed: February 20, 2020)

[PROPOSED] ORDER

"IMAGED FILE"

Date: July 23, 2021
Time: 1:30 p.m.
Dept.: 72
Judge: Hon. Timothy B. Taylor

The demurrer of Respondent and Defendant County of San Diego ("County") to
Petitioners and Plaintiffs' Verified Petition for Writ of Mandate Pursuant to the California
Public Records Act and the California Constitution and Complaint for Declaratory Relief;
Request for Attorneys' Fees and Costs ("Petition") came on regularly for hearing before the
Court on July 23, 2021 at 1:30 p.m., in Department C-72, located at 330 West Broadway,

///
///

1 San Diego, California, the Honorable Timothy B. Taylor, presiding. The Court, having heard
2 oral argument from counsel, and having considered the papers on file herein, rules as follows:

3 GOOD CAUSE HAVING BEEN SHOWN, the County’s demurrer to the Petition is
4 sustained without leave to amend.

5 IT IS SO ORDERED.

6 DATED:

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8 JUDGE OF THE SUPERIOR COURT

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