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8 Attorney for Plaintiff/Petitioner FIREARMS POLICY COALITION, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11 FIREARMS POLICY COALITION,  
12 INC.,

13 Plaintiff/Petitioner,

14 v.

15 THE SACRAMENTO COUNTY  
16 SHERIFF'S DEPARTMENT, and  
17 SCOTT R. JONES, in his official  
18 capacity,

19 Defendants/Respondents.

Case No.

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF RE:  
VIOLATIONS OF THE  
CALIFORNIA PUBLIC RECORDS  
ACT AND THE CALIFORNIA  
CONSTITUTION**

1 In this verified petition and complaint, Petitioner/Plaintiff Firearms Policy  
2 Coalition, Inc., (Petitioner) alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction under Article VI, section 10, of the California  
5 Constitution, Code of Civil Procedure §§ 410.10, 525, 526, 1060, 1085 and Government  
6 Code §§ 6258 and 6259.

7 2. Venue in this Court is proper because the action arose in Sacramento  
8 County. (Civ. Proc. §§ 393, 394.)

9 **THE PARTIES**

10 3. Petitioner realleges Paragraphs 1 through 2 as though fully incorporated  
11 herein.

12 4. Petitioner FIREARMS POLICY COALITION, INC. (FPC) is a  
13 nonprofit organization that conducts business throughout California, including  
14 Sacramento County, and serves its members and the public through direct and  
16 grassroots advocacy, litigation, research, education, and other programs. The  
17 purposes of FPC include defending the United States Constitution and the People's  
18 rights, privileges and immunities deeply rooted in the Nation's history and tradition,  
19 especially the fundamental Second Amendment right to keep and bear arms. FPC  
20 also conducts public records requests at the federal, state, and local levels, analyzes  
21 and publishes public records, and informs its members about government activities,  
22 advancing the interests of government transparency, the public's rights to access  
24 information held by public agencies, officials and/or employees, and in monitoring  
25 the activities of public agencies to assure proper performance of public duties,  
26 including but not limited to the wise and efficient spending of public funds.  
27 Obtaining access to the records and information responsive to Petitioner's records  
28 requests, and described herein, would advance the public's understanding of how

1 Respondents are conducting the public’s business, and allowing the public to  
2 ascertain whether or not Respondents are properly performing their public duties,  
3 including but not limited to the wise and efficient spending of public funds.

4 5. Respondent SACRAMENTO COUNTY SHERRIF’S OFFICE is a public  
5 agency operating under and subject to the laws of the State of California, including but not  
6 limited to the Constitution and California Public Records Act (CPRA).

7 6. Respondent SCOTT R. JONES is the elected Sheriff of Sacramento County  
8 and is subject to the laws of the State of California, including but not limited to the CPRA.

9 7. Petitioner does not know the true names and capacities of Does 1 through  
10 100 and therefore sues these Respondents fictitiously. Petitioner will allege their true  
11 names and capacities when they are ascertained.

12 **LEGAL BACKGROUND**

13 8. Petitioner realleges Paragraphs 1 through 7 as though fully incorporated  
14 herein.

15 9. The People of California have a robust right to transparent, accountable  
16 government, guaranteed by the CPRA and Article I of the California Constitution.

17 10. The California Constitution, Article 1, Section 3(b)(1) guarantees the public  
18 the “right of access to information concerning the conduct of the people’s business.”  
19 Section 3(b)(2) further requires that all law pertaining to the public right to access records  
20 and information “shall be broadly construed if it furthers the people's right of access, and  
21 narrowly construed if it limits the right of access, and that any “authority . . . that limits the  
22 right of access shall be adopted with findings demonstrating the interest protected by the  
23 limitation and the need for protecting that interest.”

24 11. In order “to ensure that public access... to the writings of public officials and  
25 agencies as specified in [Section 3(b)(1)]” the California Constitution, Article 1, Section  
26 3(b)(7) mandates that public agencies “comply with the California Public Records Act  
27  
28

1 (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government  
2 Code).”

3 12. Government Code § 6250 states that “access to information concerning the  
4 conduct of the people’s business is a fundamental and necessary right of every person in  
5 this state.

6 13. Government Code § 6252(c) states that the term “person” as used in the  
7 CPRA “includes any natural person, corporation, partnership, limited liability company,  
8 firm, or association.”

9 14. The public has a right of access records and information within the actual or  
10 constructive possession of a public agency - including records and information located on  
11 the private electronic devices of public employees and officials - that relate to the conduct  
12 of the public’s business. (*City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608.)

13 15. Delay violates the California Public Records Act (“CPRA”) and public  
14 agencies have an affirmative duty to avoid delay. (Government Code §§ 6258 and 6253(b),  
15 (c), (d) and (f); *see also, Open Am. v. Watergate Special Prosecution Force* (1976) 547  
16 F.2d 605, 617 [delay in providing access to records is tantamount to denying access].)

17 16. Upon receiving a request for a copy of a public record that an agency  
18 controls, the agency must perform duties on behalf of and to the benefit of the public,  
19 including but not limited to:  
20

21 a. affirmatively assisting the requester to access the records the requester  
22 seeks (Government Code § 6253.1);

23 b. if the Agency adopts a decision to withhold records responsive to a  
24 records request, that Agency must provide the requestor, in writing, within 10 days from  
25 receipt of the records request, findings and reasons supporting the Agency’s decision to  
26 withholding records. (Government Code § 6253(c); Cal. Const., Art.1, Section 3(b)(2));  
27  
28

1           c.       any letter sent pursuant to Government Code § 6253(c) must identify  
2 who made the decision to withhold records and/or information. (Government Code §  
3 6253(d)(3));

4           d.       if the agency alleges that any of the information within any record  
5 responsive to the request is exempt from disclosure, the agency must produce the records  
6 with the allegedly exempt information redacted (Government Code § 6253 (a));

7           e.       if the requested records are maintained in an electronic form, the  
8 agency must provide access to or copies of these records in the electronic format in which  
9 the records are maintained (Government Code § 6253.9); and

10          f.       if a document or database of information contains arguably exempt  
11 information, the public agency maintaining the record cannot withhold the entire record,  
12 but must segregate/redact the arguably exempt information and then provide access to the  
13 remainder of the document/database. (Government Code § 6253(a).)

14          17.       Whenever a member of the public believes that a local agency is failing in  
16 part or in whole to perform the duties necessary to provide the public with access to a  
17 record, that member of the public may bring a verified petition to the superior court of the  
18 county where the records are situated for an order requiring the officer or person charged  
19 with withholding the records to disclose the public records/information. (Government  
20 Code §§ 6258 and 6259(a).)

21          18.       Whenever it is made to appear by verified petition to the superior court of the  
22 county where the records or some part thereof are situated that certain public records are  
24 being improperly withheld from a member of the public:

25               a.       The reviewing court shall examine records in dispute *in camera*  
26 (Government Code § 6259(a));

27  
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1           24.     On or about August 7, 2020, Petitioner utilized Respondents’ online records  
2 request system to make a request for records and information. (Exhibit 1, attached.). This  
3 request sought access to four types of identifiable records containing non-exempt  
4 information pertaining to the conduct of the public’s business (the “Request”).

5           25.     On the same date, Respondents - utilizing its online records access system -  
6 responded to the Request as follows:

7                     “We are in receipt of your California Public Records Act Request. We  
8 will begin compiling the items and documents that we can disclose.  
9 We will forward the documentation to you as soon as all  
10 documentation is collected and a response explaining any redactions  
11 or omissions is completed.”

12           26.     In a letter dated August 26, 2020 (Exhibit 2, attached), Respondents further  
13 responded to the Request as follows:

14                     “The Sacramento County Sheriff’s Office will provide the following  
15 responsive documentation:

- 16                     •       #1, #3, and #4 - Your request is denied pursuant to the  
17 California Public Records Act, §6254(f), §6254(k), §6255, and the  
18 California Constitution, Article I , Section I.  
19                     •       #2 - Per Senate Bill 978 The Sacramento County Sheriffs  
20 Office's Policies and procedures are open to the public and located on  
21 our website at: [https://www.sacsheriff.com/Pages/Services/SB](https://www.sacsheriff.com/Pages/Services/SB1421.aspx)  
22 [1421.aspx](https://www.sacsheriff.com/Pages/Services/SB1421.aspx). [the “Website”].”  
24

25           27.     In a letter dated September 18, 2020, Petitioner’s Council, Paul Nicholas  
26 Boylan, asked Respondents for additional information Petitioner needs to determine if  
27 Respondent’s denial of Petitioner’s Request item numbers 1, 3 and 4 was and is  
28 reasonable. (Exhibit 3, attached.)

1           28.     In the same letter, Mr. Boylan informed Respondents that, despite  
2 Respondents' referral to the Website, Petitioner was unable to access records responsive to  
3 the Request through that Website. Per Government Code § 6253(b), Mr. Boylan requested  
4 production of documents responsive to Petitioner's Request item no. 2.

5           29.     As of the date this Petition is filed, Respondents have not replied to Mr.  
6 Boylan's September 18<sup>th</sup> letter, have not produced any records or information responsive  
7 to the Request, have provided insufficiently detailed reasons for withholding responsive  
8 records, and are wrongfully withholding records and information that are not exempt per  
9 Government Code §§ 6254(f), 6254(k), and/or 6255 because:

10           a.     Respondents have provided no admissible evidence that all of the  
11 records and information responsive to the Request are records of complaints or  
12 investigations pertaining to criminal acts, or are records that do not contain any of the  
13 information that Government Code § 6254(f) states nevertheless must be disclosed;

14           b.     Respondents have provided no admissible evidence that all of the  
16 records and information responsive to the Request are records that are exempted from  
17 disclosure pursuant to federal or state law (Government Code § 6254(k));

18           c.     Respondents have provided no admissible evidence that all of the  
19 records and information responsive to the Request are records that the public has an  
20 interest in not disclosing that clearly outweighs the public interest in disclosure.  
21 (Government Code § 6255));

22           d.     Respondents have provided no admissible evidence that releasing any  
24 of the records responsive to the Request will violate anyone's right to "defending life and  
25 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,  
26 happiness, and privacy" (Cal. Const. Art. I, section 1); and

27           e.     Respondents have provided no admissible evidence that Respondents  
28 have standing to assert the right to defending life and liberty, acquiring, possessing, and

1 protecting property, and pursuing and obtaining safety, happiness, and privacy on behalf  
2 of anyone who might have an interest in withholding records and/or information  
3 responsive to the Request.

4 30. Petitioner has no plain, speedy, and adequate remedy at law other than this  
5 action. Respondents' wrongful withholding of records and information that Petitioner has  
6 the immediate right to access has caused, is causing, and will cause irreparable injury that  
7 will continue absent relief from this Court.

8 31. As members of the public and holders of the aforementioned constitutional  
9 and statutory rights to promptly access public records and information, Petitioner has a  
10 present beneficial interest in the outcome of these proceedings and has a clear, present, and  
11 substantial right to the relief sought herein.

12 32. The parties disagree whether Respondents properly denied the public access  
13 to the records and information Petitioner requested. Petitioner is likely, in the future, to  
14 request similar records and information and, unless this Court provides declaratory relief  
16 specifying the respective rights and duties of the parties, similar litigation is likely to  
17 occur.

18 33. Petitioner seeks to enforce and protect the public's constitutional, statutory,  
19 and common law rights as described herein, the violation of which automatically  
20 establishes irreparable harm that cannot be remedied through an action at law. (*Smith v.*  
21 *Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1465 (quoting *Elrod v. Burns*  
22 (1976) 427 U.S. 347, 373).)

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief)**

26 (Code of Civil Procedure § 1060 and Government Code § 6258)

27 34. Petitioner realleges Paragraphs 1 through 33 as though fully incorporated  
28 herein.





1 Petitioner access to and copies of records responsive to the Request. (*See* Government  
2 Code §§ 6258 and 6253(b), (c), (d) and (f); *see also Open Am. v. Watergate Special*  
3 *Prosecution Force* (1976) 547 F.2d 605, 617 [delay in providing access to records is  
4 tantamount to denying access].)

5 52. This Court should order Respondents to perform these duties.

6 **FIFTH CAUSE OF ACTION**

7 **(Violations of California Constitution, Art. 1, Sec. 3(b)(1) and (2))**

8 53. Petitioner hereby realleges and incorporates herein by this reference  
9 Paragraphs 1 thorough 52 of this Petition as though set forth herein in full.

10 54. Respondents' failure to promptly provide access to and copies of records and  
11 information responsive to the Request violated and continue to violate Petitioner's rights  
12 under the California Constitution, Article 1, Section 3(b)(1) and (2) to access records and  
13 information pertaining to the conduct of the people's business, and demonstrates the need  
14 to protect the public right to access public records and information.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, as to each Cause of Action, Petitioner prays for relief as follows:

17 1. That the Court order the Respondents to produce forthwith the records  
18 requested in Petitioner's public records request.

19 2. Alternatively, if the Court does not immediately order production of the  
20 records requested, that it order Respondents to show cause why the public records should  
21 not be released, to prepare a log of withheld records, and thereafter order the requested  
22 records to be disclosed;  
24

25 3. Alternatively, if the Court does not immediately order the requested records  
26 to be disclosed and released, that the Court conduct an *in camera* review of the records  
27 requested for which Respondents may now claim some exemption from disclosure, and  
28 thereafter order the same to be released;

1           4.       That the Court order Respondents to conduct an adequate search for the  
2 requested records, including a search for records on the “private” (*i.e.*, nongovernmental)  
3 electronic devices and accounts of Respondents, including Sheriff Scott Jones and other  
4 Sacramento County Sheriff’s Department officials, as well as a search for documents  
5 which may be stored on Sacramento County and the Sheriff’s Department’s servers, and  
6 thereafter order such documents produced;

7           5.       For a declaration that the withheld materials are public records in that they  
8 contain information relating to the conduct of the people’s business, prepared, owned,  
9 used or retained by Respondents, and are subject to disclosure under Article I, § 3(b) of  
10 the California Constitution as writings of public agencies and public officials, and that  
11 each Respondents violated the CPRA by failing to promptly make the materials available  
12 to Petitioners and the public.

13           6.       For an award of attorney’s fees and costs to Petitioner pursuant to  
14 Government Code § 6259(d) and/or Code of Civil Procedure § 1021.5; and,

15           7.       For such other and further relief as the Court may deem just and proper.

16 DATED: October 23, 2020

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PAUL NICHOLAS BOYLAN, ESQ.



PAUL NICHOLAS BOYLAN, Attorney for  
FIREARMS POLICY COALITION

1 I, BRANDON COMBS, declare:

2 I am an officer/authorized agent of FIREARMS POLICY COALITION, INC., the  
3 Petitioner/Plaintiff in this action. I make this verification of my own knowledge. As  
4 Petitioner's authorized representative, and on Petitioner's behalf, I hereby verify that the  
5 factual matters stated in this Verified Petition/Complaint are known to me personally and  
6 that they are true, and as to those matters stated in this Petition that I do not have personal  
7 knowledge, I am informed and believe them to be true.

8 I declare under penalty of perjury under the laws of California that the foregoing is  
9 true, and that this verification was executed in Las Vegas, Nevada, on October 23, 2020.

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BRANDON COMBS

# Exhibit 1

# Request #20-533

CLOSED

As of September 4, 2020, 8:28am

Request Visibility: Unpublished

## Details

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Dear Sacramento County Sheriff Jones and Sacramento County Sheriff's Office:

This is a request for access to and copies of public records and information pertaining to matters of great public concern, unique to California, and important to our members, supporter and taxpayer throughout California

As part of our programs, we request important government records, make them available to the public perform analysis and publicly report on important new and issue (such as by investigating interactions with law enforcement relating to arms) in a manner freely accessible to the general public

### RECORDS REQUESTED

- 1) All records and information that contain information about or relate to Orangevale resident Andrew Casarez and the Gun Violence Restraining Order(s) (see e.g. Cal Penal Code Sec. 18100, et seq.), warrant(s), and seizure(s) reported on July 27, 2020 at <http://sacramento.cb.local.com/2020/07/27/alleged-leader-of-neo-nazi-group-identified-as-orangevale-resident-andrew-casarez/> and further discussed at <http://rea.on.com/2020/07/30/gun-seized-apparently-for-being-a-racist-group-leader/>
- 2) All records that are, relate, refer to, or are otherwise applicable to Sacramento County Sheriff's Office policies regarding Gun Violence Restraining Order and related petition warrants, and seizures.
- 3) For the period of January 1 2020 through the present or until such time that you produce responsive records to us, whichever is later, all Gun Violence Restraining Orders petitioned for and/or otherwise requested by the Sacramento County Sheriff's Office and/or any of its officers, employees, agents and/or others working in concert with it.
- 4) For the period of January 1 2020 through the present or until such time that you produce responsive records to us, whichever is later, all Gun Violence Restraining Orders and related warrant issued or otherwise provided to the Sacramento County Sheriff's Office and/or any of its officers, employees, agents and/or others working in concert with it.

Responsive records may include but are not limited to

- Writing (see e.g. Cal Evidence Code Sec 250)
- Petitions/requests;
- Warrants;

- Body camera police car dashboard camera or other video audio and/or radio recording
- Reports;
- Statements;
- Investigations;
- Findings and/or recommendations;
- Prior disciplinary proceedings for or investigations into any officer involved / present.

If there are any fees for the responsive records, please inform us if the legally allowable costs will exceed \$500, an amount hereby authorized by us for the purpose of . However, we request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of your policies and practices, as well as the specific circumstances surrounding the Andrew Casarez Gun Violence Restraining Order(s), warrant(s), and seizure(s) discussed and referenced herein.

Note that when a public official or employee uses a personal account to communicate about the conduct of public business, the writings may be public records and required to be disclosed. This request potentially requires the production of records that exist or are maintained in electronic form, including but not limited to e mails and chat/mobile phone messages.

Records, including e mails and other electronic records, are often subject to "retention" or "destruction" policies that require their automatic deletion at some point in time. If any records that are potentially responsive to this request are subject to such a retention or destruction policy, please prevent their deletion/destruction before you can locate, review and provide us with copies.

For all records, please take all steps necessary to prevent the intentional or accidental destruction/loss of these records during the pendency of this request. We request that you confirm that you have placed a "litigation hold" on all responsive records and information. Please provide all records and information responsive to this request as electronic files, if they exist as electronic files.

— [Read less](#)

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*Received*

**August 7, 2020** via web

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*Departments*

**None Assigned**

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Requester

**Firearms Policy Coalition**

✉ policy@fpchq.org

📍 1215 K Street, 17th Floor, Sacramento, CA 95814

📞 916 378 5785

🏢 Firearms Policy Coalition

## Documents

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Public (pending) ⓘ

(none)

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Requester

[CPRA Response.pdf](#)

## Staff

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Point of Contact

**Miyazaki, Stacey**

## Timeline

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**Request Closed**

Public

*September 2, 2020, 1:43pm*

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**Document(s) Released to Requester**

Public

CPRA Response.pdf

*September 2, 2020, 1:42pm*

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**External Message**

Requester + Staff

We are in receipt of your California Public Records Act Request. We will begin compiling the items and documents that we can disclose. We will forward the documentation to you as soon as all documentation is collected and a response explaining any redactions or omissions is completed.

*August 7, 2020, 9:17am*

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**Request Opened**

Public

Request received via web

*August 7, 2020, 9:17am*

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# Exhibit 2



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## SACRAMENTO COUNTY SHERIFF'S OFFICE

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SCOTT R. JONES  
*Sheriff*

August 26, 2020

Firearms Policy Coalition  
1215 K Street, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
Sent via: [policy@fpchq.org](mailto:policy@fpchq.org)

Re: CPRA #20-533

To Whom It May Concern,

The Sacramento County Sheriff's Office is in receipt of your California Public Records request.

**Request:** "RECORDS REQUESTED:

- 1) All records and information that contain information about or relate to Orangevale resident, Andrew Casarez, and the Gun Violence Restraining Order(s) (see, e.g., Cal. Penal Code Sec. 18100, et seq.), warrant(s), and seizure(s) reported on July 27, 2020 at <https://sacramento.cbslocal.com/2020/07/27/alleged-leader-of-neo-nazi-group-identified-as-orangevale-resident-andrew-casarez/> and further discussed at <https://reason.com/2020/07/30/gun-seized-apparently-for-being-a-racist-group-leader/>.
- 2) All records that are, relate, refer to, or are otherwise applicable to Sacramento County Sheriff's Office policies regarding Gun Violence Restraining Orders and related petitions, warrants, and seizures.
- 3) For the period of January 1, 2020, through the present, or until such time that you produce responsive records to us, whichever is later, all Gun Violence Restraining Orders petitioned for and/or otherwise requested by the Sacramento County Sheriff's Office and/or any of its officers, employees, agents and/or others working in concert with it.
- 4) For the period of January 1, 2020, through the present, or until such time that you produce responsive records to us, whichever is later, all Gun Violence Restraining Orders and related warrants issued or otherwise provided to the Sacramento County Sheriff's Office and/or any of its officers, employees, agents and/or others working in concert with it.

Responsive records may include but are not limited to:

- Writings (see, e.g., Cal. Evidence Code Sec. 250);
- Petitions/requests;

- Warrants;
- Body camera, police car dash camera, or other video, audio, and/or radio recordings;
- Reports;
- Statements;
- Investigations;
- Findings and/or recommendations;
- Prior disciplinary proceedings for or investigations into any officer involved / present.

If there are any fees for the responsive records, please inform us if the legally allowable costs will exceed \$500, an amount hereby authorized by us for the purpose of. However, we request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of your policies and practices, as well as the specific circumstances surrounding the Andrew Casarez Gun Violence Restraining Order(s), warrant(s), and seizure(s) discussed and referenced herein.

Note that when a public official or employee uses a personal account to communicate about the conduct of public business, the writings may be public records and required to be disclosed. This request potentially requires the production of records that exist or are maintained in electronic form, including but not limited to e-mails and chat/mobile phone messages.

Records, including e-mails and other electronic records, are often subject to "retention" or "destruction" policies that require their automatic deletion at some point in time. If any records that are potentially responsive to this request are subject to such a retention or destruction policy, please prevent their deletion/destruction before you can locate, review and provide us with copies.

For all records, please take all steps necessary to prevent the intentional or accidental destruction/loss of these records during the pendency of this request. We request that you confirm that you have placed a "litigation hold" on all responsive records and information.

Please provide all records and information responsive to this request as electronic files, if they exist as electronic files.”

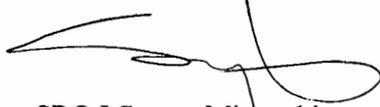
**Response:** The Sacramento County Sheriff's Office will provide the following responsive documentation:

- #1, #3, and #4 Your request is denied pursuant to the California Public Records Act, §6254(f), §6254(k), §6255, and the California Constitution, Article 1, Section 1.
- #2 Per Senate Bill 978 The Sacramento County Sheriff's Office's Policies and procedures are open to the public and located on our website at:  
<https://www.sacsheriff.com/Pages/Services/SB1421.aspx>

Firearms Policy Coalition  
CPRA #20-533  
August 26, 2020  
Page 3

Very truly yours,

SCOTT R. JONES, SHERIFF

A handwritten signature in black ink, appearing to read 'SRO I Stacey Miyazaki', with a large, sweeping flourish extending to the left.

SRO I Stacey Miyazaki  
PSD – Legal Affairs  
Sacramento County Sheriff's Office

RJ:rj

# Exhibit 3

# Paul Nicholas Boylan, Esq.

P.O. Box 719  
Davis, CA 95617  
Phone: 530 400 1653  
Fax: 877 400 1693  
Email: pnboylan@gmail.com

September 18, 2020

VIA EMAIL DELIVERY  
(LegalAffairs@SacSheriff.com)

Stacey Miyazaki  
Sacramento County Sheriff's Office  
Legal Affairs  
4500 Orange Grove Avenue  
Sacramento, Ca 95841-4205

RE: CPRA #20-533

Dear Officer Miyazaki:

I represent the Firearms Policy Coalition ("FPC") for purposes of CPRA #20-533.

On behalf of FPC, I thank you for your prompt response to FPC's records request. However, FPC has the following question, comments and concerns about Sacramento County Sheriff's Office answer and respond dated August 26, 2020.

Caveat: Spoliation Warning:

It is likely that most of the records and information this Request seeks are maintained in electronic formats that are often subject to automatic deletion pursuant to a possible "records retention policy." Please take all steps necessary from preventing the intentional or accidental loss of records and information responsive to this Request. Such steps are commonly referred to as a "litigation hold."

Production of Responsive Records via Reference:

FPC's 2<sup>nd</sup> Request asks for access to and copies of "All records that are, relate, refer to, or are otherwise applicable to Sacramento County Sheriff's Office (SCSO) policies regarding Gun Violence Restraining Orders and related petitions, warrants, and seizures." In response, SCSO referred FPC to <https://www.sacsheriff.com/Pages/Services/SB1421.aspx>.

FPC has attempted, but is unable to access or reproduce the public records responsive to FPC's request from the mass of records housed within the internet website referenced in your August 26, 2020, letter. Therefore, FPC requests that SCSO provide a copy of the specific records responsive to FPC's request and that, per Government Code § 6253(b), SCSO promptly provide FPC a copy of the public records requested.

**Insufficient Support for Exemption/Privilege Claims:**

If a public agency determines that requested records are not subject to disclosure because, for example, the records fall within a statutory exemption, the agency must notify the requester that the agency has determined the records requested are exempt *and* provide the reasons for that determination. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419.) In your August 26, 2020, letter, SCSO informed FPC that SCSO would not provide FPC with access to or copies of the records FPC requested in its Requests Nos. 1, 3 and 4 because SCSO had determined that the documents FPC requested were exempt per Sections 6254(f), §6254(k), §6255, and the California Constitution, Article I, Section I. However, SCSO failed to provide the reasons for SCSO's determination.

This disclosure requirement has a clear purpose, i.e., to allow those requesting records to enable to clearly understand why records are being withheld in order to avoid needless litigation based due to avoidable factual and legal misunderstandings.

FPC does not wish to litigate this matter based on a lack of information that SCSO is mandated to provide. In this spirit, FPC requests that SCSO provide the following information:

- Which specific exemptions/privileges does SCSO claim justifies withholding records responsive to FPC's requests? For example, Section 6254(k) provides virtually any reason articulated under state or federal law. Which state or federal laws – separate from those described with specificity in Section 6254 – does SCSO believe justifies withholding responsive records?
- As to each specific reason justifying disclosure, what facts and law support such a determination? For example:
  - SCSO is alleging that Section 6254(f) exempts responsive records. However, Section 6254(f) only applies to records that pertain an actual, existing, suspicion that a crime has been committed. FPC's position is that SCSO's application of "red flag" rules, regulations and statutes do not involve suspicions of criminal activity, can be, and often are, applied absent any reasonable suspicion of criminal activity. Therefore, in order to comply with the mandate to provide reasons why SCSO has determined that Section 6254(f) justifies withholding responsive documents, SCSO must identify the criminal investigations that warrant that determination.
  - Privacy concerns can justify withholding records. But asserting a privacy interest is not enough. If SCSO has determined that releasing the record FPC requests would

violate someone's reasonable expectations of privacy to information within those records, SCSO must generally describe what information should be deemed private, how many people have such a privacy interest, whether or not one, some or all of these people will be asserting their privacy interest, or, if SCSO is asserting the privacy privilege in a representative capacity, SCSO must specify the law that allows SCSO to assert a third person's privacy interest in the specific information contained in the records FPC requests.

- Section 6253(a) requires a public agency to redact exempt information from documents and then produce the redacted document. For example, if a document contains private information or privileged information, public agencies cannot withhold the whole document, but must redact that information and then produce the redacted record. If SCSO is withholding entire records, SCSO must specify the exemption/privilege and then explain why that information cannot be redacted.
- SCSO asserts that Section 6255 justifies denying FPC's records request. Asserting this "catch all" exemption is not enough: SCSO must identify the public interest justifies nondisclosure.

#### Privilege Log Requested:

Although the CPRA does not expressly require a privilege log, public agencies habitually produce privilege logs because doing so is the easiest way to demonstrate to a court that the agency has complied with the clear mandate to provide reasons for any determination that a record is exempt and/or privileged. For example, FPC is not seeking any communications between a client and their attorney that is made for the primary purpose of requesting, receiving or providing legal advice. However, if you withhold any record or information, in part or in whole, for any reason, including but not limited to a privilege claim, then please provide a privilege log describing the records or information withheld and the reason for the withholding. This information must be provided so that FPC can evaluate the reasonableness of the privilege claim.

#### Rolling Production:

FPC hopes that this letter prompts SCSO to change its mind and agree to produce records responsive to FPC's Requests Nos. 1, 3 and 4. And, as shown above, SCSO must now promptly provide records responsive to FPC Request No. 2. In order to avoid unnecessary delay, please produce records and information on a "rolling" basis – *i.e.*, please do not produce records and information only after all of the records and information responsive to a are gathered and processed; instead, please produce records and information as records and information are processed and become available.

Thank you for your prompt attention to this records request. Please do not hesitate to contact me if there is anything about this request you do not understand or if I can do anything to assist you.

**RE: Firearms Policy Coalition v. Sacramento County Sheriff's Office**  
**September 18, 2020**  
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Sincerely,

PAUL NICHOLAS BOYLAN

A handwritten signature in black ink that reads "Paul N. Boylan". The signature is written in a cursive style with a large initial "P" and a stylized "N".

Paul Nicholas Boylan