



September 27, 2016

Honorable Tani Gorre Cantil-Sakauye
Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Opposition to Request for Depublication of
City of Eureka v. Superior Court of Humboldt County,
Case No. A145701 (filed July 19, 2016),
under Cal. Rules of Court 8.1125(a)

Dear Chief Justice and Associate Justices of the California Supreme Court:

We, Californians Aware, are writing to respectfully voice our strong opposition to the City of Eureka's request for depublication of the above-referenced decision (hereinafter "*City of Eureka*"). As a non-profit public interest organization dedicated to protecting the public's constitutional and statutory rights of access to public records and the information therein, we are confident that the decision in *City of Eureka* is legally sound and serves the interests of Californians and all other members of the public.

1. Californians Aware's Interest

Californians Aware (hereinafter CalAware) is a nonprofit public benefit organization organized under the laws of California with the stated mission "To foster the improvement of, compliance with and public understanding and use of, public forum law, which deals with people's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss."

CalAware, out of concern for access to public information in particular, has since its founding in 2004

- conducted surveys of compliance with records disclosure requirements of principal state executive branch agencies; of public education institutions statewide, from school districts to the University of California; of law enforcement agencies statewide, including police and sheriffs' departments and offices of the California Highway Patrol; and of the executive offices of the superior and appellate courts as well as the Administrative Office of the Courts;
- published a 500 page *CalAware Guide to Public Records and Private Information in California*;
- sponsored legislation that—but for vetoes—would have: authorized review by the Attorney General of access denials by local government agencies as well as by state agencies that had not consulted with the Attorney General in denying access, with nonbinding conclusions

published for guidance for both records requesters and public agencies; given courts discretion to impose monetary penalties on local or state agencies that, in denying access, were shown to have “acted in bad faith or with reckless disregard of the agency’s obligations” under the California Public Records Act; required every state agency, board and commission with a website to provide on its home page an HTML form allowing people to submit requests for public records, and called on the Attorney General to convene an expert study group to recommend which types of records should be routinely posted on state websites to spare citizens from having to ask for them piecemeal;

- won a court decision that California State University Stanislaus violated its duties under the California Public Records Act and wrongfully withheld a speaking contract with former Alaska Governor Sarah Palin; sued the Contra Costa County Community College District for charging \$40 per hour for staff time in compiling copies of public records—a requirement the district rescinded in settlement; sued the City of Salinas for withholding from the public, as a preliminary draft exempt from disclosure, a “calendar of upcoming events” to be placed on future city council meeting agendas, although the document was made available to council members—a practice that the city abandoned in settlement; and sued the City of Baldwin Park for failing to retain records of its application to the U.S. Department of Justice for a share of funds or property confiscated from citizens on suspicion of criminal involvement—a practice the city abandoned in settlement.

2. Why the Decision Should Not be Depublished

The decision in *City of Eureka* chiefly concerns whether police patrol car dashboard camera video recordings of an arrest are exempt from disclosure as confidential peace officer personnel records under subdivisions (d) or (e) of Penal Code §832.8, because either they might be consulted in some future internal disciplinary review or they were in fact consulted in such a review.

The Court of Appeal rejected the first argument because the fact “(t)hat officers involved in an incident might face an internal affairs investigation or discipline at some unspecified point in the future does not transmute arrest videos into disciplinary documentation or confidential personnel information.” *City of Eureka*, Cal.Rptr.3d 134, ____.

The Court rejected the second argument because even assuming there were some evidence of actual reliance “it would not transmute the video into confidential personnel information. The arrest video “was generated independently and in advance of the administrative investigation” (citing *Pasadena Peace Officers Association v. Superior Court*, 240 Cal.App.4th 291) in concluding that ““records about an incident”” triggering an internal investigation were not protected personnel records under *Pitchess*.

The City of Eureka, in requesting depublication, does not take issue with these conclusions but instead ignores them, urging that the dispositive rule is Welfare and Institutions Code §827 (a) (3) (A), which provides that

If a juvenile case file, or any portion thereof, is privileged or confidential pursuant

to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail.

The Court of Appeal's conclusion that the videos were not "disciplinary documentation or confidential personnel information" under the *Pitches* statutes simply renders this provision irrelevant.

Respectfully Submitted,

Terry Francke
General Counsel
Californians Aware

Attached:
Proof of Service

PROOF OF SERVICE

I, Carolyn Francke, declare:

I am over 18 years of age, and not party to this action. I am employed by Apple Inc. and based at 2218 Homewood Way, Carmichael, CA, which is located in the county where the mailing described below occurred. On September 28, 2016, I mailed a copy of the following document:

**OPPOSITION TO REQUEST FOR DEPUBLICATION OF
CITY OF EUREKA V. SUPERIOR COURT OF HUMBOLDT COUNTY**

To each of the persons named below:

 X **OVERNIGHT DELIVERY:** I enclosed the above-described document in a sealed envelope or package addressed to the persons listed below, and placed the envelope or package with overnight delivery fees paid at an office regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

Chief Justice Tani G. Cantil-Sakauye and
Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Honorable Judge Barbara J. R. Jones
Court of Appeal
First Appellate District, Division Five
350 McAllister Street
San Francisco, CA 94102

Honorable Judge Christopher Wilson
Humboldt County Superior Court
825 Fifth Street
Eureka, CA 95501

Mary Blair Angus
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Davis, CA 95617

Cyndy Day-Wilson
City Attorney
City of Eureka
531 K Street
Eureka, CA 95501-1165

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

Date: September 28, 2016

Carolyn Francke