

Castanares v. Superior Court (City of Chula Vista)
(2023) DJDAR 12120

Trial court erred in determining, as a matter of law, that all video footage from a police drone program was exempt from disclosure under the California Public Records Act.

FACTS

The FAA selected the City of Chula Vista’s police department to be the first in the country to test a first responder drone program to respond to certain 911 calls. An officer determines when sending a drone to examine a situation is appropriate, and then the drone streams video of the relevant area to inform the police on how to more effectively and safely respond upon arrival at the scene. The City does not use the drones for general surveillance or patrol.

Arturo Castanares, a journalist and private pilot, made a California Public Records Request (“CPRA”) under Government Code section 7923.500 for information related to the City’s drone program, including the drone footage, from March 1 to March 31, 2021. The City provided him with the information, except for the footage which exceeded 91 hours. Castanares filed suit for declaratory and injunctive relief. The trial court issued a minute order determining that the footage was exempt under the CPRA’s investigatory records exception and also its catchall exception.

Castanares filed a petition for an extraordinary writ asking the Court of Appeal to vacate the trial court’s minute order and order the City to disclose the footage that was not related to a law enforcement investigation with necessary redactions. The City opposed the writ, but requested the Court of Appeal consider the petition to clarify the scope of its obligation to disclose the drone footage under the CPRA as it was a matter of first impression.

FOURTH APPELLATE DISTRICT’S RULING

Granted in part. The CPRA is modeled after the federal Freedom of Information Act (“FOIA”). It grants public access to state and local agency records. The California Constitution requires the CPRA be broadly construed in favor of access and any exceptions be narrowly construed.

The CPRA’s investigatory records exception does not require disclosure of “records of investigations” conducted by any state or local police agency. (§ 7923.600(a).) As drone footage is a matter of first impression, the Court found it fell somewhere in between precedent involving targeted police stops to investigate potential crimes and mass data collection programs of license plate information.

As the exceptions must be narrowly construed, the Court held that all drone footage is not categorically exempt as a matter of law from disclosure merely because it was obtained in response to an officer’s determination to deploy a drone in response to a 911 call. Drone footage could fall under three possible categories – the first two fall under the exception and are exempt from disclosure, the third does not.

First, drone footage that is part of an investigatory file. The parties agreed that at least some of the footage fell under this exception and was exempt. Second, footage obtained while investigating whether a legal violation occurred, but which didn’t ultimately become part of an investigatory file. Under related precedent, this would fall under the exception as it was part of investigating a potential crime. Third, all other footage used to make a factual inquiry to determine what type of assistance was required but was not investigatory in nature. The Court’s examples included potentially dangerous wildlife roaming the neighborhood, a stranded motorist, and a water leak.

The second issue before the court was whether the footage was exempt under the CPRA's catchall exception. (§ 7322.000.) This exception permits withholding a public record under a case-by-case balancing process. The City must show that the public interest served for non-disclosure outweighed the interest served by disclosure. The trial court found that any benefit of disclosure was outweighed by the unreasonable burden on the City to redact the footage, privacy concerns, and the significant volume of other information already disclosed. In support, the City provided evidence regarding typical redaction times and that there was over 91 hours of total footage.

The Court noted there were strong privacy reasons for careful redaction, particularly for footage obtained while traveling over backyards to and from locations and of bystanders. The Court did take issue with the fact that the City hadn't reviewed the actual footage and just provided typical redaction times. The Court also found that not all 91 plus hours was at issue because some was exempt as it fell under the first two categories of the investigatory records exception. The footage that fell under the third factual inquiry category was only left at issue for the catchall exception and the City did not bear its burden on this topic as it did not break down the footage into these categories (that the Court had just judicially created).

The Court remanded the case with directions to vacate the order and determine which footage must or must not be disclosed. The Court suggested the trial court ask the City to separate the footage into the three categories. For the third, the City was to offer arguments as to why the catchall provision applied and the Court noted it would be sensible for the City to review at least a sampling to more accurately represent the burden.