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10 SUPERIOR COURT OF CALIFORNIA — COUNTY OF SACRAMENTO

11
12 McClatchy Newspapers, Inc.,

13 Petitioner,

14 vs.

15 The Regents Of The University Of
16 California; and DOES 1 through 20,

17 Respondent.

No.

**MCCLATCHY NEWSPAPERS, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Date
Time:
Dept:

Complaint Filed:

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I
INTRODUCTION

McClatchy Newspapers, Inc., seeks disclosure of 14 police reports pertaining to crimes and incidents occurring at the Medical Center of the University of California at Davis between 1996 and 2000. The University has denied public access to these reports on the grounds that the criminal investigations discussed in the reports are closed. The University's decision to deny access relies entirely on one case decided under the Public Records Act that involved a request to a **city** police department. That case, County of Los Angeles v. Superior Court (Kusar), 18 Cal. App. 4th 588 (1993), limited the information required to be disclosed under Government Code Section 6254(f) to contemporaneous information about present police activity.

The University cannot rely on Kusar, however, in the context of McClatchy's request here because the University, as a recipient of public funds, has an independent obligation under the Education Code, with certain limited exceptions not relevant here, to disclose the police reports requested. This statutory obligation is intended to ensure that students, applicants, and other members of the public have detailed information from which to assess their own safety while on campus property. There is no exception to this obligation for closed cases.

Despite the clear mandate of the Education Code, the University seeks to maintain its policy of secrecy about past crimes occurring on its campus by engrafting into its disclosure obligations under the Education Code the Kusar time limitations, which have no application here for at least the following reasons:

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- Both state and federal disclosure and reporting requirements applicable to post-secondary educational institutions receiving public funds would be rendered meaningless if they only pertained to open criminal cases.
- The legislative history of the Education Code's disclosure requirements, together with the clear import of Section 6254(f) of the Government Code itself as adopted by the California Supreme Court, conclusively show that only where disclosure would endanger the successful completion of an investigation or the safety of an individual involved in an investigation may police reports required to be disclosed under the Education Code be withheld. They may not be withheld because they pertain to closed investigations.
- The policies of disclosure sought to be advanced under the Education Code and the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act are entirely independent from the policies sought to be advanced by the disclosure requirements of Section 6254(f), which, as the Kusar court explained, are intended to prevent secret arrests.
- The University's present use of the police reports requested to fulfill its ongoing statutory disclosure and reporting obligations requires that they be compelled not to prevent secret arrests but to ascertain whether certain areas of school campuses are dangerous and whether the people's business is being conducted in accordance with state and federal law.

1 • Even if state and federal law did not provide an independent
2 basis upon which the police reports must be disclosed, the request at
3 issue here, unlike that in Kusar, involves a string of similar crimes
4 occurring at the same location over a relatively short period of time – the
5 last occurring in January of 2000 — and therefore does pertain to
6 contemporaneous police activity within the meaning of Kusar.

7
8 Accordingly, McClatchy is entitled to the police reports requested, or at
9 the very least details of the type required to be disclosed under Section 6254(f)(1) and
10 (f)(1), and the University's policy of secrecy about past crimes occurring on its campus
11 must be changed. Indeed, the University's current practice of denying access to all
12 ongoing investigations – without any showing that disclosure would harm an
13 investigation — and then denying access as soon as the case is closed on the
14 grounds that the request no longer pertains to contemporaneous police activity,
15 means that the public will never be able to obtain any police reports. This policy
16 completely abrogates the University's responsibilities under the Education Code.
17 While the University may desire such an outcome, the public's interest mandates a
18 contrary result.

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20 Therefore, an alternative writ of mandate should issue compelling the
21 University to provide McClatchy Newspapers, Inc., with the 14 police reports
22 requested, or, alternatively, an order to show cause why production of the reports
23 should not be compelled.

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II
FACTUAL BACKGROUND

A. The Bee's Request For Public Records

On October 31, 2000, as part of her investigative efforts on behalf of the public, Reporter Terri Hardy of the Sacramento Bee (the "Bee"),¹ wrote the University's Campus Counsel Steven Drown requesting access to the following police reports believed to be in the possession of the University's police department: 9906-3739; 9707-0250; 9611-0699; 9610-1379; 9608-2300; 0001-2656; 9711-1803. That letter also requested that all nonexempt records be made "promptly" available, as statutorily required. Additionally, the letter explained that if the University believes that an express provision of law exists exempting from disclosure all or any portion of the information requested, that the University notify the Bee of the reasons for its determination within 10 days as required under California Government Code Section 6253. [See October 31, 2000 letter from Terri Hardy to Campus Counsel Steven A. Drown, Exhibit A to Declaration of Terri J. Hardy In Support of McClatchy's Petition For Writ of Mandate ("Hardy Decl.") and Hardy Decl., ¶¶ 2, 5.]

Most of the police reports requested are believed to pertain to sex crimes occurring at the University's Medical Center between 1996 and 2000. Specifically, McClatchy believes that: report number 0001-2656 pertains to a 2000 lewd act at the University's Medical Center; report number 9906-3739 pertains to a 1999 suicide at the University's Medical Center; report number 9707-0250 pertains to

¹ The Sacramento Bee is a daily newspaper of general circulation, which regularly reports on and disseminates information of public concern to the citizens of Sacramento and the surrounding areas and which is published by McClatchy Newspapers, Inc. The Bee and McClatchy are used interchangeably throughout this brief.

1 a 1997 sexual assault at the University's Medical Center; report number 9611-0699
2 pertains to a 1996 sexual battery at the University's Medical Center; report number
3 9610-1379 [sic 9608-1379] pertains to a 1996 sexual battery at the University's
4 Medical Center; report number 9608-2300 pertains to a 1996 sexual battery at the
5 University's Medical Center; report number 9711-1803 pertains to a 1997 rape in the
6 Davis area. [See Hardy Decl., ¶¶ 3,4.]
7

8 Nine days after Ms. Hardy's Public Records Act request, on November
9 9, 2000, the University wrote back neither granting access to the specific police
10 reports requested nor denying access. Instead, the University said, "We are in the
11 process of retrieving and reviewing this information to determine if any or all of the
12 records are exempt from disclosure." While the University explained that it would take
13 some time to complete all aspects of the request, "since the records are coming from
14 various sources/units on campus and the search involves examining volumes of
15 records for the years involved," it did not request an extension of time to respond, nor
16 did it set forth a date on which a determination could be expected. [See Exhibit B to
17 Hardy Decl., ¶ 6.]
18

19 On December 5, 2000, well over a month after the Bee's original written
20 request, the University wrote again setting forth the progress on various aspects of
21 the Bee's original request. Like the November 9, 2000 letter, the University neither
22 granted access to the specific police reports requested nor denied access to them.
23 Instead, the University said, "Campus counsel is in the process of reviewing." Again,
24 the University did not request an extension and did not provide an expected date
25 upon which a determination would be made. [See Exhibit C to Hardy Decl., ¶ 7.]
26

27 On December 8, 2000, via facsimile to the University's police
28 department and again on December 11, 2000, in writing on the police department's

1 official request form, Reporter Terri Hardy requested, among other records, the
2 following additional police reports: 9701-3602; 9709-1993; 9711-2682, 9803-2696,
3 9805-0589; 9810-1536; 9912-1264. Similar to the nature of the reports request on
4 October 31, 2000, the reports requested on December 8 and December 11 are
5 believed to all pertain to sexual assaults or rapes occurring at the University's Medical
6 Center in 1997, 1998 and 1999. [See Hardy Decl., ¶¶ 8,9.]
7

8 In response to these later requests, the manager of communications
9 and records of the University's police department told Terri Hardy it would take seven
10 to ten business days to process the request. And, upon being informed that it would
11 take seven to ten business days to process the December 8, and December 11, 2000
12 request, Terri Hardy provided the manager of communications and records with a
13 copy of relevant portions of the Education Code. These provisions require that
14 compiled records of all occurrences reported to campus police, campus security
15 personnel, or campus safety authorities of, and arrests for, crimes that are committed
16 on campus and that involve violence, hate violence, theft or destruction of property,
17 illegal drugs, or alcohol intoxication to be made available within two business days
18 following any request by the media, or any student, employee or applicant for
19 admission. [See Hardy Decl., ¶¶ 10,11.]
20

21 On December 8, 2000, and again on December 12, 2000, McClatchy's
22 Assistant General Counsel Stephen J. Burns called the University's counsel to
23 ascertain the status of the October 31, 2000 request for specified police reports. On
24 both these occasions, McClatchy's counsel was informed that the police reports
25 requested would be forthcoming within a few days with probably only minor
26 redactions. [See Declaration of Stephen J. Burn In Support of McClathcy's Petition
27 For Writ of Mandate ("Burn's Decl."), ¶ 2.]
28

1 Finally, on December 15, 2000, over a month and a half after the Bee's
2 original request for records, and after leading it to believe that the police reports
3 requested, or information extracted from the police reports, would be produced, the
4 University denied the Bee access to the police reports requested in its October 31,
5 2000 request and denied access to any information of the type required to be
6 extracted from those reports under Government Code Section 6254(f)(1), (f)(2) and
7 (f)(3). The sole basis for the University's denial of access was its contention that
8 since the information sought was no longer current information about
9 contemporaneous police activity pertaining to individuals presently in the criminal
10 justice system, it was exempt from the disclosure requirements of Section 6254(f)(1),
11 (f)(2) and (f)(3), citing Kusar, supra. [See December 15, 2000 letter from the
12 University's Campus Counsel to McClatchy's Assistant General Counsel, Exhibit A to
13 Burn's Decl., ¶ 3.]
14

15 The University has not responded to the Bee's December 8, 2000 and
16 December 11, 2000 request for additional police records, other than to state in its
17 December 15, 2000 denial letter that "[t]he University plans to follow the standards
18 described above in evaluating other Public Records Act requests for police records."
19 [Id. at 7.]

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1 **B. The University's Policy Of Denying Access To Both Closed And Ongoing**
2 **Investigations**

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4 Despite the University's proffered reasons for denying access to closed
5 criminal investigations, it is clear that its has had a longstanding written policy of
6 denying public access to all police reports, whether ongoing or closed, as evident
7 from the official web site of the University's police department. [See Exhibit D to
8 Hardy Decl., ¶ 14.] Indeed, not only is it the University's stated policy to deny public
9 access to any police reports pertaining to "criminal" activity, it is the University's
10 practice to take seven to ten working days to process such requests and to require
11 that all requests be in writing. [Id.] Significantly, the University charges \$7.00 for the
12 first five pages of a report and \$1.50 thereafter, even though under the Public
13 Records Act it may charge no more than the direct cost of duplicating. [Id.]

14
15 The University's policy with respect to closed investigations is
16 particularly troubling given its stated policy with respect to ongoing investigations, as
17 indicated by a Public Records Act request made on January 8, 2001. On this date,
18 Terri Hardy requested the police report regarding an apparent suicide at a campus
19 fraternity that had occurred a week or so earlier. [See Hardy Decl., ¶ 16 and Exhibit E
20 thereto.]. Ms. Hardy was told by the University's Police Captain that the University
21 does not provide police reports pertaining to any ongoing investigation and that she
22 was not aware of any police department that did. [Id.] On January 11, 2001,
23 Ms. Hardy was denied access to the 911 tapes regarding this same incident for the
24 same reasons she was denied access to the police report – the University's
25 investigation was ongoing. [See Hardy Decl., ¶ 17.] In denying access to both the
26 police report and the 911 tapes regarding this recent incident, the University did not
27 explain how disclosure would harm its investigation. [See Hardy Decl., ¶ 18.]
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1 Thus, the University's written and stated policy is to deny access to both
2 closed investigations and ongoing investigations.

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4 **C. Informal Attempts To Obtain Public Records Fail**

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6 On December 22, 2000, in an attempt to informally resolve the impasse
7 reached between the Bee and the University over the police reports contained in its
8 October 31, 2000 request and its December 8, 2000 request, McClatchy's counsel
9 wrote the University's counsel explaining, among other things, that there could be no
10 time limitations on production of police report information where, as here, the
11 University is independently obligated to produce the records under the Education
12 Code and presently relies on the police reports to meet its ongoing reporting and
13 disclosure requirements under the Education Code and the Clery Act. [See
14 McClatchy's Assistant General Counsel's December 22, 2000 letter to the University's
15 Campus Counsel, Exhibit B to Burn's Decl., ¶¶ 5-8.]

16
17 Despite McClatchy's efforts to resolve this matter, the University's
18 insistence that the public has no right of access to closed criminal investigations, even
19 when disclosure is independently required under state law so that the public can
20 assess the safety and security of its college campuses, necessitates Court
21 intervention. [See January 9, 2000 letter from the University's Campus Counsel to
22 McClatchy's Assistant General Counsel, Exhibit C to Burn's Decl., ¶ 8.]

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III
LEGAL ANALYSIS

A. The University's Policy of Secrecy About Past Crimes Is Illegal

In accordance with the strong public policy favoring access to public information, public records are broadly defined to include:

Any writing, containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

Cal. Gov't Code § 6252(e)(West Supp. 2000); see also Vallejos v. Cal. Hwy Patrol, 89 Cal. App. 3d 781, 784-85 (1979); Cook v. Craig, 55 Cal. App. 3d 773, 781-82 (1976) (both courts adopting broad definition of public records).

Unless the public records of the state agency are exempt from the provisions of the California Public Records Act, they must be made available for public inspection. Williams v. Superior Court, 5 Cal. 4th 337, 346 (1993). Here, the University contends the information requested is exempt from disclosure under Section 6254(f) of the Public Records Act as not pertaining to contemporaneous police activity involving individuals currently in the criminal justice system. In so arguing, the University relies on one case involving a request to a city police department for police report information going back ten years. See County of Los Angeles v. Superior Court (Kusar), 18 Cal. App. 4th 588 (1993).

The University's reliance on Kusar in the context of McClatchy's request here is misplaced and must be rejected because: 1) as a post-secondary educational institution receiving public funds, state law requires the University to disclose the police

1 reports requested here, except for the names of the victims, so that the public can
2 assess the safety and security of its college campuses; 2) both state and federal law
3 require, at the very least, the University to disclose the same basic information
4 requested by McClatchy here; 3) the University's present reliance on the police reports
5 to meet its ongoing reporting obligations to the state and federal government
6 necessitates that public access to them also be granted; and 4) McClatchy's request,
7 unlike that in Kusar, involves a string of similar crimes occurring at the same location
8 over a relatively short period of time – the last occurring in January of 2000 – and
9 therefore does pertain to contemporaneous police activity within the meaning of Kusar.

10
11 Accordingly, the police reports requests are public records within the
12 meaning of the Public Records Act and must be produced.

13
14 **1. Aside From The Name Of A Victim, State Law Requires Disclosure**
15 **Of The Police Reports Requested By McClatchy**

16
17 **a. The Education Code requires disclosure of the actual police**
18 **reports.**

19
20 The California Education Code requires that the University compile
21 records of specified crimes and make those records available to the media within two
22 business days of any request. Specifically, Section 67380(a)(1)(A) of the Education
23 Code mandates that the University "compile records" of "[a]ll occurrences reported
24 to campus police, campus security personnel, or campus safety authorities of, and
25 arrests for, crimes that are committed on campus and that involve violence, hate
26 violence, theft or destruction of property, illegal drugs, or alcohol intoxication." Cal.
27 Ed. Code § 67380(a)(1)(A) (West Supp. 2000). Section 67380(a)(3) in turn mandates
28 that the above information be made available to students, employees, or applicants

1 for admission, or to the media within two business days of a request "unless the
2 information is the type of information **exempt** from disclosure pursuant to subdivision
3 (f) of Section 6254 of the Government Code, in which case the information is not
4 required to be disclosed." Cal. Ed. Code § 67380(a)(3) (West Supp. 2000).
5 (Emphasis added.)
6

7 In amending Section 67380 to add disclosure requirements to the
8 media, it was expressly recognized that Section 67380's disclosure requirements went
9 beyond those under then existing federal law, which required disclosure of only
10 "campus crime reporting and disciplinary procedures, and crime statistics." [See
11 Exhibit A to McClatchy's Request For Judicial Notice.] Indeed, the Senate Committee
12 on Education discussing the bill (A.B. 3739) stated that while the Federal Student
13 Right to Know Act "does not require crime reports to be made available to the media,"
14 the proposed bill "[r]equires crime records be made available to the media within one
15 business day following a request for the records." Id.²
16

17 Moreover, then Assembly Member Pat Nolan, the author of the original
18 bill and the 1992 amendments, in a August 25, 1992 letter to Governor Pete Wilson
19 regarding the proposed amendments, explained that "[V]ictims groups and students
20 have told me that they are having trouble obtaining the **actual police reports of**
21 **crimes** which occur on campus." (Emphasis added.). To remedy this, Nolan
22 explained that the bill would "require public and private higher education institutions to
23 make available the reports of crimes committed on their campuses within two
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26 _____
27 ² The legislation as enacted requires disclosure within two business days following a request from any
28 student, employee, applicant for admission or the media. Cal. Ed. Code § 67380 (a)(3).

1 business days following a request for the records." [See Exhibit B to McClatchy's
2 Request For Judicial Notice.]³ Further explaining the need for the bill, Nolan added:

3
4 Schools need to alert students to the dangers they face, and
5 students deserve to know the **details** of crimes that have
6 been committed on campus. Only when students are aware
7 of what is going on around them can they take the necessary
8 precautions to protect themselves from criminals who may
9 be lurking in the shadows of campus buildings or parking
10 lots."

11 Id. (Emphasis added.)

12 The legislation passed to achieve these goals makes no exception for
13 closed investigations; given its stated purpose, information about past crimes clearly
14 is an essential part of the information that must be made available to the public.
15 Thus, if not already clear from the statutory language requiring that "compiled
16 records" of certain specified incidents and crimes be made available to

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21 the public, the legislative history surrounding the enactment of the 1992 amendments

22
23 ³ While the legislative history surrounding the original enactment of the Education Code's disclosure
24 provisions calls into question whether statistical information or actual "crime records" were required to
25 be disclosed, it is clear that the 1992 amendments require disclosure of actual crime records. See April
26 22, 1992 Assembly Ways and Means Committee Analysis, wherein committee explains that while as
27 originally enacted "statistics" were required to be disclosed, the proposed amendments would require
28 "crime records" be made available to any individual, including the media. Compare May 15, 1990
Assembly Ways and Means Committee Analysis, which suggests that as originally enacted actual
crime records were required to be disclosed. Exhibits C and D, respectively, to McClatchy's Request
For Judicial Notice.

1 makes clear that "actual" police reports are required to be disclosed under Section
2 67380(a)(3), with only the limited exemptions explained below.⁴

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b. The Education Code mandates disclosure of past criminal activity as well as present criminal activity.

Not only does Section 67380(a)(3) mandate disclosure of police reports for certain specified incidents and crimes, it is clear from the statute, and the Legislature's stated intent in enacting it, that **past** criminal activity as well as **current** criminal activity is required to be disclosed. The purpose of Section 67380 is to provide information to the public, including students and the media, by which it can assess the safety and security of its college campuses and make more informed decisions about college selection and one's own safety while on college campuses. [See Assembly Ways and Means Committee Report of April 17, 1999, Exhibit E to McClatchy's Request For Judicial Notice.] To fulfill this legislative intent, crime reports about past criminal activity (i.e., closed investigation files) as well as current criminal activity must be disclosed. Indeed, Section 67380 does not restrict the time period for discloseable records of campus crimes. Rather, it specifically requires disclosure of "all occurrences reported to campus police . . . and arrests for" certain specified incidents and

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crimes. (Emphasis added.) If the Legislature intended that only the small percentage

⁴ This conclusion is further supported by comparing the language of Section 67380 (a)(1) to Section 67380 (a)(5), which sets forth the requirements for reporting to the government, Subsection (a)(1) requires the University to "compile records," while subsection (a)(5) requires the University to "report information compiled." If reports about the information compiled satisfied the disclosure requirements, as opposed to production of the compiled records themselves, the Legislature certainly knew how to say it.

1 of occurrences that were still under investigation be disclosed they would have
2 chosen different words to express their intent.

3
4 Moreover, if the disclosure requirements of Section 67830(a)(3) only
5 applied to crimes pertaining to current police investigations involving individuals
6 currently in the criminal justice system, the statute would have little or no impact on its
7 stated goal. For example, if fourteen sexual assaults have taken place all at the same
8 University parking lot over a period of three years and disclosure were limited to just
9 those presently in the criminal justice system, a student would have only a small part
10 of the information that might lead to an informed decision about his or her own safety.
11 What is in fact an ongoing issue might well be misperceived as an isolated event.
12 Section 67380's disclosure requirements cannot be given such a limited construction.

13
14 **c. The University's position is untenable.**

15
16 Despite the clear language and intent of Section 67380's disclosure
17 requirements, the University here contends it is required to disclose only statistical
18 information from the police reports, rather than the police reports themselves, and
19 then only as to crimes pertaining to contemporaneous police activity involving
20 individuals currently in the criminal justice system. By so arguing, the University
21 ignores its clear obligation to disclose the "actual" police reports to the public so it can
22 have "detailed" information from which to make informed decisions.

23
24 Additionally, and perhaps more disturbing, the University misconstrues
25 the exemption contained in Section 67380(a)(3), which mandates disclosure "unless
26 the information is the type of information exempted from disclosure pursuant to
27 subdivision (f) of Section 6254. . . ." Specifically, the University would like to read this
28 exemption as incorporating the broad, permissive non-disclosure provisions of

1 Section 6254(f), rather than the exemptions from disclosure expressly set forth in
2 Section 6254(f). The University's position, however, misconstrues both the plain
3 construction of Section 6254(f) and the legislative history of Section 67380, which
4 confirms that its disclosure exemption does not include the broad, permissive
5 nondisclosure provisions of Section 6254(f), but only the express exemptions from
6 disclosure set forth in that section.

7
8 In construing the meaning of Section 67380's disclosure exemptions,
9 which incorporates portions of Section 6254(f), it is helpful to review Section 6254(f)'s
10 statutory construction. Under Section 6254(f), there are three general categories of
11 information discussed. See Williams v. Superior Court, 5 Cal. 4th 337, 348-49 (1993)
12 (where Court explained "complicated" structure of Section 6254(f) and set forth the
13 three general categories included in Section 6254(f)'s provisions); see also Kusar, 18
14 Cal. App. 4th 588, 595, fn 10. The first category of information described in Section
15 6254(f) is that encompassed by the broad, permissive exemptions **that allow, but do**
16 **not require** an agency to withhold records or information from the public. Included in
17 this first category are "[r]ecords of . . . investigations conducted by . . . any state or local
18 police agency" ⁵ Cal. Gov't Code § 6254(f); Williams, 5 Cal. 4th at 349. The
19 second category of information discussed in Section 6254(f) is that which **must** be
20 disclosed, such as the name, occupation, and physical description of an arrestee. Id.
21 The third category of information discussed in Section 6254(f), and by the California
22 Supreme Court in Williams, is that information **otherwise required to be disclosed,**
23 **but that may be withheld** under certain specified circumstances. In other words, this
24 third category of information sets for express exemptions to the disclosure

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26 ⁵ This construction is clear from the preamble to Section 6254, which states, "Except as provided in
27 Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of
28 records that are any of the following: . . . (f) Records of . . . investigations conducted by . . . any state or
local police agency. . . ."

1 requirements of Section 6254(f). This third category, allows an agency to withhold
2 information where it would 1) "endanger the safety of a person involved in an
3 investigation," and 2) "endanger the successful completion of the investigation or a
4 related investigation." Id.; Williams, 5 Cal. 4th at 349. Additionally, under Section
5 6254(f)(2) the name of a victim of certain specified crimes may be withheld at the
6 victim's request and under Section 6254(f)(3), added by a 1995 amendment, the
7 address of a victim of certain specified crimes must remain confidential. Cal. Gov't
8 Code § 6254(f)(2) and(f)(3).

9
10 It is only this third category of information that is "the type of information
11 **exempt** from disclosure" under Section 6254(f), within the meaning of Section 67380
12 – not the broad categories of information that **may** or may not be disclosed and which
13 are not exempt from disclosure. Thus, only where disclosure would endanger the
14 safety of a person involved in an investigation or would endanger a successful
15 completion of the investigation may a post-secondary educational institution, such as
16 the University here, withhold information otherwise required to be disclosed under
17 Section 67380.

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23 Additionally, the name of a victim of certain specified crimes may not be disclosed
24 without the victim's permission. See Cal. Ed. Code Section 67380(a)(3).⁶

25
26 ⁶ This does not give the University carte blanche to deny access to a victim's name. Rather, it requires
27 the University to affirmatively seek approval from the victim before disclosing that information. See,
28 e.g., Cal. Pen. Code § 293, which requires law enforcement agencies to advise victims of their rights to
have their names withheld.

1 The legislative history of Section 67380, ***which includes input from***
2 ***the Regents' regarding the incorporation of Section 6254(f)'s exemptions into***
3 ***Section 67380***, fully confirms this construction. Indeed, the Committee Report
4 regarding A.B. 3739 from the Senate Committee on Education states:

5
6 [T]he disclosure requirement does not apply if the
7 information is the type of information described in
8 Government Code Sec. 6254(f) which prohibits the
9 disclosure of information that would endanger the safety of a
10 person involved in an investigation or would endanger the
11 successful completion of the investigation or related
12 investigation.

13 [See Exhibit A to McClatchy's Request For Judicial Notice; see also Exhibit G, Author's
14 Proposed Amendments to A.B. 3739, Senate Education Committee, dated June 10,
15 1992.] The Regents knew during the enactment of Section 67380's amendment that
16 Section 6254(f)'s provisions were being incorporated into Section 67380 to protect
17 against disclosure of this very "type of information." Indeed, it was the Regents who
18 urged incorporation of Section 6254(f)'s provisions to protect the privacy rights of victims
19 and to protect "on-going criminal investigations." [See June 30, 1992 letter from the
20 Regents' Director of State Government Relations, Stephen A. Arditti, to Assembly
21 Member Pat Nolan, (wherein Mr. Arditti explained that the intended protections could be
22 meet by "simply referencing Section 6254 of the Government Code which specifies the
23 exemptions to public information requirements that you wish to incorporate into AB
24 3739."), Exhibit F to McClatchy's Request For Judicial Notice.]

25 Moreover, before urging that the bill "simply reference" Section 6254 to
26 provide the necessary protections, the Regents had proposed its own amendment to
27 accomplish the same thing and which expressly recognized that the broad permissive
28 non-disclosure provisions of Section 6254(f) were not intended to be incorporated into
Section 67380:

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Except to the extent that disclosure of a particular item of information would endanger the safety of any person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, or would violate federal or state privacy laws, the campus police or designated safety authority shall make the record required to be compiled pursuant to subsection (a)(1) available to any student or employee of, or applicant for admission to, any campus within their respective jurisdictions, or to the media, within one business day following the request.

[See Notes regarding conversation with Regents' Analyst, Catherine Castoreno, submitted by David Stefandes of Assembly Member Pat Nolan's office, Exhibit H to McClatchy's Request For Judicial Notice.]

To argue now that Section 67380's disclosure exemptions mean something different than what the Regents knew them to mean back in 1992, the Regents relies solely on Kusar, a decision decided after the 1992 amendments to Section 67380 and which has no application here.⁷ In Kusar the court held that the disclosure requirements of Section 6254(f)(1) and (f)(2) applied only to contemporaneous information, not to requests for police report information going back ten years. Kusar, 18 Cal. App. 4th at 599. It said nothing about the Education Code's required disclosure of criminal history information. By so holding, the Kusar court limited only what must be disclosed under Section 6254(f)(1) and (f)(2) – the second category of information discussed by the California Supreme Court in Williams, supra. The Kusar court did not create an exemption for information otherwise required to be disclosed – the third category of information discussed in Williams. It is only this third category of information discussed in Williams, that is incorporated into the exemptions

⁷ Indeed, by concocting this argument and sticking to it, one could argue that the University is making an intentional effort to defeat the clear purpose of the legislation it participated in drafting.

1 of Section 67380's disclosure requirements, as evident from that section's legislative
2 history and the statutory construction of Section 6254(f) as explained by the California
3 Supreme Court. Indeed, even in the context of Section 6254(f), Kusar did not create an
4 exemption to the mandatory disclosure requirements under Section 6254(f)(1) and
5 (f)(2), but only a limitation on what must be disclosed.

6
7 Section 67380's disclosure requirements simply cannot be read to require
8 disclosure of only contemporaneous police activity of individuals presently within the
9 criminal justice system as the University contends. Indeed, the University's present
10 practice of denying access to ongoing investigations even when not shown to endanger
11 an ongoing investigation, and denying access to closed investigations as no longer
12 pertaining to contemporaneous police activity of persons presently in the criminal justice
13 system, completely obliterates its obligations under the Education Code and abrogates
14 its responsibilities to the public. [See Hardy Decl., ¶ 16 (where University denied
15 January, 2001, request by the Bee for police report information about a supposed
16 suicide on campus not because it would harm an ongoing investigation but simply
17 because it was an ongoing investigation)]

18
19 Because the University is statutorily obligated to produce the police
20 records to the public and to the media, with the names and addresses of victims of
21 certain specified crimes redacted, and because it has no claim that disclosure will
22 hamper any ongoing investigations, this Court should issue an alternative writ requiring
23 that the University produce the police reports requested, or an order to show cause why
24 such a writ should not issue.

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1 **2. Because Much Of The Same Information Is Required To Be**
2 **Disclosed Under Both State And Federal Law As That Sought By**
3 **McClatchy Here, Detailed Facts From The Police Reports Must Be**
4 **Produced If Not The Police Reports Themselves**

5
6 Even if Section 67380's disclosure requirements could be read to
7 require less than full disclosure of the police reports, excluding the victim's name and
8 address, the University must be required — at the very least — to provide "detailed"
9 information from those reports so that the public can remain informed about the safety
10 of the University's campus and the Medical Center in particular. Such information
11 must include all the details required to be disclosed under Section 6254(f)(1) and
12 (f)(2), without limiting the disclosure to contemporaneous crimes for the reasons
13 discussed above.⁸

14
15 Additionally, since the University maintains a police department, the
16 federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime
17 Statistics Act, 20 USC Section 1092(f) (4)(A) (West 2000) the "Clery Act"), requires
18 that it "make, keep, and maintain" a daily log recording all crimes reported to the
19 police or security department. The log must contain: "(i) the nature, date, time and
20 general location of each crime; and (ii) the disposition of the complaint, if known." Id.

21 ⁸ With respect to crimes, Section 6254(f)(1) mandates disclosure of the name, occupation, physical
22 description — including date of birth, color of eyes and hair, sex, height and weight — the time and
23 date of arrest, the time and date of booking, the location of the arrest, the factual circumstances
24 surrounding the arrest, the amount of bail set, the time and manner of release or the location where the
25 individual is currently being held, and all charges the individual is being held upon, outstanding
26 warrants, and parole or probation holds.

27 With respect to complaints or requests for assistance, Section 6254(f)(2) mandates disclosure of the
28 time, substance and location of all complaints or requests for assistance, the time and nature of any
29 response thereto, including the time, date and location of occurrence, where recorded, the time and
30 date of the report, the name and age of the victims (with certain limited exceptions) the factual
31 circumstances surrounding the crime or incident, and a general description of any injuries, property, or
32 weapons involved. Section 6254(f)(3), among other things, also mandates disclosure of the current
33 address of the individual arrested upon declaration as to purported use.

1 Moreover, with certain limited exceptions, all entries for the most recent 60-day period
2 must be open to public inspection during normal business hours, and entries older
3 than 60 days must be made available within two business days of a request, unless
4 disclosure is prohibited by law or would compromise the victim's confidentiality. 20
5 USC § 1092(f)(4)(B); 34 CFR § 668.46(f)(5) (the implementing regulations to the Clery
6 Act).⁹ Clearly, this scheme creates no exception for closed investigations.

7
8 Thus, since both state law and federal law require disclosure of detailed
9 information of the type requested by McClatchy here, the Court should require the
10 Regents – at the very least – to provide these details from the police reports
11 requested, and under the language of the Education Code it should also order
12 production of the police reports themselves.

13
14 **3. Because The University Presently Relies On The Police Reports To**
15 **Meet Its Ongoing Reporting Obligations To The State And Federal**
16 **Government, Access To Them Must Be Granted**

17
18 In addition to the disclosure obligations to the public under the Education
19 Code and the Clery Act, the University has ongoing reporting obligations to the state
20 and federal governments as a recipient of public funds. To meet these ongoing
21 reporting requirements, the University and the Regents must necessarily rely on both
22 closed criminal files as well as pending criminal investigations. Specifically, pursuant
23 to Section 67380(a)(5) of the Education Code, the University is required to "report
24 information compiled" pursuant to subparagraph (1) of Section 67380(a) relating to

25 ⁹ As with the Education Code, the Clery Act is intended to make people aware of the occurrence of
26 crimes so that they can make informed decisions about their safety. [See House Report No. 101-518
27 (June 5, 1990, Exhibit I to McClatchy's Request For Judicial Notice.) And as with the Education Code
28 the disclosure requirements under the Clery Act necessarily pertain to past criminal activity as well as
present criminal activity.

1 hate violence to the Regents, which in turn must submit a compilation of all the
2 information from campuses within their jurisdiction to the California Post-Secondary
3 Education Commission no later than January 1 of each year, commencing January 1,
4 1993. Cal. Ed. Code § 67380(a)(5). Under the Clery Act, the University is required to
5 collect, prepare, publish and distribute information regarding campus crime "statistics"
6 and is required to report campus crime statistics during the most recent calendar year,
7 and during the two preceding calendar years for certain specified criminal offenses
8 reported to both campus security authorities and local police agencies. 20 U.C.S.
9 § 1092(f), 34 C.F.R. § 668.46 (c).

10
11 Certainly, the Kusar time limitations for the disclosure of reportable
12 information under Section 6254(f)(1) and (f)(2) cannot be read into these reporting
13 statutes or they would have no meaning. Moreover, since the University must
14 presently rely on most if not all the police reports requested by McClatchy to meet
15 these ongoing reporting requirements, not to mention its disclosure obligations, the
16 public has a fundamental right of access to these reports to ascertain whether the
17 people's business is being conducted in accordance with state and federal law.¹⁰
18 Kusar cannot be used as a shield to deny access here. In Kusar, the court interpreted
19 Sections 6254(f)'s disclosure requirements consistent with the policy behind
20 disclosure under that subsection – to prevent secret arrests. Kusar, 18 Cal. App. 4th
21 at 598. Here, the policy in favor of disclosure has nothing to do with preventing secret
22 arrests; rather, it has to do with the University's independent statutory obligations to
23 ensure the public's safety and provide sufficient information from which the public can
24 make informed decisions.

25
26 ¹⁰ Certainly, if the University is not relying on the police reports in fulfilling these statutory obligations,
27 the public has right to know, which can only be ascertained by resort to the police reports or, at the very
28 least, the details required to be disclosed under Section 6254(f)(1) (f)(2) and (f)(3).

1 The University's argument that it can rely on Section 6254(f)'s disclosure
2 limitations to maintain secrecy over police reports or information from those reports
3 has been rejected in a similar context by the court in Uribe v. Howie, 19 Cal. App. 3d
4 194 (1971). In Uribe, a farm worker who suffered from health problems attributed to
5 pesticides brought a Public Records Act Request to inspect reports statutorily
6 required to be filed by farmers who had sprayed pesticides in the area. Id. at 200. In
7 denying access, the county agricultural commissioner argued that the reports were
8 exempt from disclosure under Section 6254(f) as part of the investigatory file compiled
9 for "licensing" purposes, and thus subject to the same protection under subdivision (f)
10 as files compiled for "law enforcement" purposes. Id. at 204. The appellate court
11 rejected this argument because licensing "was not the primary purpose [for which the
12 files] were compiled" and because they were not "being put to such a purpose at the
13 time of trial." Uribe, 19 Cal. App. 3d at 213. The court further explained:

14
15 To say that the exemption created by subdivision (f) is
16 applicable to any document which a public agency might,
17 under any circumstances, use in the course of [an
18 investigation] would be to create a virtual carte blanche for
19 the denial of public access to public records. The exception
20 would thus swallow the rule.

21 Id. at 212-213; citing Bristol-Myers Co. v. F.T.C., 424 F.2d 935, 939 (D.C. Cir. 1970);
22 see also Williams, 5 Cal. 4th at 355-56 (approving of Uribe). Where, as in Uribe, the
23 public agency has an independent obligation to compile the records being requested
24 and the present use of those records has nothing to do with law enforcement, the
25 agency cannot rely on Section 6254(f), or, as here, the judicially created time
26 limitations on disclosure under that subsection, to deny the public's right of access.
27 Therefore, Kusar does not justify nondisclosure and to hold otherwise would be to
28 allow an exception to swallow the rule.

1 **B. McClatchy Is Entitled To Expedited Relief By The Issuance Of A Writ of**
2 **Mandate**

3
4 California Government Code Section 6258 expressly provides for
5 expedited relief in enforcing rights under the Public Records Act as follows:

6
7 Any person may institute proceedings for injunctive or declarative
8 relief or writ of mandate in any court or competent jurisdiction to
9 enforce his or her right to inspect or to receive a copy of any public
10 record or class of public records under this Chapter. The times for
11 responsive pleadings and for hearings in these proceedings shall
12 be set by the judge of the court with the object of securing a
13 decision as to these matters at the earliest possible time.

14 Cal. Gov't Code § 6258 (emphasis added).

15 Expedited relief as provided under Section 6258 is essential here
16 because access to the public information sought relates to matters of fundamental
17 public interest concerning such matters as public safety and security at the University,
18 responsibilities of public officials charged with maintaining that safety and security,
19 responsibilities of public officials charged with reporting and disclosing information
20 regarding campus crimes, and the University's accountability to the public regarding
21 application for and expenditure of public funds. Thus, McClatchy asks this Court to
22 set a hearing date on its Petition at the earliest possible time; rather than 45 days out
23 as local rules generally provide for writs of mandate. Local Rule 2.01 (B).

24 **IV**
25 **CONCLUSION**

26
27 The University's will have completely abrogated its disclosure
28 responsibilities under the Education Code if the Court allows the University to

1 continue its present practice of denying access to closed investigations, as not
2 pertaining to contemporaneous police activity, while denying access to all ongoing
3 investigations. Students, employees, applicants for enrollment and the public deserve
4 better. Indeed, they deserve what is required of the University under the law: full
5 disclosure of police reports, minus the victims' name, unless it can be shown that
6 disclosure will impair an ongoing investigation or endanger the safety of a person
7 involved with an investigation — circumstances that do not exist here.

8
9 Even if the Education Code's mandate were not clear, the University's
10 present use of these reports to comply with both state and federal disclosure and
11 reporting requirements independently justifies their disclosure.

12
13 For all these reasons, and those discussed above, McClatchy requests
14 that this Court issue an alternative writ of mandate requiring the University to produce
15 the police reports at issue or show cause why such an order should not issue.

16
17 DATED: January __, 2000.

18
19 CROSBY, HEAFEY, ROACH & MAY
20 Professional Corporation

21
22 By _____
23 Duffy Carolan
24 Attorneys for Petitioner
25 McClatchy Newspapers, Inc.,
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27
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