

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-830

Filed 7 October 2026

Pitt County, No. 24CVS003049-730

LYDIA NIKAC, Petitioner,

v.

PITT COUNTY OFFICE OF THE SHERIFF and NORTH CAROLINA STATE
HIGHWAY PATROL, Respondents.

Appeal by Petitioner from Order entered 3 February 2025 by Judge Matthew
T. Houston in Pitt County Superior Court. Heard in the Court of Appeals 25 March
2026.

*Law Offices of John M. Kirby, PLLC, by John M. Kirby, for Petitioner-
Appellant.*

*Attorney General Jeff Jackson, by Senior Deputy Attorney General Olga E.
Vysotskaya de Brito and Assistant Attorney General Manuel C. Davis, for
Respondent-Appellee North Carolina State Highway Patrol.*

No brief filed for Respondent-Appellee Pitt County Office of the Sheriff.

HAMPSON, Judge.

Factual and Procedural Background

Lydia Nikac (Petitioner) appeals from an Order directing the North Carolina
State Highway Patrol and the Pitt County Office of the Sheriff (collectively,
Respondents) to release custodial law enforcement agency recordings to her and her
counsel but restricting her from disseminating the files to third parties. The Record
before us tends to reflect the following:

Petitioner is a professional dog trainer. She runs a business training K-9 police dogs. On the morning of 5 October 2024, Petitioner discovered a man, later identified as Kevin Toler, breaking into her car on her property in Washington. Petitioner called 911. While waiting for law enforcement to arrive, Petitioner attempted to detain Toler with the help of her two trained police dogs, Bonnie and Clyde.

Trooper Justin Maness of the North Carolina State Highway Patrol (Respondent NCSHP) arrived at Petitioner's property and parked across the street. The dashboard camera in his vehicle recorded the ensuing events. Trooper Maness observed Toler on the ground in Petitioner's yard; Bonnie and Clyde were barking at him. Trooper Maness instructed Petitioner to "control" her dogs. He then drew his firearm and fired multiple shots at the dogs, killing them both. Deputies from the Pitt County Office of the Sheriff (Respondent PCOS) soon arrived at the scene, arrested Toler, and collected evidence.

On 23 October 2024, Petitioner filed a Petition for Release of Custodial Law Enforcement Agency Recording (the First Petition). In an attached affidavit, Petitioner stated, "I believe I and/or my personal property are on the recordings in [Respondents'] possession, and I need the recordings to determine legal issues."

The trial court held a hearing on the First Petition on 9 December 2024. Counsel for Petitioner indicated her client was considering filing a civil claim arising from the fatal shooting of her dogs, noting, "whether or not [Trooper Maness] was approached by the dogs and whether or not there was continual fire after the dogs

continued to retreat is crucial to the civil case[,]” and asserting the requested recordings were “necessary so that [Petitioner] can proceed with the civil investigation and see if there are merits [to] the claim there.” Petitioner’s counsel also opposed a consent order proposed by Respondent PCOS, which asked “that nothing be released whatsoever to the public.”

In response, counsel for Respondent PCOS first noted Petitioner had not served all parties entitled to process. Counsel then objected “to any public dissemination” of any recordings, arguing such release could risk “[i]nflaming the public” and “could impact the safety of our law enforcement officers” by disclosing their identities. Counsel for Respondent NCSHP opposed public release due to “the threat it may cause . . . [to] the trooper that was involved and that is depicted in that video.” An attorney from the Pitt County District Attorney’s Office appeared and raised the concern public dissemination could create “pretrial publicity” that could “interfere” with Toler’s “right to have a fair trial.” In response, Petitioner’s counsel clarified Petitioner did not intend “to provide these [recordings] on social media.” Rather, Petitioner’s “sole purpose” for the files other than for potential civil litigation was to educate future clients of her K-9 training business.

The trial court ordered Respondents to provide all applicable recordings for in-camera review and instructed Petitioner to serve all parties entitled to process. The matter was set for a return hearing on 13 January 2025.

On 17 December 2024, Petitioner filed a “Petition for Issuance of Order

Directing Release of Police Records and Entire Investigative File” (the Second Petition). Petitioner stated she needed to “obtain copies of the full investigative file[,]” including all video recordings of the shooting, “to determine [her] rights and privileges in a potential civil matter.” Petitioner added the requested materials “will assist [her] in her recollection of the dispute.” Petitioner attached the same affidavit that accompanied the First Petition.

Prior to the 13 January 2025 return hearing, the trial court conducted an in-camera review of the video files submitted by Respondents (the Recordings). At that hearing, the parties argued their positions under N.C. Gen. Stat. § 132-1.4A, the statute governing the release of custodial law enforcement agency recordings. Petitioner’s counsel asked for public release of the Recordings, arguing they raised several “compelling public interest[s],” namely, that the shooting incident was “newsworthy” and involved law enforcement accountability and transparency. Additionally, for the first time, Petitioner’s counsel expressly invoked the First Amendment, citing her client’s constitutional rights “not to be subject to a prior restraint,” to publish, and to discuss the Recordings.

Counsel for Respondent PCOS contended Petitioner was not “entitled” to the Recordings under the First Amendment “in the first place.” Moreover, noting Petitioner was seeking the Recordings for use in a potential civil suit, counsel argued Petitioner “would be able to obtain that relief certainly without public dissemination to social media, [or] things of that nature.” Counsel for Respondent NCSHP also

opposed a “general public release” of the Recordings, pointing out the legislature had made such files nonpublic records. Counsel for both Respondents stated they did not oppose the release of the Recordings only to Petitioner for the sole purpose of use in potential civil litigation.

The trial court orally ruled “it is appropriate to release the [Recordings] to . . . Petitioner and her counsel” for the exclusive purpose of potential “legal proceedings between the parties[.]” The trial court stated it would not order a “general public release[.]” Petitioner’s counsel asked if her client was “permitted to talk about the contents of the [Recordings] to [the] news[.]” The trial court explained that it was “not limiting [Petitioner’s] ability to speak about anything, but she’s not to share . . . [or] disseminate” the Recordings themselves.

On 3 February 2025, the trial court entered an “Order on Petitions for Release of Custodial Law Enforcement Agency Recordings and Investigative Files” (the Order). Among its factual findings, the trial court found “one or more criminal investigations are ongoing” arising from the events at Petitioner’s property on 5 October 2024. It also made the following pertinent Findings:

12. Petitioner seeks the recordings and investigative files to obtain evidence to determine legal issues in a potential court proceeding.

13. Release of the recordings and investigative files might create a serious threat to the fair, impartial, and orderly administration of justice in connection with ongoing or potential criminal investigations if released to persons other than Petitioner and Petitioner’s counsel, and the materials should not at this time be

Opinion of the Court

made available to persons other than Petitioner or Petitioner's counsel.

14. In the Court's discretion, good cause exists to release all portions of the recordings and investigative files only to Petitioner and Petitioner's counsel.

The trial court then ordered the following:

1. Respondents are authorized and directed to release to Petitioner and Petitioner's counsel all portions of the recordings and investigative files in Respondents' possession concerning events occurring on October 5, 2024, at and around [Petitioner's property];
2. The recordings and investigative files may be used only for the limited purpose of prosecuting or defending against legal proceedings between Petitioner and one or more Respondents related to the subject matter of the recordings or investigative files, and neither the recordings nor any portion of the investigative files may otherwise be disclosed, disseminated, or made public with[out] prior Court authorization; and
3. If any civil action is filed between Petitioner and one or more Respondents, or otherwise concerning the recordings and investigative files at issue in this matter, the presiding Superior Court judge may authorize further disclosure or dissemination as appropriate, including in discovery.

Petitioner timely filed written Notice of Appeal on 4 March 2025.

Issue

The dispositive issue on appeal is whether the trial court abused its discretion by prohibiting Petitioner from disseminating the Recordings to third parties.

Analysis

Petitioner argues the trial court "abused its discretion in prohibiting [her] from

sharing the [Recordings] with third parties.” We disagree.

Under the North Carolina Public Records Act, “the people may obtain copies of . . . public records” unless an exception “specifically provided by law” applies. N.C. Gen. Stat. § 132-1(b) (2025). Among these exceptions is Section 132-1.4A, also known as the CLEAR statute, which “governs access to custodial law enforcement agency recordings (CLEAR).” *In re McClatchy Co.*, 386 N.C. 77, 79, 900 S.E.2d 765, 768 (2024). CLEAR includes recordings captured by law enforcement officers’ body-worn cameras and dashboard cameras. N.C. Gen. Stat. § 132-1.4A(a)(6). The CLEAR statute “creates confidentiality protections for these recordings, stating that they are ‘not public records,’ are ‘not personnel records,’ and can only be released as provided in the statute itself.” *State v. Chemuti*, 388 N.C. 412, 418, 920 S.E.2d 810, 816 (2025) (quoting N.C. Gen. Stat. § 132-1.4A(b), (c), (g)), *cert. denied*, _ U.S. _, 146 S. Ct. 1843, 224 L. Ed. 2d 275 (2026) (Mem.). To “[r]elease” CLEAR is “[t]o provide a copy of a recording.” N.C. Gen. Stat. § 132-1.4A(a)(7). “[N]othing . . . [in] the CLEAR statute creates a presumption in favor of granting release requests. The burden rests on the requester to make the case for release.” *McClatchy Co.*, 386 N.C. at 93, 900 S.E.2d at 776 (footnote omitted).

When a party with standing¹ petitions for the release of a covered recording,

¹ It is undisputed Petitioner had standing to request release of the Recordings because she is a “person whose image or voice is in the recording[s]” of the 5 October 2024 incident. N.C. Gen. Stat. § 132-1.4A(c)(1).

the trial court is required to “consider the applicability” of eight standards when determining whether to release all or part of the recording:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

N.C. Gen. Stat. § 132-1.4A(g). The CLEAR statute does not instruct “a trial court how much importance to attach to each of the eight standards listed in subsection (g). A trial court must determine in its sound discretion what weight to assign to which standards based on the facts of a particular case.” *McClatchy Co.*, 386 N.C. at 93, 900 S.E.2d at 776. In addition to the eight enumerated standards, Section 132-1.4A(g) directs the trial court to consider “any other standards [it] deems relevant[.]”

“In fashioning its order granting . . . a request” for the release of a covered recording, “a trial court ‘may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.’” *Id.* (quoting N.C. Gen. Stat. § 132-1.4A(g)). Thus, “orders granting or denying release requests under the CLEAR statute are reviewed for abuse of discretion.” *Id.* at 92, 900 S.E.2d at 775-76 (citation omitted). “To show an abuse of discretion and reverse the trial court’s order, the appellant has the burden to show the trial court’s rulings are manifestly unsupported by reason, or could not be the product of a reasoned decision.” *In re Custodial L. Enft Recording Sought by Greensboro*, 383 N.C. 261, 270, 881 S.E.2d 96, 102 (2022) (citation and quotation marks omitted). In this deferential inquiry, “[t]he only consideration is whether the trial court’s actions are fairly supported by the record[,]” where “‘[f]airly supported’ means there is competent evidence to support the court’s findings and those findings support the court’s conclusions.” *Id.* (citations, quotation marks, and ellipsis omitted). “A trial court also abuses its discretion when it makes an error of law.” *Id.* at 268, 881 S.E.2d at 101 (citation omitted).

In the instant case, the trial court reviewed the files submitted by Respondents in-camera and heard all parties’ arguments at the hearings. In its resulting Order, the trial court stated it had “considered the applicability of all” Section 132-1.4A(g) standards. It then made Findings responsive to several enumerated standards. *See McClatchy Co.*, 386 N.C. at 93, 900 S.E.2d at 776 (the trial court has discretion to weigh the standards based on the facts of each case). In Finding 12, the trial court

Opinion of the Court

found, “Petitioner seeks the recordings and investigative files to obtain evidence to determine legal issues in a potential court proceeding[.]” which tracks the language of the third standard. *See* N.C. Gen. Stat. § 132-1.4A(g)(3). The Record supports Finding 12. From the outset, Petitioner indicated her primary objective was to obtain materials for use in a potential civil case arising from the fatal shooting of her dogs. In the affidavit attached to both Petitions, Petitioner stated she “need[ed] the recordings to determine legal issues.” In the Second Petition, Petitioner requested the files “to determine [her] rights and privileges in a potential civil matter” and to “assist . . . in her recollection of the dispute.”

In Finding 13, the trial court found release of the Recordings to parties other than Petitioner and her counsel “might create a serious threat to the fair, impartial, and orderly administration of justice in connection with ongoing or potential criminal investigations[.]” This Finding, which uses language drawn from the sixth and seventh subsection (g) standards, is also supported by the Record. *See id.* § 132-1.4A(g)(6), (7). In a separate Finding, the trial court stated that “one or more criminal investigations are ongoing” related to the events at Petitioner’s property on 5 October 2024. At the first hearing, Respondents’ counsel and an attorney from the Pitt County District Attorney’s Office indicated there was a pending criminal matter against Toler and raised concerns about pretrial publicity affecting Toler’s right to a fair trial. At the return hearing, Respondents’ counsel again argued public dissemination of the Recordings could affect Toler’s criminal case and violate the privacy of the law

enforcement officers depicted in the footage.

In Finding 14, the trial court found “good cause exists to release all portions of the [R]ecordings . . . only to Petitioner and [her] counsel.” This Finding mirrors the language of the eighth standard. *See id.* § 132-1.4A(g)(8). Petitioner does not challenge this Finding in her brief. Therefore, it is binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are presumed to be supported by competent evidence and are binding on appeal).

Thus, the trial court properly considered the Section 132-1.4A(g) standards and tailored the Order to balance the parties’ interests. The trial court recognized Petitioner’s legitimate need for the Recordings for use in preparing a potential civil lawsuit. For Respondents, the trial court took account of the risks public dissemination might pose to the fairness and integrity of a pending criminal matter. As such, the Order released the Recordings to Petitioner for use in civil litigation while imposing reasonable restrictions based on the government interests advanced by Respondents. Moreover, the Order expressly permits Petitioner, if any civil action is filed, to return to the trial court and seek “further disclosure or dissemination [of the Recordings] as appropriate, including in discovery.”

Petitioner also argues the Findings of Fact are insufficiently detailed to justify the Order’s restrictions on dissemination. We first observe Section 132-1.4A(g) “does not require the trial court to make findings of fact” in the first place. *Greensboro*, 383 N.C. at 271, 881 S.E.2d at 103 (Newby, C.J., concurring in result only). Here, the trial

court elected to make Findings. As discussed above, the Findings are supported by Record evidence and reflect the consideration of multiple Section 132-1.4A(g) standards. In turn, the Findings support the trial court’s decision to restrict release of the Recordings to Petitioner and her counsel. *See id.* at 270, 881 S.E.2d at 102. Thus, Petitioner has not shown the Findings are deficient, much less unsupported by reason. *See id.* (appellant’s burden to prove an abuse of discretion sets “a high bar and is not an opportunity to second guess the trial court’s wisdom”). To the extent Petitioner argues the trial court should have assessed the evidence differently, “we emphasize that it is not the function of this Court to reweigh the evidence on appeal.” *In re J.M.*, 271 N.C. App. 186, 194, 843 S.E.2d 668, 674 (2020) (citation, quotation marks, and brackets omitted).

Petitioner also brings an as-applied First Amendment challenge to the Order. Although the First Amendment is not an enumerated interest in Section 132-1.4A(g), the statute also instructs the trial court to consider “any other standards [it] deems relevant” in determining whether to release a recording. N.C. Gen. Stat. § 132-1.4A(g). Petitioner’s assertion of First Amendment rights to share the Recordings could be a “relevant” standard under subsection (g). Therefore, we review Petitioner’s First Amendment arguments under the same standard of review as the trial court’s consideration of the statute’s enumerated standards: abuse of discretion. *See McClatchy Co.*, 386 N.C. at 93, 900 S.E.2d at 775-76.

Petitioner argues the trial court applied the CLEAR statute in a manner that

violated her First Amendment rights by prohibiting her from publicly sharing the Recordings. In response, Respondent NCSHP contends Petitioner’s argument contravenes the intent, scheme, and text of the CLEAR statute, which expressly makes such recordings nonpublic records and gives trial courts discretion to place restrictions on their release. We agree with Respondent NCSHP.

At oral argument, Petitioner contended—and we agree—the United States Supreme Court’s opinion in *Seattle Times Co. v. Rhinehart* applies to this case.² 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). *Seattle Times* recognized the First Amendment does not categorically protect a litigant’s “right to disseminate information that he has obtained pursuant to a court order that both granted him access to that information and placed restraints on the way in which the information might be used.” *Id.* at 32, 104 S. Ct. at 2207, 81 L. Ed. 2d at 26. The Court employed a two-prong test, which balances “whether the practice in question [furthers] an important or substantial governmental interest unrelated to the suppression of

² *Seattle Times* reviewed a Washington trial court’s protective order restricting the dissemination of information the appellants obtained from their opposing party in civil discovery. 467 U.S. at 27, 104 S. Ct. at 2204, 81 L. Ed. 2d at 23. Thus, the case involved a statutorily created rule of civil procedure rather than a statute governing the release of nonpublic government records, like Section 132-1.4A. But as Petitioner’s counsel asserted at oral argument, the reasoning of *Seattle Times* extends to First Amendment challenges to CLEAR orders. Indeed, the Supreme Court did not cabin its analysis to information obtained in civil discovery. The Court characterized the speech category at issue as “information that [a party] has obtained pursuant to a court order that both granted him access to that information and placed restraints on the way . . . [it] might be used.” *Id.* at 32, 104 S. Ct. at 2207, 81 L. Ed. 2d at 26. The instant case involves the same fundamental scenario. Through a statutory procedure, Petitioner obtained a court order releasing confidential information to her while placing restrictions on her use of it. On appeal, Petitioner argues those restrictions violate the First Amendment. Thus, we agree with Petitioner: *Seattle Times* is on point and supplies the proper constitutional framework.

expression” and “whether the limitation of First Amendment freedoms [is] no greater than is necessary or essential to the protection of the particular governmental interest involved.” *Id.* (alterations in original) (citations and quotation marks omitted).

This Order passes the *Seattle Times* test. As to the first prong, Finding 13 articulates a substantial governmental interest unrelated to the suppression of expression that would be served by restricting dissemination of the Recordings only to Petitioner and her counsel, *see id.*, namely, avoiding the “creat[ion] [of] a serious threat to the fair, impartial, and orderly administration of justice in connection with ongoing or potential criminal investigations[.]”³

As to the second *Seattle Times* prong, the limitations on Petitioner’s speech are no greater than necessary to protect the governmental interest. *See id.* Petitioner may use the Recordings in connection with potential civil litigation—again, the precise relief her Petitions requested. Moreover, the restrictions are not immutable: if she sues the Respondents, Petitioner can ask the trial court to “authorize further disclosure or dissemination” of the Recordings. Finally, Petitioner is not barred from publicly *speaking* about the Recordings. After the trial court announced its ruling, Petitioner’s counsel asked if her client could talk to the news media about the

³ Indeed, at oral argument, Petitioner’s counsel answered affirmatively when asked whether Finding 13, as a general proposition, stated a substantial government interest that would justify placing some restrictions on the dissemination of the Recordings.

Opinion of the Court

Recordings. The trial court confirmed Petitioner could “speak about anything” but stated she could not share or disseminate the Recordings. The written Order did not deviate from this oral ruling.

Petitioner also asserts the Order is an unconstitutional prior restraint on speech. We disagree. The Court in *Seattle Times* concluded the civil discovery protective order was “not the kind of classic prior restraint that requires exacting First Amendment scrutiny[.]” *id.* at 33-34, 104 S. Ct. at 2208, 81 L. Ed. 2d at 27 (citation omitted), in part because the appellants

gained the information they wish to disseminate only by virtue of the trial court’s discovery process. As the Rules authorizing discovery were adopted by the state legislature, the processes thereunder are a matter of legislative grace. A litigant has no First Amendment right of access to information made available only for purposes of trying his suit. Thus, continued court control over the discovered information does not raise the same specter of government censorship that such control might suggest in other situations.

Id. at 32, 104 S. Ct. at 2207, 81 L. Ed. 2d at 26-27 (citations omitted). Here, while the Recordings were not the product of civil discovery, the same reasoning applies. Petitioner obtained the Recordings only by virtue of the procedure set out in the CLEAR statute, which vests the trial court with “broad discretion” to impose restrictions on the release, if any, of these nonpublic records. *McClatchy Co.*, 386 N.C. at 94, 900 S.E.2d at 776. Thus, because *any* release of CLEAR is a “matter of legislative grace[.]” the trial court’s “continued . . . control” over Petitioner’s ability to disseminate the Recordings does not raise serious censorship concerns. *Seattle Times*

Opinion of the Court

Co., 467 U.S. at 32, 104 S. Ct. at 2207, 81 L. Ed. 2d at 26-27. Therefore, following *Seattle Times*, the Order is not a classic prior restraint demanding heightened First Amendment scrutiny.⁴ See *id.* at 33-34, 104 S. Ct. at 2208, 81 L. Ed. 2d at 27.

Thus, Petitioner has not shown the trial court acted without reason by weighing the Section 132-1.4A(g) standards and ultimately restricting release of the Recordings only to Petitioner and her counsel. See *Greensboro*, 383 N.C. at 270, 881 S.E.2d at 102. Therefore, the trial court did not abuse its discretion. See *McClatchy Co.*, 386 N.C. at 92, 900 S.E.2d at 775-76. Consequently, we affirm the Order.

Conclusion

Accordingly, for the foregoing reasons, we affirm the Order.

AFFIRMED.

Judges STROUD and CARPENTER concur.

⁴ Because the Order is not a total prior restraint on speech, the cases Petitioner cites in her brief concerning gag orders—which prohibited the parties from speaking to the press or public entirely—are inapposite. See *Sherrill v. Amerada Hess Corp.*, 130 N.C. App. 711, 504 S.E.2d 802 (1998); *Beaufort Cnty. Bd. of Educ. v. Beaufort Cnty. Bd. of Comm’rs*, 184 N.C. App. 110, 645 S.E.2d 857 (2007).