

City of Alameda



OPEN GOVERNMENT COMMISSION
2263 Santa Clara Avenue, Suite 380
Alameda, CA 94501
(510) 747-4800

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission: City Clerk, City Attorney, APD

Name of individual contacted at Department or Commission: Lisa Cooper, Lara Weisiger

- ☒ Alleged violation of public records access.
☐ Alleged violation of public meeting. Date of meeting: _____

Sunshine Ordinance Section: §§ 2-92.1, 2-92.9(a), 2-92.8(d); see attached
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach all relevant documentation supporting your complaint. Documentation is required [Type text here](#)
Please see attached complaint and exhibits.

A complaint must be filed no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance.

Name: Erin Fraser Address: _____

Telephone No: _____ E-mail Address: _____

Date: April 13, 2022 _____

Signature _____

Erin Fraser
415-379-0843
elfraser@protonmail.com

OPEN GOVERNMENT COMMISSION

CITY OF ALAMEDA, CALIFORNIA

ERIN FRASER,

Complainant,

vs.

CITY OF ALAMEDA, ET AL,

Respondent

Case No.: 2022-_____

SUNSHINE ORDINANCE COMPLAINT

This complaint is made pursuant to Alameda Municipal Code, Chapter II, Article VIII (the “Sunshine Ordinance”), Section 2-93. Erin Fraser (“Complainant”) makes this complaint in his personal capacity as a resident of Alameda, California, and not in any professional or representational capacity for any client, organization, or other person. Complainant argues that the City of Alameda, through its City Custodian of Records the City Clerk, its designated Custodian of Records for the Police Department, and other actors in their professional capacities such as the City Attorney (collectively, “Respondent”), have failed to promptly and timely respond to a request made pursuant to the California Public Records Act, CA Gov’t Code §§ 6250-6270 (the “CPRA”), and the Sunshine Ordinance.

I. ISSUES PRESENTED

This issues presented for the Open Government Commission are as follows:

1. Whether Respondent has complied with the good faith requirement provided for in Sunshine Ordinance § 2-92.9(a) to comply with a “shortened timeframe that has been reasonably justified”.
2. Whether Respondent has complied with Government Code § 6253.9(a)(1)-(2) (incorporated in to the Sunshine Ordinance by § 2-92.1) to make the information available in the electronic format in which Respondent holds the information.
3. Whether Respondent has complied with the acknowledgement requirement provided for in Sunshine Ordinance § 2-92.2(g).

1 4. Whether Respondent has complied with the requirement to cooperate with members of the
2 public and disclose requested law enforcement information to the full extent permitted by law, as required by Sunshine
3 Ordinance § 2-92.8(d)(1).

4 5. Whether Respondent has complied with Government Code § 6254(f)(1) (expanded by
5 Sunshine Ordinance § 2-92.8(d)(1)) to “make public the following information . . . (1) The full name and occupation
6 of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes
7 and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest,
8 the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location
9 where the individual is currently being held, and all charges the individual is being held upon, including any
10 outstanding warrants from other jurisdictions and parole or probation holds. (2) (A) . . . the time, substance, and
11 location of all complaints or requests for assistance received by the agency and the time and nature of the response
12 thereto, including, to the extent the information regarding crimes alleged or committed or any other incident
13 investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age
14 of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries,
15 property, or weapons involved.”

16 6. Whether Respondent has complied with the prohibition on withholding entire records and
17 the further requirement to explain withheld information in writing, as required by Sunshine Ordinance § 2-92.11.

18 Furthermore, in order to preserve issues for potential future litigation in Federal or State court, the
19 Complainant presents the following issues of State law which may be incorporated through the Sunshine Ordinance
20 and therefore subject to the jurisdiction of the Open Government Commission. If Respondent concedes jurisdiction
21 on the following issues is proper at the Open Government Commission (NB: Respondent has argued in at least one
22 instance that claims of violations of the CPRA cannot be decided by the Open Government Commission), Complainant
23 will amend this complaint to provide additional detail, if requested:

24 7. Whether Respondent has complied with Government Code § 6253(c) to “determine
25 whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and
26 shall promptly notify the person making the request of the determination and the reasons therefor”.

27 8. Whether Respondent has responded to the public information request in a “timely” manner
28 for purposes of the CPRA, and relevant case law.

1 9. Whether costs and attorneys fees are due to Complainant pursuant to Government Code
2 § 6259(d), and relevant cases.

3 **II. FACTUAL BACKGROUND AND CONTEXT FOR THE COMPLAINT**

4 **A. CAUSE FOR THE PUBLIC INFORMATION REQUEST**

5 At approximately 10:45 am on April 19, 2021, Mr. Mario Gonzalez (“Victim”) was resting, talking,
6 and sitting in a public space by himself. His presence in the park was, according to publicly released information by
7 Respondent, reported to Respondent by two non-emergency calls to the Alameda Police Department (“APD”). APD
8 officers and non-officer employees reported to the scene shortly before 12:00pm PST and confronted Victim. The
9 interaction between Victim and APD is the subject of litigation and criminal investigations, both of which are
10 ostensibly ongoing. However, it is undisputed that Victim was alive, alert, and verbally responsive before and during
11 parts of the interaction. It is also undisputed that Victim did not survive his interaction with APD and died on April
12 19, 2021.

13 APD’s official Twitter account posted a message at 1:08 pm on the same day, stating:

14 Alameda PD officers are on the scene of a death investigation on Otis Dr. & Park St. We
15 are asking the public to keep the area clear while detectives work. At this time, we have no
16 further information to release. However, we will post any updates on our social media
17 platforms.

18 Seven hours later, at 8:02 pm on April 19, 2021, APD’s official Twitter account posted a message and included an
19 image of a press release. That press release is included in the attached Exhibit A. Notably, the press release identified
20 the death of victim as an “In-Custody Death” and provided Case Number 21-01762. According to the press release:

21 APD asked the Alameda County Sheriff’s Office to conduct an independent investigation
22 into this incident. Per County policy, the Alameda County District Attorney’s Office is
23 conducting its own independent, parallel investigation. ACSO and the District Attorney’s
24 Office are in the early stages of the investigation, and no additional details will be provided
25 at this time.

26 The next evening, at 5:32 pm on April 20, 2021, APD’s official Twitter account posted a message
27 and included an image of a (second) press release. This second press release, a copy of which is included as Exhibit
28 B, was captioned “MULTI-AGENCY INVESTIGATION LAUNCHED INTO MAN’S DEATH”, and reiterated that

1 the Alameda County Sheriff's Office "is conducting the primary criminal investigation into this incident. . . . [T]he
2 Alameda County District Attorney's Office was notified and sent personnel to conduct a separate parallel investigation.
3 The City will also contract with an outside investigator to conduct an administrative investigation into this incident."
4 (The City of Alameda announced on April 23, 2021 that it hired Louise Renne to conduct an investigation into the
5 death of Victim.)

6 **B. THE ORIGINAL PUBLIC INFORMATION REQUEST**

7 At 11:50pm PST on April 19, 2021, the same day of Victim's death, Complainant sent by e-mail a
8 request for "all records relating to Case Number 21-01762, from and including April 19, 2021 going forward"
9 (sometimes hereinafter referred to as Complainant's "Original Request"). A copy of the email transmittal and the
10 Original Request are included in the attached Exhibit C. The request was intended to be forward-looking and
11 specifically requested records that were not in existence at the time, but would be created later. The request also
12 included the following clarification:

13 Because "records" is broadly defined by the Cal. Gov't Code for purposes of the Public
14 Records Act, my request is intended to include body cam footage, Mobile Digital Terminal
15 messages, notes, calendar appointments, mobile phone messages (whether SMS, MMS, or
16 sent via another application such as WhatsApp), and any other item meeting the definition
17 of "record".

18 Hence, less than thirteen (13) hours after the death of Victim, Complainant had put Respondent on
19 notice regarding information requested about the death of Victim. Respondent knew, prior to any of the subsequent
20 actions Respondent took publicly or internally, that Complainant sought to assert Complainant's rights under State
21 and City law with respect to a broad range of records relating to the death of Victim.

22 In addition, the Original Request included the following request regarding timing, "Time is of the
23 essence. I respectfully request that the City begin producing records related to this request within the next 30 days for
24 this reason."

25 **C. ADDITIONS TO THE PUBLIC INFORMATION REQUEST**

26 Complainant's request was initially made April 19, 2021. After initial replies by Respondent,
27 specifically a representative of the City Attorney's office (Lisa Cooper) (such replies are discussed below),
28 Complainant clarified the request.

1 On April 22, 2021, Complainant wrote to Respondent by email the following:

2 To be clear, my request should include whatever records relate to the decision for officers
3 to go door to door in the surrounding area of Oak St and the lagoon to "inform" neighbors
4 of the peaceful memorial last night.

5 See attached.

6 Attached to Complainant's message was a "screen shot" image from www.NextDoor.com, reproducing a post by a
7 user identified as Bronze Coast resident Michael Rich. Mr. Rich wrote:

8 **Follow up on incident at Scout Park.** This morning the APD knocked on my door to let
9 me know they are going door to door on my street to let the neighborhood know that a
10 "vigil" is planned at Scout Park this evening, which is near the corner of Park and Otis.
11 During our brief exchange, the Sergeant said that APD doesn't expect any trouble. At that
12 point I asked if the "vigil" was a protest. He said no. When I asked what else was going on,
13 besides the medical emergency and the person subsequently dying, he said "it's still being
14 investigated," and he referred me to the City's website for more information. Just FYI. [All
15 errors and emphasis in the original.]

16 A copy of the first of the Additional Requests is included in the attached Exhibit D. Respondent
17 did not directly reply or acknowledge this request.

18 Two days later, on April 24, 2021, Complainant wrote to Respondent to express disappointment
19 with Respondent lack of transparency and simultaneous public declaration of "full transparency and accountability in
20 the tragic death of Mario Gonzalez." (See Respondent's press release dated April 23, 2021 and captioned "City
21 launches independent investigation" available at [https://www.alamedaca.gov/Shortcut-Content/News-Media/City-](https://www.alamedaca.gov/Shortcut-Content/News-Media/City-launches-independent-investigation)
22 [launches-independent-investigation](https://www.alamedaca.gov/Shortcut-Content/News-Media/City-launches-independent-investigation)). In addition, Complainant clarified the request as follows:

23 Ms. Cooper's email appears to suggest that I requested ongoing investigation records. Such
24 records may have been included in my request because of the broad nature of my request,
25 but I am not very interested in the police analysis or investigation (which is being
26 conducted by outside agencies anyway). I want the raw information (911 and dispatch calls,
27 body cam footage, etc.) which includes no police or law enforcement analysis. If there was
28 genuine confusion on this point, I apologize for my lack of clarity. Of course, you can

1 always ask a clarifying question as opposed to simply stalling or denying that the records
2 should be produced.

3 Respondent did not directly reply or acknowledge this request. Collectively, these two additional requests are
4 sometimes referred to hereinafter as the "Additional Requests". A copy of the second of the Additional Requests is
5 included in the attached Exhibit E.

6 **D. RESPONDENT REPEATEDLY FAILED TO SUBSTANTIVELY REPLY TO THE**
7 **REQUEST WHILE PROMISING FURTHER INFORMATION APPROXIMATELY EVERY 30**
8 **DAYS**

9 Respondent has largely failed to substantively reply to the Original Request and Additional Requests.
10 Respondent, through a representative of the City Attorney's office (paralegal Lisa Cooper) and always with the
11 knowledge of the Clerk, has sent Respondent a series of email replies. These replies essentially argue that Respondent
12 is not obligated to comply with the Original Request and Additional Requests, despite several cases, laws, and
13 ordinances to the contrary.

14 The first of Respondent's replies of this type was sent April 21, 2021 (less than 48 hours after the
15 Original Request). A copy of the Respondent's April 21, 2021 reply is included in the attached Exhibit F.

16 Respondent sent emails nearly identical to that of April 21, 2021 (Exhibit F) every 30-40 days,
17 usually within the time frame it would provide for itself. On information and belief, each of Respondent's replies
18 included variations on following statement:

19 That incident remains an active and open investigation under the control and direction of
20 the Alameda County District Attorney's Office and the Alameda County Sheriff's Office.

21 To avoid prejudicing these ongoing investigations or interfering with the testimony of
22 parties and witnesses, the City is withholding responsive materials to your request at this
23 time because disclosure of such materials at this time would substantially interfere

24 with the successful completion of the investigations and/or enforcement proceedings.

25 Accordingly, the Alameda Police Department has determined the public interest in non-
26 disclosure clearly outweighs the public interest in disclosure. Gov. Code, section 6254

27 (f)(4), Penal Code, section 822.7(b)(7), Gov. Code, Section 6255.
28

1 Notably, Respondent did release audio of two purported calls to APD and body-worn camera
2 footage of APD officers on April 27, 2021. Respondent posted this information to www.YouTube.com and as of the
3 date of this Complaint, such information has been viewed nearly 450,000 times. (See
4 <https://www.youtube.com/watch?v=OBJnToNolHw>) Clearly, there is strong public interest in this case, locally, and
5 nationally.

6 **E. RESPONDENT MADE DEMONSTRABLY FALSE STATEMENTS AND VIOLATED**
7 **SEVERAL PROVISIONS OF THE SUNSHINE ORDINANCE AND CALIFORNIA LAW**

8 The pattern of Respondent sending a monthly vapid formulaic reply citing inapplicable law and
9 baseless conclusions continued for months. Out of desperate frustration, Complainant would frequently reply to these
10 emails and continue to request all applicable records as stated in the Original Reply.

11 On March 7, 2022, Respondent sent a typical reply, which included the following passage (errors in
12 the original):

13 As we previously advised on February 3, 2022, the Alameda County District Attorney's
14 Office has not yet determined whether to file criminal charges related to the use of force.
15 Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information,
16 if the disclosure could reasonably be expected to interfere with a criminal enforcement
17 proceeding against the officer or officer(s) who used force. The District Attorney's
18 investigation remains active and ongoing and it has not yet issued a charging determination,
19 ...

20 The [Alameda Police] Department will reassess its decision as facts become available to it
21 but in no event, no later than April 7, 2022.

22 A copy of the Respondent's March 7, 2022 reply is included in the attached Exhibit G. However, by 3:34 pm on April
23 7, 2022, no update had arrived. Complainant then emailed Respondent's representative at the City Attorney's office
24 (paralegal Lisa Cooper) the following at 3:34pm:

25 Ms. Cooper,

26 Will the City be providing an update?
27
28

1 A copy of the Complainant's April 7, 2022 reply is included in the attached Exhibit H. Twenty minutes later,
2 Respondent replied with the same monthly vapid formulaic reply. That reply included the following statements (errors
3 in the original):

4 The Alameda Police Department has again considered and reassessed its decision to
5 withhold certain documents, video records, and other information arising from the April
6 19, 2021 incident involving Mario Gonzalez. See, Government Code Section
7 6254(f)(4)(A)(ii) and Penal Code Section 832.7(b)(7)(A)(ii).

8 As we previously advised on February 3, 2022, the Alameda County District Attorney's
9 Office has not yet determined whether to file criminal charges related to the use of force.

10 Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information,
11 if the disclosure could reasonably be expected to interfere with a criminal enforcement
12 proceeding against the officer or officer(s) who used force. The District Attorney's

13 investigation remains active and ongoing and it has not yet issued a charging determination,

14 Because disclosure of the investigation material could prejudice the potential testimony of
15 both potential parties and witnesses in a criminal enforcement proceeding,

16 the Alameda Police Department will continue to withhold all investigative material that
17 has not yet been publicly released, See Penal Code Section 832.7(b)(7)(A)(ii).

18 The Department will reassess its decision as facts become available to it but in no event,
19 no later than May 9, 2022.

20 A copy of the Respondent's April 7, 2022 reply is included in the attached Exhibit I.

21 Unfortunately for Ms. Cooper, the City Attorney's office, the Respondent as a whole and the public, the statements
22 above were false. On information and belief, Complainant believes that the Alameda County District Attorney, Nancy
23 O'Malley, had reviewed a report prepared by her office and agreed with its conclusion not to charge Officers McKinley,
24 Fisher, and Leahy on or about March 30, 2022. O'Malley's published report includes a transmittal letter to the Chief
25 of the Alameda Police Department dated March 30, 2022. A copy of the transmittal letter dated March 30, 2022 reply
26 is included in the attached Exhibit J. On information and belief, Complainant alleges that Respondent knowingly
27 made false statements on April 7, 2022 with respect to the status of the report, a responsive document to the Original
28 Request of Complainant.

1 **F. SUMMARY OF RELEVANT FACTS AND CONTEXT**

2 To summarize, Complainant made the Original Request on April 19, 2021 and Additional Requests
3 on April 22, 2021 and April 24, 2021. Respondent did release audio of two purported calls to APD and body-worn
4 camera footage of APD officers on April 27, 2021, prompting hundreds of thousands of views on YouTube. Otherwise,
5 Respondent failed to meaningfully reply and produce documents as required (with certain exceptions for body worn
6 camera footage and calls to APD), but would promise every 30 days to review and reassess the situation.

7 Finally, on April 7, Complainant expected and did not receive an update initially. Complainant sent
8 Respondent an email and Respondent repeated the same claims about withholding information while the Alameda
9 County District Attorney's office completed its work. However, those claims were demonstrably false. Hence, for
10 purposes of the Open Government Commission the violation of the Sunshine Ordinance is alleged to have occurred
11 on April 7, 2022. This complaint is being filed within the statutory 15 day period following a violation.

12 In addition, as will be shown, the City has failed to comply with clear statutory obligations under
13 State law and the Sunshine Ordinance. All of the facts demonstrate a lack of good faith on the part of the City and
14 therefore a violation of the Sunshine Ordinance.

15 **III. APPLICABLE LAW AND ANALYSIS**

16 **A. SUNSHINE ORDINANCE § 2-92.9**

17 Sunshine Ordinance § 2-92.9(a) is captioned "Disclosure Requests" and is found within the section
18 of the Sunshine Ordinance discussing access to public information. Section 2-92.9(a) says in pertinent part:

19 A Custodian of Records **shall make good faith efforts to comply within a shortened**
20 **timeframe** that has been reasonably justified by a records requester by the facts of his or
21 her situation, e.g. the requester needs the documents for a hearing scheduled the next day.
22 **A request to . . . obtain copies of public records . . . shall receive a response within the**
23 **time frames** and in the manner set forth in this Ordinance and the Public Records Act,
24 unless the requestor is advised in writing that additional time is needed . . . [Emphasis
25 added.]

26 The Sunshine Ordinance does not define what "reasonably justified" or a "shortened timeframe" are
27 to mean. As far as Complainant is aware, the Sunshine Ordinance has never been litigated in a published case. Further,
28 § 2-92.9(a) has known no judicial gloss. Therefore, the plain language of the ordinance should govern. The example

1 provided in the ordinance is of a hearing the following day. It should be noted that, typically, hearings are scheduled
2 weeks or months in advance. It is also worth noting the repeated use of the word “shall” in this section of the ordinance.
3 Shall is almost always interpreted as a requirement, as compared to the permissive “may”. Hence, this section can be
4 read as saying the City must make good faith efforts to comply with a shortened time frame.

5 In this case, the Complainant requested a shortened time frame of 30 days, the reason for the
6 shortened time frame was that the subject matter was of national interest. Like a hearing (the example in the Sunshine
7 Ordinance), here the Complainant had a private purpose for obtaining the information. The purpose was to use the
8 information to inform the public and to attempt to achieve justice for the death of Victim. Naïve as this purpose may
9 have been in light of the District Attorney’s vacuous analysis of the facts, the statute does not require a “good” purpose
10 (which would be difficult to navigate given First Amendment concerns). The question is whether public interest as to
11 a “critical incident” (which would be ruled a homicide by the Alameda County Coroner) is enough to be “reasonably
12 justified” given the shortened timeframe of 30 days. As the life of a young father, brother, son and area community
13 member (i.e., Victim) was lost, Complainant cannot reasonably think of a more reasonably justified reason for
14 disclosure. This matter was one which received significant public and media attention, Complainant’s view is that the
15 request was more than “reasonably justified” and therefore that Respondent was required to make good faith efforts
16 to comply.

17 Again, the Sunshine Ordinance does not define what “good faith efforts” means. However,
18 Respondent has adopted a policy of addressing public information requests on a first-in-first-out basis, regardless of
19 urgency or size of the request. Because of this policy—which Respondent appears not to waver from—a non-urgent
20 but large public information request could prevent Respondent from making shortened time frames for urgent but
21 small public information requests.

22 As this case makes clear, this first-in-first-out policy runs contrary to the Sunshine Ordinance
23 because it essentially prevents a request from being addressed urgently if any other person has a request currently
24 being processed. The Sunshine Ordinance does not include a proviso which says, in effect, “the City should address
25 urgent requests if it has nothing better to do.” Rather, one can assume that upon its adoption, the City indeed had
26 ordinary and extraordinary measures which staff were required to address. Nevertheless, the Sunshine Ordinance uses
27 the mandatory language of “shall” when addressing how the City must treat shortened timelines, and makes no
28 exception for other requests or other City business, including the investigation of a crime.

1 It should be noted that § 2-92.9(a) **does** allow the City some time for extensions. Extensions for
2 shortened timeframes are allowed in the following instances:

- 3 1.The request seeks disclosable public records or information;
- 4 2.The requested records are in the possession of the department processing the request;
- 5 3.The requested records are stored in a location outside of the department;
- 6 4.The requested records likely comprise a voluminous amount of separate and distinct
7 writings;
- 8 5.The requested records reasonably involve another department or other local or state
9 agency that has a substantial subject matter interest in the requested records and which
10 must be consulted in connection with the request.

11 In its replies to Complainant over the nearly 12 months since Complainant first requested the records, Respondent has
12 not cited any of these reasons for its failure to meet (or even attempt to meet) the shortened timeframe specified by
13 Complainant. The reason the City Attorney’s office has provided was that “law enforcement investigative files are
14 not subject to disclosure under the California Public Records Act”. (See Exhibit F.) This, for good reason, is not
15 listed as a valid excuse under the Sunshine Ordinance. The Sunshine Ordinance expands the requirements under the
16 CPRA. Hence, it is not immediately relevant what the CPRA says; it is relevant here what the Sunshine Ordinance
17 says. If investigative files were a valid excuse, the City Attorney would undoubtedly always be finding something to
18 busy itself with to avoid filling public information requests. This would lead to an arbitrary and capricious result,
19 which is unacceptable. Furthermore, this statement and others like it are misleading as many items are subject to
20 disclosure under the CPRA as discussed below.

21 Because Respondent has failed to comply with a reasonably justified shortened timeframe, the
22 Complainant believes Respondent has violated the Sunshine Ordinance.

23 **B. GOVERNMENT CODE § 6253.9(A)(1)-(2) (INCORPORATED IN TO THE SUNSHINE**
24 **ORDINANCE BY § 2-92.1)**

25 Sunshine Ordinance § 2-92.1 is captioned “Release of Documentary Public Information” and is
26 found within the section of the Sunshine Ordinance discussing access to public information. Section 2-92.1 says in
27 pertinent part:

28 The provisions of Government Code Section 6253.9 are incorporated herein by reference.

1 Government Code § 6253.9 is found within the general provisions section of the CPRA. Section
2 6253.9 says in pertinent part:

3 (a) Unless otherwise prohibited by law, any agency that has information that constitutes an
4 identifiable public record . . . that is in an electronic format **shall make that information**
5 **available** in an electronic format when requested by any person **and**, when applicable,
6 **shall comply with the following:**

7 (1) The agency shall make the information available in any electronic format in which it
8 holds the information.

9 (2) Each agency **shall provide a copy of an electronic record in the format requested** if
10 the requested format is one that has been used by the agency to create copies for its own
11 use or for provision to other agencies. The cost of duplication shall be limited to the direct
12 cost of producing a copy of a record in an electronic format.

13 Complainant in the Original Request (attached as Exhibit C) named several types of records
14 Complainant was seeking, such as “body cam footage, Mobile Digital Terminal messages, notes, calendar
15 appointments, mobile phone messages (whether SMS, MMS, or sent via another application such as WhatsApp).”
16 The Original Request also provided that Complainant was seeking such records in their original form. Specifically,
17 the Original Request stated, “Electronic delivery of materials in their original form is requested.”

18 To date, Respondent has not communicated with Complainant directly to transmit any records in
19 response to Complainant’s Original Request or Additional Request. Respondent has made publicly available body
20 worn camera footage and audio purported to be from calls to the Alameda Police Department. Respondent has also
21 publicly released information related to the autopsy and coroner’s report of Victim. Finally, on April 12, 2022,
22 Respondent made more information public on its website, but did not inform Complainant. Nevertheless, initially,
23 Respondent did not provide the audio and video items in their original format, but instead posted them to
24 www.YouTube.com in an edited format. Even the items released on April 12, 2022 in their original format appear to
25 have been modified since April 2021 because their metadata reflects save date of December 21, 2021.

26 Complainant’s reason for seeking records in their original format is irrelevant as Complainant is
27 statutorily entitled to the records provided in their original format. Nevertheless, it is notable that Respondent initially
28 undertook additional steps to edit and reformat the publicly available records into a new file and posting such file to

1 www.YouTube.com. This process removed valuable metadata from records and also edited their contents. In other
2 words, Respondent has altered the records in a manner that only Respondent knows prior to making them public.
3 Given Respondent's incentive to mislead the public and demonstrated history of misleading the public in this case and
4 others, Respondent's actions to edit records rather than produce them in their original form is suspect. It is also a
5 violation of City ordinance and State law.

6 **C. SUNSHINE ORDINANCE § 2-92.2(G)**

7 Sunshine Ordinance § 2-92.2 is captioned "Responsibilities of Staff" and is found within the section
8 of the Sunshine Ordinance discussing access to public information. Subsection 2-92.2(g) provides:

9 Record requests made by email must be acknowledged with an email response to the sender.
10 As stated above in II.B, the Original Request was sent on April 19, 2021 at 11:50pm. The Original Request was made
11 by email and was acknowledged by an email from a representative of the City Attorney's office (paralegal Lisa
12 Cooper) on April 20, 2021 at 9:03 am. Complainant acknowledges that the Original Request was acknowledged with
13 an email response to Complainant pursuant to subsection 2-92.2(g).

14 Nevertheless, as stated above in II.C, Complainant sent two Additional Requests by email on April
15 22nd, 2021 at 11:23 am and April 24th, 2021 at 8:15 am. On information and belief, neither of the Additional Requests
16 were acknowledged by Respondent. Thus, by the clear terms of Sunshine Ordinance subsection 2-92.2(g), Respondent
17 violated the Sunshine Ordinance by failing to acknowledge to the Additional Requests.

18 **D. SUNSHINE ORDINANCE § 2-92.8(D)(1).**

19 Sunshine Ordinance § 2-92.8(d) is captioned "Law Enforcement Information" and is found within
20 the section of the Sunshine Ordinance discussing access to public information captioned "Non-Exempt Public
21 Information". Subsection 2-92.8(d)(1) provides:

22 The Alameda Police Department and its Custodian of Records shall cooperate with all
23 members of the public making requests for law enforcement records and documents under
24 the California Public Records Act or other applicable law. Unless disclosure of the records
25 sought is prohibited by other provisions of state or federal law, records and documents
26 exempt from disclosure under the California Records Act **pertaining to any investigation,**
27 **arrest or other law enforcement activity shall be disclosed to the public to the full**
28 **extent permitted by law after the district attorney or court determines that a**

1 **prosecution will not be sought against the subject involved** or the statute of limitations
2 for filing charges has expired, **whichever occurs first**. Information may be **redacted** from
3 such records and documents and withheld if, based upon the particular facts, the public
4 interest in nondisclosure clearly outweighs the public interest in disclosure. Redacted law
5 enforcement information may include:

6 (a)The names of juvenile witnesses or suspects;

7 (b)Personal or otherwise private information related or unrelated to the investigation if
8 disclosure would constitute an unwarranted invasion of privacy;

9 (c)The identity of a confidential source;

10 (d)Secret investigative techniques or procedures;

11 (e)Information whose disclosure would endanger law enforcement personnel, a witness, or
12 party to the investigation;

13 (f)Information whose disclosure would endanger the successful completion of an
14 investigation where the prospect of enforcement proceedings is likely; or

15 (g)Any information required by State or federal law is to be kept confidential.

16 As stated above in II.B, the Original Request requested “all records relating to Case Number 21-01762, from and
17 including April 19, 2021 going forward.”

18 Complainant argues that the Sunshine Ordinance and CPRA required Respondent to provide
19 information within timeframes shorter than 12 months. Nevertheless, Complainant concedes that the Open
20 Government Commission may not have jurisdiction to hear such violations of state and local law older than 15 days.
21 Hence, for purposes of the Open Government Commission, Complainant will focus on the period from March 30,
22 2022 until present.

23 On information and belief, Alameda County District Attorney Nancy O’Malley sent to Respondent
24 her office’s critical incident report on or around March 30, 2022. From that date forward, it appears no other law
25 enforcement agency was actively pursuing homicide charges against Officers McKinley, Fisher, and Leahy, or City
26 employee Charles Clemmens.

27 Nevertheless, Respondent falsely stated on April 7, 2022 that “the Alameda County District
28 Attorney’s Office has not yet determined whether to file criminal charges related to the use of force.” (See Exhibit

1 H.) On information and belief, Respondent made this false claim 7 days *after* Respondent became aware of the District
2 Attorney's office determining not to criminally charge anyone in order to unlawfully prolong non-disclosure of
3 information to the public, including Complainant.

4 Even after Respondent publicly released the report by the Alameda County District Attorney's office,
5 Respondent has failed to provide the information requested by Complainant and required by Sunshine Ordinance § 2-
6 92.8(d). Respondent is in continuing violation of the law. Respondent's actions from March 30, 2022 to present
7 demonstrate systemic problems with complying with the law and demonstrate the need for the strongest remedies
8 allowable under the Sunshine Ordinance.

9 **E. GOVERNMENT CODE § 6254(F)(1) (EXPANDED BY SUNSHINE ORDINANCE § 2-**
10 **92.8(D)(1))**

11 Government Code § 6254(F) and (F)(1) is found within the general provisions section of the CPRA.
12 Section 6254(F) and (F)(1) state in pertinent part:

13 **Notwithstanding any other provision of this subdivision, state and local law**
14 **enforcement agencies shall make public the following information**, except to the extent
15 that disclosure of a particular item of information would endanger the safety of a person
16 involved in an investigation or would endanger the successful completion of the
17 investigation or a related investigation:

18 (1) The full name and occupation of every individual arrested by the agency, the
19 individual's physical description including date of birth, color of eyes and hair, sex, height
20 and weight, the time and date of arrest, the time and date of booking, the location of the
21 arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and
22 manner of release or the location where the individual is currently being held, and all
23 charges the individual is being held upon, including any outstanding warrants from other
24 jurisdictions and parole or probation holds.

25 (2) (A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time,
26 substance, and location of all complaints or requests for assistance received by the agency
27 and the time and nature of the response thereto, including, to the extent the information
28 regarding crimes alleged or committed or any other incident investigated is recorded, the

1 time, date, and location of occurrence, the time and date of the report, the name and age of
2 the victim, the factual circumstances surrounding the crime or incident, and a general
3 description of any injuries, property, or weapons involved. . .

4 As stated above in II.B, the Original Request requested “all records relating to Case Number 21-01762, from and
5 including April 19, 2021 going forward.”

6 Complainant argues that the Sunshine Ordinance and CPRA required Respondent to provide
7 information within timeframes shorter than 12 months. Nevertheless, Complainant concedes that the Open
8 Government Commission may not have jurisdiction to hear such violations of state and local law older than 15 days.
9 Hence, for purposes of the Open Government Commission, Complainant will focus on the period from March 30,
10 2022 until present.

11 On information and belief, Alameda County District Attorney Nancy O’Malley sent to Respondent
12 her office’s critical incident report on or around March 30, 2022. From that date forward, it appears impossible that
13 public disclosure of information could “endanger the successful completion of the investigation or a related
14 investigation.” Therefore, from March 30, 2022 to present, Respondent had no legal basis for withholding information
15 required to be disclosed under Government Code § 6254(F) and (F)(1). On information and belief, Respondent has
16 failed to produce such information and is thus in continuing violation of state and local law. Respondent’s actions
17 from March 30, 2022 to present demonstrate systemic problems with complying with the law and demonstrate the
18 need for the strongest remedies allowable under the Sunshine Ordinance.

19 **F. SUNSHINE ORDINANCE § 2-92.11.**

20 Sunshine Ordinance § 2-92.11 is captioned “Withholding Restrictions” and is found within the
21 section of the Sunshine Ordinance discussing access to public information. Subsection 2-92.11 provides:

22 No record shall be withheld from disclosure in its entirety unless all information contained
23 in it is exempt from disclosure by law. Any redacted or withheld information or documents
24 shall be explained in writing.

25 Complainant believes the purpose of Sunshine Ordinance § 2-92.11 is to prevent Respondent from withholding entire
26 records from the public without telling the public of such withholding. Stated otherwise, it is to prevent a situation
27 whereby Respondent withholds a responsive record without informing the requester and thereby deprives the requester
28 of the opportunity to challenge such withholding.

1 On information and belief, for the last year, Respondent has done exactly what this provision of the
2 Sunshine Ordinance was intended to prevent. Respondent has failed to produce records in response to the April 19,
3 2021 Original Request and failed to produce any written explanation for the withholding, other than general recitations
4 of supposed exceptions. These general recitations do not “explain” the “redacted or withheld information”. Rather,
5 they explain Respondent’s supposed justification for withholding. Hence, Respondent has failed to comply with the
6 purpose and plain language of Sunshine Ordinance § 2-92.11 from April 19, 2021 to present. Nevertheless,
7 Complainant concedes that the Open Government Commission may not have jurisdiction to hear such violations of
8 state and local law older than 15 days. Hence, for purposes of the Open Government Commission, Complainant
9 alleges Respondent has failed to comply with the purpose and plain language of Sunshine Ordinance § 2-92.11 from
10 March 30, 2022 to present.

11 As Respondent’s formulaic replies demonstrate, Respondent never devoted the time and analysis
12 necessary to comply with the description requirements of Sunshine Ordinance § 2-92.11. Respondent is in continuing
13 violation of the law. Respondent’s actions from March 30, 2022 to present demonstrate systemic problems with
14 complying with the law and demonstrate the need for the strongest remedies allowable under the Sunshine Ordinance.

15 **G. GOVERNMENT CODE § 6253(C) (INCORPORATED IN TO THE SUNSHINE**
16 **ORDINANCE BY § 2-92.1)**

17 Government Code § 6253(c) (incorporated in to the Sunshine Ordinance by § 2-92.1) requires
18 Respondent, as custodian of public records, to “determine whether the request, in whole or in part, seeks copies of
19 disclosable public records in the possession of the agency and shall promptly notify the person making the request of
20 the determination and the reasons therefor”.

21 On information and belief, Respondent has never complied with Government Code § 6253(c) with
22 respect to the Original Request or the Additional Requests and is in continuing violation of the law. Respondent’s
23 actions from March 30, 2022 to present demonstrate systemic problems with complying with state law and
24 demonstrate the need for the strongest remedies allowable under the Sunshine Ordinance.

25 **H. TIMELINESS UNDER THE CPRA (INCORPORATED IN TO THE SUNSHINE**
26 **ORDINANCE BY § 2-92.1)**

27 As a threshold matter, it is worth noting that the CPRA § 6253(e) provides that agencies “may adopt
28 requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum

standards set forth in this chapter.” That is, the City of Alameda as an agency may adopt requirements that make public records requests faster, more efficient, or with greater access than the minimum prescribed in the CPRA. An agency could not adopt requirements which make things slower, less efficient, or with less access, because the CPRA would preempt and trump such action. As such, the Sunshine Ordinance must be read as being more expansive than the minimum provided by the CPRA.

Even if the Open Government Commission may not have jurisdiction to rule, these violations go to Respondent’s bad faith. Specifically, CPRA § 6253 provides the well-known 10 day timeline for replying to a public records request. (Ten calendar days, not business days.) Subsection (c) provides that the notification discussed above must occur “within 10 days from the receipt of the request.”

As noted above, Respondent never notified the Complainant “of the determination”, *i.e.*, whether Respondent has responsive documents. Because more than 10 calendar days have transpired since the April 19, 2021 Original Request, the City violated CPRA § 6253(c). The Complainant has assumed Respondent has responsive documents, but this assumption has never been confirmed by Respondent to the best of Complainant’s knowledge and belief.

On information and belief, Respondent’s failures to comply with Government Code § 6253(c) from April 19, 2021 to present demonstrate systemic problems with complying with state law and demonstrate the need for the strongest remedies allowable under the Sunshine Ordinance.

To pre-empt an argument that Respondent has frequently used in the past (with Complainant and other members of the public), Complainant will address *Rogers v. Superior Court*, 19 Cal.App.4th 469 (1993). This is a case related to the City of Burbank and the particular opinion Respondent frequently cites to the public is from the Second District Court of Appeal. California has six appellate districts each organized into at least one division. Alameda County (and thus Alameda, the Island City) falls under the First District Court of Appeal. Again, the case cited is from the Second District, Alameda is in the First District. That matters because it means that courts in the Alameda’s district can choose to disregard the precedent from other districts. In other words, the case cited may be persuasive in a court, but it would not be binding precedent. However, this caveat (that the case is, at best, persuasive) is left out of the City Attorney’s offices communications when citing the case. Respondent appears to universally fail to disclose the lack of authority of the case (see the attachments to Open Government Commission hearing of Scott Morris, specifically Mr. Morris’s email of April 27, 2020).

1 Complainant argues that by continuing to cite a case that Respondent knows is not binding precedent
2 is indicative of bad faith on the part of Respondent. Presumably, an attorney employed by the City Attorney's office
3 drafted the language frequently citing the *Rogers* case, and that attorney was bound by the California Rules of
4 Professional Conduct, and Rule 3.3 in particular. And even beyond professional ethics failings (as, at the time, there
5 was no tribunal), the Sunshine Ordinance requires "good faith". Citing inapplicable case law that is known to be
6 inapplicable is not demonstrative of good faith.

7 Furthermore, had Respondent (or any of its attorneys) actually read the case cited, they would have
8 noted that the premise for which it was cited was also faulty. In an email to the Complainant related to a different
9 request made under the CPRA, the City Attorney's office cited the *Rogers* case for the proposition "finding that request
10 for production of records of 1990 convention in April and May of 1992 was timely." This statement, without context,
11 implies that a 2 year waiting period was found to be timely. In fact, the *Rogers* case clearly states that the period that
12 was deemed "timely" was much, much shorter. The opinion states:

13 Petitioner requested the documentation for the 1990 convention informally on March 24,
14 1992, and March 30, 1992, and formally on April 12, 1992, and May 21, 1992. . .

15 On June 1, 1992, the City notified petitioner that it would need until June 8, 1992, to
16 produce the voluminous documents requested. . . . On July 1, 1992, the City produced the
17 1990 convention documentation.

18 *Rogers v. Superior Court*, 19 Cal.App.4th at 482.

19 In the case cited, the petitioner formally requested the documents on May 21, 1992, and received
20 the documents July 1, 1992. That is a waiting period of 41 days. In this case, Complainant formally requested the
21 documents on April 19, 2021. As of this date, April 12, 2022, it has been 358 days, and only a handful of records
22 have been publicly released, and no records have been provided directly to Complainant. Hence, this case actually
23 stands for the premise that a time frame **shorter than what Respondent has used** is timely. Their citation in prior
24 correspondence with Complainant of the *Rogers* case is faulty, misleading, and unethical. Respondent mentions it
25 here to pre-empt such arguments before the Open Government Commission in this case.

26 **I. GOVERNMENT CODE § 6259(D)**

27 Complainant is an attorney, duly licensed to practice law in the State of California. Complainant
28 has spent significant time and effort pursuing Respondent for the records requested in the Original Request and the

1 Additional Requests. While Complainant acknowledges that the Sunshine Ordinance was recently amended to remove
2 financial penalties against Respondent as a remedy, Complainant seeks to preserve a claim for costs and attorneys fees
3 due to Complainant pursuant to Government Code § 6259(d).

4 **IV. CONCLUSION AND DEMAND FOR PENALTIES**

5 Respondent has failed to comply with City and State law. This is not the first time Respondent has
6 failed with regard to this Complainant. Hence, the Complainant believes that Sunshine Ordinance § 2-93.8 should
7 apply to impose the strongest possible recommendation for action against the City and/or the City Attorney's office.

8 The subject matter of the underlying facts (i.e., the death of Victim) is reasonably expected to result
9 in extensive and costly litigation. To avoid further litigation in the context of public records requests, a strong
10 recommendation to take action to clean up the City Attorney's office is required. For example, Complainant seeks a
11 recommendation that the City Attorney, the Assistant City Attorneys, and members of the City Attorneys office on
12 ethics and applicable law, and further for recommendation of disciplinary action to be taken against the attorneys
13 involved in this matter for their demonstrated bad faith and misleading statements.

14 In order to preserve claims in later litigation, Complainant reserves the right to pray for other
15 monetary, equitable, and injunctive relief against Respondent.

16
17 Complainant respectfully reserves the right to amend this complaint.

18
19 Dated this 13th of April, 2022.

20
21 Erin Fraser
22
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25
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28

ALAMEDA POLICE DEPARTMENT

P R E S S



R E L E A S E

FOR IMMEDIATE RELEASE*April 19, 2021*

INCIDENT TYPE: In-Custody Death	CASE NUMBER: 21-01762
LOCATION: 800 block of Oak Street	CONTACT INFORMATION: Captain Jeff Emmitt/ 510-337-8400
DATE/TIME OCCURRED: April 19, 2021 / 10:45 am	

SUMMARY:

On Monday, April 19, patrol officers responded to two separate reports of a male who appeared to be under the influence and a suspect in a possible theft.

Officers found the man in the 800 block of Oak Street. Officers attempted to detain the man, and a physical altercation ensued. At that time, the man had a medical emergency. Officers immediately began lifesaving measures and requested the Alameda Fire Department to the scene. The Alameda Fire Department transported the male to a local area hospital, where he later died.

APD asked the Alameda County Sheriff's Office (ACSO) to conduct an independent investigation into this incident. Per County policy, the Alameda County District Attorney's Office is conducting its own independent, parallel investigation. ACSO and the District Attorney's Office are in the early stages of the investigation, and no additional details will be provided at this time. APD will provide updates when the investigation allows.

###

ALAMEDA POLICE DEPARTMENT

P R E S S



R E L E A S E

FOR IMMEDIATE RELEASE

April 20, 2021

INCIDENT TYPE: In-Custody Death *UPDATE*	CASE NUMBER: 21-01762
LOCATION: 800 Block of Oak Street	CONTACT INFORMATION: Captain Jeff Emmitt, 510-337-8400
DATE/TIME OCCURRED: April 19, 2021 / 10:45 a.m.	

MULTI-AGENCY INVESTIGATION LAUNCHED INTO MAN'S DEATH**SUMMARY:**

While the investigation into yesterday's in-custody death is ongoing, the Alameda Police Department is able to provide preliminary information about this tragic incident.

The man who died in-custody yesterday has been identified by the Alameda County Coroner as Mario Arenales Gonzalez, a 26-year-old resident of Oakland. The cause of Mr. Gonzalez's death is not yet known, as an autopsy is pending. The cause of Mr. Gonzalez's medical emergency is also not yet known. Preliminary information indicates that after the officers made contact with him, there was a scuffle as officers attempted to place his hands behind his back. Officers did not use any weapons during the scuffle with Mr. Gonzales.

The Alameda County Sheriff's Office is conducting the primary criminal investigation into this incident. The Alameda County Chief of Police and Sheriffs Association has a policy that persons who die while in custody or under an officer's control constitute a critical incident. In response to this policy, the Alameda County District Attorney's Office was notified and sent personnel to conduct a separate, parallel investigation.

The City will also contract with an outside investigator to conduct an administrative investigation into this incident. Three officers involved in the incident with Mr. Gonzalez have been placed on paid administrative leave, per the Department's standard procedure in these types of cases.

Video from the officers' Body Worn Cameras (BWC) have been turned over to investigators from the Sheriff's Office and District Attorney. The Alameda Police Department will coordinate releasing BWC video to the public with the investigating agencies, which must interview all involved parties prior to release. We anticipate releasing the video after interviews are completed which is anticipated to be by the end of next week.

"The protection of human life is our primary duty as police officers. The loss of Mr. Gonzalez is a terrible tragedy and our thoughts and prayers go out to his loved ones," stated Interim Police Chief Randy Fenn.

###

April 19, 2021

City of Alameda
2263 Santa Clara Ave.
Alameda, CA 94501

Dear Madam Clerk,

Pursuant to the state open records law Cal. Gov't Code Secs. 6250 to 6277, and the Alameda Sunshine Ordinance, I write to request access to and a copy of **all records relating to Case Number 21-01762, from and including April 19, 2021 going forward**. To be clear, I request all records created relating to the incident described in Case Number 21-01762, whether they are currently in existence, or not. I will follow-up if and when I wish to cease receiving records related to Case Number 21-01762.

Because "records" is broadly defined by the Cal. Gov't Code for purposes of the Public Records Act, my request is intended to include body cam footage, Mobile Digital Terminal messages, notes, calendar appointments, mobile phone messages (whether SMS, MMS, or sent via another application such as WhatsApp), and any other item meeting the definition of "record".

Case Number 21-01762 relates to today's death of a person in APD custody, and there is great public interest in this information. **Time is of the essence. I respectfully request that the City begin producing records related to this request within the next 30 days for this reason.**

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

Please note the following information about these requests:

- Electronic delivery of materials in their **original** form is requested, pursuant to Government Code Sec. 6253(b). A Dropbox-style cloud drive or directory structure would be fine.
- Please let me know if you have any questions; I am willing to narrow my request, if necessary.
- I agree to pay any reasonable copying and postage fees of not more than \$100. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.
- In lieu of any non-disclosable documents, I request a privilege log or similar summary.

- **Time is of the essence.** I would appreciate receiving information as quickly as possible, including on a partial and rolling basis.

As provided in the open records law, Sec. 6253(c), I will expect your response within ten (10) business days.

If you choose to deny these requests, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

I would note that willful violation of the open records law can result in the award of court costs and reasonable attorney fees. See Sec. 6259(d).

Thank you for your assistance.

Sincerely,

Erin L. Fraser
Alameda, CA

RE: [EXTERNAL] Public Records Request (Case Number 21-01762)

From: E. Fraser <

To Lisa Cooper <lcooper@alamedacityattorney.org>

CC Lara Weisiger <lweisiger@alamedaca.gov>

Date: Thursday, April 22nd, 2021 at 11:23 AM

Ms. Cooper,

To be clear, my request should include whatever records relate to the decision for officers to go door to door in the surrounding area of Oak St and the lagoon to "inform" neighbors of the peaceful memorial last night.

See attached.

-Erin Fraser

On Wed, Apr 21, 2021 at 3:34 PM, Lisa Cooper <lcooper@alamedacityattorney.org> wrote:

Mr. Fraser,

The City has received your California Public Records Act Request for records related to Case Number 21-01762.

As a general rule, law enforcement investigative files are not subject to disclosure under the California Public Records Act. (CPRA) (Gov. Code, § 6250 et seq.) Gov. Code, § 6254, subd. (f) exempts "[r]ecords of . . . investigations conducted by, or records of intelligence information or security procedures of . . . any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency . . . for correctional, law enforcement or licensing purposes" from disclosure under the CPRA. (See, also Williams v. Superior Court (1993) 5 Cal. 4th 337.) Once an investigation has begun, all materials that relate to the investigation and are thus properly included in the file remain exempt from disclosure indefinitely. (Id. at pp. 355, 361-362.) Video records, including body camera footage, to the extent any exist, are considered part of the investigative file and not subject to disclosure under the CPRA. (See, Haynie v. Superior Court (2001) 26 Cal. 4th 1061).

While AB748 and SB1421 created exemptions to this general rule, the matter remains active, open, under investigation and under the control and direction of the Alameda County District Attorney and the Alameda County Sheriff's Department. To avoid prejudicing these ongoing investigations or interfering with the testimony of parties and witnesses, the City is withholding responsive materials at this time. Because disclosure of these materials would substantially interfere with the successful completion of the investigation and/or enforcement proceedings, the Alameda Police Department has determined that at this time the public interest in non-disclosure clearly outweighs the public interest in disclosure. See, Government Code Section 6254(f)(4) and PC 822.7(b))(7) Government Code Section 6255.

The City is, however, preparing some material, including Body Worn Camera footage for public release. Some of these materials will need to be redacted to protect the privacy rights of the decedent and third party, non-police officer witnesses. We expect some material to be available within the next week to two

RE: [EXTERNAL] Public Records Request (Case Number 21-01762)

From: E. Fraser

To: Lisa Cooper <lcooper@alamedacityattorney.org>

CC: Lara Weisiger <lweisiger@alamedaca.gov>

Date: Saturday, April 24th, 2021 at 8:15 AM

Madam Clerk and Ms. Cooper,

Two non-legal thoughts.

First, the City claims in its press release "The City is committed to full transparency and accountability in the tragic death of Mario Gonzalez." Yet, the City is denying release of any records. Thus, it seems the presser is disingenuous. Or, if it is a genuine reflection of the City's intent, then follow through and produce the records I requested.

Second, Ms. Cooper's email appears to suggest that I requested ongoing investigation records. Such records may have been included in my request because of the broad nature of my request, but I am not very interested in the police analysis or investigation (which is being conducted by outside agencies anyway). I want the raw information (911 and dispatch calls, body cam footage, etc.) which includes no police or law enforcement analysis. If there was genuine confusion on this point, I apologize for my lack of clarity. Of course, you can always ask a clarifying question as opposed to simply stalling or denying that the records should be produced.

-Erin Fraser

On Wed, Apr 21, 2021 at 3:34 PM, Lisa Cooper <lcooper@alamedacityattorney.org> wrote:

Mr. Fraser,

The City has received your California Public Records Act Request for records related to Case Number 21-01762.

As a general rule, law enforcement investigative files are not subject to disclosure under the California Public Records Act. (CPRA) (Gov. Code, § 6250 et seq.) Gov. Code, § 6254, subd. (f) exempts "[r]ecords of . . . investigations conducted by, or records of intelligence information or security procedures of . . . any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency . . . for correctional, law enforcement or licensing purposes . . ." from disclosure under the CPRA. (See, also *Williams v. Superior Court* (1993) 5 Cal. 4th 337.) Once an investigation has begun, all materials that relate to the investigation and are thus properly included in the file remain exempt from disclosure indefinitely. (Id. at pp. 355, 361-362.) Video records, including body camera footage, to the extent any exist, are considered part of the investigative file and not subject to disclosure under the CPRA. (See, *Haynie v. Superior Court* (2001) 26 Cal. 4th 1061).

While AB748 and SB1421 created exemptions to this general rule, the matter remains active, open, under investigation and under the control and direction of the Alameda County District Attorney and the Alameda

RE: [EXTERNAL] Public Records Request (Case Number 21-01762)

From: Lisa Cooper <lcooper@alamedacityattorney.org>

To: E. Fraser

CC: Lara Weisiger <lweisiger@alamedaca.gov>

Date: Wednesday, April 21st, 2021 at 3:34 PM

Mr. Fraser,

The City has received your California Public Records Act Request for records related to Case Number 21-01762.

As a general rule, law enforcement investigative files are not subject to disclosure under the California Public Records Act. (CPRA) (Gov. Code, § 6250 et seq.) Gov. Code, § 6254, subd. (f) exempts "[r]ecords of . . . investigations conducted by, or records of intelligence information or security procedures of . . . any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency . . . for correctional, law enforcement or licensing purposes . . ." from disclosure under the CPRA. (See, also *Williams v. Superior Court* (1993) 5 Cal. 4th 337.) Once an investigation has begun, all materials that relate to the investigation and are thus properly included in the file remain exempt from disclosure indefinitely. (Id. at pp. 355, 361-362.) Video records, including body camera footage, to the extent any exist, are considered part of the investigative file and not subject to disclosure under the CPRA. (See, *Haynie v. Superior Court* (2001) 26 Cal. 4th 1061).

While AB748 and SB1421 created exemptions to this general rule, the matter remains active, open, under investigation and under the control and direction of the Alameda County District Attorney and the Alameda County Sheriff's Department. To avoid prejudicing these ongoing investigations or interfering with the testimony of parties and witnesses, the City is withholding responsive materials at this time. Because disclosure of these materials would substantially interfere with the successful completion of the investigation and/or enforcement proceedings, the Alameda Police Department has determined that at this time the public interest in non-disclosure clearly outweighs the public interest in disclosure. See, Government Code Section 6254(f)(4) and PC 822.7(b)(7) Government Code Section 6255.

The City is, however, preparing some material, including Body Worn Camera footage for public release. Some of these materials will need to be redacted to protect the privacy rights of the decedent and third party, non-police officer witnesses. We expect some material to be available within the next week to two weeks. To the extent you have additional questions or concerns about any of the administrative or criminal proceedings arising out of this incident, you may contact the Alameda County District Attorney. We will update you as materials become available but no later than Thursday June 4, 2021 consistent with Government Code 6254(f)(4)(A)(i).

Regards, Lisa

Lisa K. Cooper
Paralegal
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4764
lcooper@alamedacityattorney.org

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please contact the sender by reply e-mail, delete the message and any attachments and destroy hard copies, if any, of the original message and attachments. Thank you.

From: Lisa Cooper
Sent: Tuesday, April 20, 2021 9:03 AM
To: 'elfraser'
Subject: FW: [EXTERNAL] Public Records Request (Case Number 21-01762)

Mr. Fraser,

On behalf of the City Clerk and pursuant to Alameda Municipal Code Section 2-92.2(d), this email acknowledges receipt of your April 20, 2021 California Public Records Act request, attached, which you emailed to the City Clerk.

The Public Records Act and related Sunshine Ordinance provisions ("PRA") provide timeframes to determine whether a request seeks disclosable records. (Gov. Code, § 6253(c).)

The PRA contains no specific time limits for producing disclosable records. Instead, it requires agencies to provide an estimate of the date the records will be made available. (*Id.*) This is because the PRA recognizes that governmental operations should not come to halt in order for the public agency to respond to PRA requests, particularly requests for voluminous document sets like this one. (See, e.g., *Rogers v. Superior Court*, 19 Cal.App.4th 469, 483 (1993) [finding that request for production of records of 1990 convention in April and May of 1992 was timely].)

This request will be handled in the order in which it is received by an attorney, and consistent with our limited resources and the current volume of requests (which at this moment is very high).

Regards, Lisa

Lisa K. Cooper
Paralegal
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4764
lcooper@alamedacityattorney.org

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From: Lara Weisiger
Sent: Tuesday, April 20, 2021 8:58 AM
To: Rita Dharmani ; Randy Fenn ; Alan Cohen ; Lisa Cooper
Subject: FW: [EXTERNAL] Public Records Request (Case Number 21-01762)

Hi Again,
I assume this is a Police case number, but if not please let me know and I will try to figure out the correct department.
Thanks,
Lara

From: E. Fraser
Sent: Monday, April 19, 2021 11:50 PM
To: City Clerk <CLERK@alamedaca.gov>
Subject: [EXTERNAL] Public Records Request (Case Number 21-01762)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Madam Clerk,

Please see the attached request.

- Erin Fraser

Public Records Request (Case Number 21-01762) Update 4

From: Lisa Cooper <lcooper@alamedacityattorney.org>

To: E. Fraser<

CC: City Clerk<CLERK@alamedaca.gov>

Date: Monday, March 7th, 2022 at 2:16 PM

Good afternoon,

The Alameda Police Department has again considered and reassessed its decision to withhold certain documents, video records, and other information arising from the April 19, 2021 incident involving Mario Gonzalez. See, Government Code Section 6254(f)(4)(A)(ii) and Penal Code Section 832.7(b)(7)(A)(ii).

As we previously advised on February 3, 2022, the Alameda County District Attorney's Office has not yet determined whether to file criminal charges related to the use of force. Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information, if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer or officer(s) who used force. The District Attorney's investigation remains active and ongoing and it has not yet issued a charging determination. Because disclosure of the investigation material could prejudice the potential testimony of both potential parties and witnesses in a criminal enforcement proceeding, the Alameda Police Department will continue to withhold all investigative material that has not yet been publicly released, See Penal Code Section 832.7(b)(7)(A)(ii).

Finally, the investigation files contain over 1000 files comprising 65.1 gigabytes of information. Consistent with Penal Code Section 832.7(b)(6)-(7), the Department will need to individually review these records to ensure that the privacy of witnesses, and other private citizen third parties are protected. Accordingly, at this time, the Department believes that the public interest in non-disclosure clearly outweighs the public interest in disclosure. See, Gov. Code Section 6254 (f)(4), Penal Code Section 822.7(b)(7), Gov. Code Section 6255. The Department will reassess its decision as facts become available to it but in no event, no later than April 7, 2022.

Regards, Lisa

Lisa K. Cooper
Paralegal
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4764
lcooper@alamedacityattorney.org

From: Lisa Cooper
Sent: Thursday, January 6, 2022 2:16 PM
To: 'E. Fraser'
Cc: City Clerk <CLERK@alamedaca.gov>
Subject: Public Records Request (Case Number 21-01762) Update 2

Re: Public Records Request (Case Number 21-01762) Update 4

From: E. Fraser ·

To Lisa Cooper <lcooper@alamedacityattorney.org>

CC City Clerk <CLERK@alamedaca.gov>

Date: Thursday, April 7th, 2022 at 3:34 PM

Ms. Cooper,

Will the City be providing an update?

E. Fraser

On Mon, Mar 7, 2022 at 2:16 PM, Lisa Cooper <lcooper@alamedacityattorney.org> wrote:

Good afternoon,

The Alameda Police Department has again considered and reassessed its decision to withhold certain documents, video records, and other information arising from the April 19, 2021 incident involving Mario Gonzalez. See, Government Code Section 6254(f)(4)(A)(ii) and Penal Code Section 832.7(b)(7)(A)(ii).

As we previously advised on February 3, 2022, the Alameda County District Attorney's Office has not yet determined whether to file criminal charges related to the use of force. Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information, if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer or officer(s) who used force. The District Attorney's investigation remains active and ongoing and it has not yet issued a charging determination. Because disclosure of the investigation material could prejudice the potential testimony of both potential parties and witnesses in a criminal enforcement proceeding, the Alameda Police Department will continue to withhold all investigative material that has not yet been publicly released, See Penal Code Section 832.7(b)(7)(A)(ii).

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Regards, Lisa

Public Records Request (Case Number 21-01762) Update 5

From: Lisa Cooper <lcooper@alamedacityattorney.org>

To: E. Fraser <[REDACTED]>

CC: City Clerk <CLERK@alamedaca.gov>

Date: Thursday, April 7th, 2022 at 3:55 PM

Good afternoon,

The Alameda Police Department has again considered and reassessed its decision to withhold certain documents, video records, and other information arising from the April 19, 2021 incident involving Mario Gonzalez. See, Government Code Section 6254(f)(4)(A)(ii) and Penal Code Section 832.7(b)(7)(A)(ii).

As we previously advised on February 3, 2022, the Alameda County District Attorney's Office has not yet determined whether to file criminal charges related to the use of force. Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information, if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer or officer(s) who used force. The District Attorney's investigation remains active and ongoing and it has not yet issued a charging determination. Because disclosure of the investigation material could prejudice the potential testimony of both potential parties and witnesses in a criminal enforcement proceeding, the Alameda Police Department will continue to withhold all investigative material that has not yet been publicly released, See Penal Code Section 832.7(b)(7)(A)(ii).

The Department will reassess its decision as facts become available to it but in no event, no later than May 9, 2022.

Regards, Lisa

Lisa K. Cooper
Paralegal
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4764
lcooper@alamedacityattorney.org

From: Lisa Cooper
Sent: Thursday, January 6, 2022 2:16 PM
To: 'E. Fraser' <[REDACTED]>
Cc: City Clerk <CLERK@alamedaca.gov>
Subject: Public Records Request (Case Number 21-01762) Update 2

Dear Requestor,

The Alameda Police Department has again considered and reassessed its decision to withhold certain documents, video records, and other information arising from the April 19, 2021 incident involving

Mario Gonzalez. See, Government Code Section 6254(f)(4)(A)(ii) and Penal Code Section 832.7(b)(7)(A)(ii).

As we have previously advised, the Alameda County District Attorney's Office has not yet determined whether to file criminal charges related to the use of force. Penal Code Section 832.7(b)(7)(A)(ii) allows an agency to withhold records or information, if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the officer or officer(s) who used force. The District Attorney's investigation remains active and ongoing and it has not yet issued a charging determination. Because disclosure of the investigation material could prejudice the potential testimony of both potential parties and witnesses in a criminal enforcement proceeding, the Alameda Police Department will continue to withhold all investigative material that has not yet been publicly released, See Penal Code Section 832.7(b)(7)(A)(ii).

Finally, the investigation files contain over 1000 files comprising 65.1 gigabytes of information. Consistent with Penal Code Section 832.7(b)(6)-(7), the Department will need to individually review these records to ensure that the privacy of witnesses, and other private citizen third parties are protected. Accordingly, at this time, the Department believes that the public interest in non-disclosure clearly outweighs the public interest in disclosure. See, Gov. Code Section 6254 (f)(4), Penal Code Section 832.7(b)(7), Gov. Code Section 6255. The Department will reassess its decision as facts become available to it but in no event, no later than February 5, 2022.

Regards, Lisa

Lisa K. Cooper
Paralegal
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2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4764
lcooper@alamedacityattorney.org

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From: E. Fraser
Sent: Monday, April 19, 2021 11:50 PM
To: City Clerk
Subject: [EXTERNAL] Public Records Request (Case Number 21-01762)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Madam Clerk,

Please see the attached request.

- Erin Fraser



**Office of the District Attorney
Alameda County**

Nancy E. O'Malley
District Attorney
alcoda.org

March 30, 2022

Chief Nishant Joshi
Alameda Police Department
1555 Oak Street
Alameda, CA 94501

Dear Chief Joshi:

Enclosed is the District Attorney's Office Report on the in-custody death of Mario Gonzalez Arenales-p[which occurred on April 19, 2021.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against any law enforcement agency.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than five calendar days after March 30, 2022.

Very truly yours,

Nancy E. O'Malley
Nancy E. O'Malley
District Attorney