

OPEN GOVERNMENT COMMISSION

CITY OF ALAMEDA, CALIFORNIA

ERIN FRASER,

Complainant,

vs.

CITY OF ALAMEDA, ET AL,

Respondent

MEETING OF MAY 18, 2022
AGENDA ITEM 3-A

REPLY TO THE
COMMISSIONERS' QUESTIONS

This Reply is in response to questions posed by OGC Commissioners and received by the Complainant by email sent by the City Clerk on May 5, 2022. For brevity, questions are referred to by the inquiring commissioner and that commissioner's question number (enumerated or implied).

Cambra 1: Yes, there are simple and easy means of reproduction: copy and paste electronic files from the Respondent's medium to a Dropbox folder. Free software programs exist which will copy electronic files "bit by bit" and then verify the "hash" to ensure an exact copy is made. With respect, the larger issue is that the Respondent is arguing it is not obligated to even try to produce copies in original form, despite an ordinance requiring just that. Respondent is not even trying to comply.

LoPilato 1: This question places an undue burden on the Complainant to know what records exist and to list them. This is not required under the Sunshine Ordinance or the CPRA, and Complainant has no way to know what records exist. The Complainant requested "all records" and the Respondent did not meaningfully attempt to search for and produce all records, nor did it request that Complainant narrow his request. For example, the Respondent did not conduct a search for text messages. As a recent LA Times article revealed, text messages are often where the meaty details of government fraud and abuse occur. See <https://www.latimes.com/california/story/2022-05-04/california-official-betty-yee-covid-mask-deal-fraud-claims>. Mr. Cohen said officers' phones are collected when a critical incident occurs, so the Respondent had the phones and it could have produced texts *related to* the case and *existing at the time* it seized the phones. Similarly, the Respondent communicated with three different bodies conducting investigations: none of the records of these communications were produced. The billing records with the Renne Law Group are not privileged and were not produced. See *Los Angeles County Board of Supervisors v. Superior Court*, No. S226645 (Cal. Supreme Ct. Dec. 29, 2016). The original audio and video of statements by the officers and employees that murdered Mr. Gonzalez were not produced. The terminal messages, which were in fact used by APD

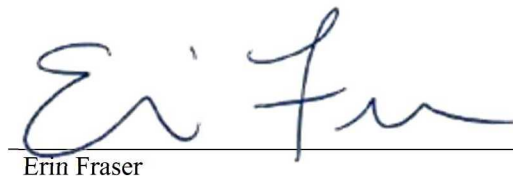
officers in the past to send hateful and racist messages, were not produced. See <https://www.sfchronicle.com/opinion/openforum/article/For-more-than-a-century-Alameda-has-been-the-Bay-16211890.php>. The police case file was a summary of information produced in a PDF, it was not information in its original form. The Respondent has apparently never to the Complainant's knowledge conducted a search of the records in its custody or control (including records which are indirectly in its control and on the phones of its employees). In any case, the suggestion that final reports were entirely responsive to the broadest possible request for records related to the case (which would include raw evidence, interviews, notes, correspondence, billing records, phone records, text messages, and many, many more things) is not a credible position.

LoPilato 2: As of the date of this response (May 11, 2022), the Respondent has still not conducted a search or meaningfully produced the requested records. Respondent directs readers of its press releases to <http://www.alamedaca.gov/investigation> a website which currently redirects to a brief narrative and no records (which are linked from a separate press release and have not been updated since April 12, 2022).

Chen 1: No, I did not receive records at all, let alone in their original format. On April 7 and April 12, I received nothing. Others apparently received an email. On May 4, 2022, I learned that the "independent" report by Renne Law Group was reported publicly by the press. I emailed Mr. Cohen to express disappointment that, again, the City Attorney had leaked the report to the press prior to replying to PRA requestors. Later on May 4, 2022, I received an email directing me to a press release which linked to the Renne Law Group's report.

Chen 1.a.: As noted above in response to question 1 from LoPilato, and as expressed in the hearing, I am seeking all records related to the in-custody death of Mario Gonzalez. This request is intentionally broad and is meant to encompass text messages on personal cell phones of Respondent's employees, internal emails, messages, phone records, notes, interviews of officers, billing records with the Renne Law Group, correspondence with all the three bodies investigating the death of Mr. Gonzalez, and every other "record" as defined by the CPRA.

Complainant respectfully submits this Reply this 11th of May, 2022.



Erin Fraser