

BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

In re:
The Complaints of James Howley

James Howley,
Complainant

The City of Alameda,
Respondent

Case No. 18-01

DECISION OF THE
OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

On June 16, 2018, complainant James Howley filed with the Alameda Police Department a request for records under the California Public Records Act (Exhibit 1). He requested:

“copies of any and all content, including but not limited to: all of the officers’ body camera footage and any related audio; any and all dash cam vide and related audio; dispatcher logs; police reports; internal memos; and any and all related department policies from the incidents involving James Howley (Case # 18-940/Resisting Arrest) that occurred on Sunday, February 18, 2018, at the following locations: my home address 330 Westline Drive, # B424, Alameda, CA 94501; Alameda Hospital 2070 Clinton Avenue Alameda CA 94501 and John George Psychiatric Hospital 2060 Fairmont Drive, San Leandro, CA 94578” and

“any and all information related to the quantity, date and outcome of any and all complaints made against Officer Kevin Campi # 30, Officer Jeannette Cazares # 85 and Officer Sara Cardona # 11.

On June 27, 2018, the City Attorney’s Office responded to Mr. Howley (Exhibit 2) that both categories of records he sought were exempt under the California Public Records Act, the first category under Government Code, section 6254 (f) [police files that relate to

an ongoing investigation] and the second category under Penal Code section 832.7 [peace officer's personnel files are confidential and may be disclosed only through certain procedures.]

On July 11, 2018, Mr. Howley filed a Sunshine Ordinance Complaint (Exhibit 3) naming the Alameda Police Department as the Department against which the complaint was filed and alleging a violation of access to public records and citing Section 2-93 and 2-93-7 of the Sunshine Ordinance.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the Open Government Commission, created under the Sunshine Ordinance, hears the complaint and renders a formal written decision. The complainant and the City shall appear at a hearing. During the hearing, the Open Government Commission considers the evidence and the arguments of the parties before making its decision. Section 2-93.2 (b). The Commission conducted the hearing on August 21, 2018 and considered the evidence and arguments of Mr. Howley and the City.

Discussion

Section 2-93 simply states "Enforcement Procedures" and is the heading of the following sections. Section 2-93.7 provides the Sunshine Ordinance supersedes other local laws and whenever there is a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

There was no violation of Section 2-93.7. Mr. Howley has not identified any conflict between the Sunshine Ordinance and any other "local law" that would provide him with greater or more expedited public access to information.

To the extent he is alleging that there is a conflict between the California Public Records Act and the Sunshine Ordinance such that the Sunshine Ordinance must provide him with greater access than the Public Records Act, he is mistaken. The Sunshine Ordinance provides that records that are exempt under the Public Records Act pertaining to an investigation, arrest or other law enforcement activity shall be disclosed but only after the district attorney or a court determines that prosecution will not be sought or the statute of limitations on the underlying charge has expired, whichever occurs first. Section 2-92.8 d. 1, Alameda Municipal Code. As of the date of the response to Mr. Howley, no such determination had been made nor had the statute of limitations run on the underlying charge. That same section also exempts from disclosure records prohibited from disclosure by state law, such as Penal Code Section 832.7.

Decision

The Police Department did not violate Section 2-93.7 nor any other section of the Sunshine Ordinance by not producing the records requested in Mr. Howley's June 16, 2018 letter. The complaint, therefore, is determined to be unfounded.

Irene Dieter, Chair

Paul Foreman, Member

Michael Henneberry, Member

Heather Little, Member

Bryan Schwartz, Member