

LARA WEISIGER

From: Rasheed Shabazz <rasheed@berkeley.edu>
Sent: Tuesday, July 23, 2019 1:31 PM
To: heatherlittle9691@gmail.com; bryan@bryanschwartzlaw.com; Henneberry, Mike; rtilos@yahoo.com
Cc: John Le; Alan Cohen; LARA WEISIGER; Ashley Zieba; IRMA Glidden; Michael Roush
Subject: [OGC] re: City's Failure to Provide Timely Response to January 22, 2019 Public Records Act Request for Access to Police Records and Hearing on Sunshine Ordinance Complaint 2019-7100

*** **CAUTION:** This email message is coming from a non-City email address. Do not click links or open attachments unless you trust the sender and know the content is safe. Please contact the Help Desk with any questions. ***

Peace Commissioners,

This correspondence includes facts related to my OGC complaint, background on relevant state law related to police records, a few comments the importance of transparency and perception, and recommendations to make local government accessible to the public.

Background on SB 1421

Community organizations have advocated for increased transparency of policing for decades. In the past five years, police brutality has received increased media attention in our region and nationally. The lack of law enforcement transparency and perceptions of a lack of accountability for officer misconduct has recently led to changes to state law.

In 2018, the California Legislature passed SB 1421. The "Right to Know Act" gives the public the right to see certain records relating to police misconduct and serious uses of force. Beginning January 1, 2019, the public gained the ability, through Public Records Act requests, to view non-confidential documents relating to the discharge of a firearm at a citizen, force that causes death or great bodily injury, sexual assault on a member of the public or a sustained finding of dishonesty by an officer during the performance of their duties.

As you may also know, the California Public Records Act and the City of Alameda's Sunshine Ordinance requires the City to comply with requests within 10 days.

On January 22, I submitted a PRA via email to the Police Chief and the City Clerk of the City of Alameda. On March 22 and April 30 of this year, I sent follow up requests to Lisa Cohen of the City Attorney's Office. I did not receive responses. It was not until I physically visited the City Attorney's Office and filed a complaint with this Commission on May 29 that I received the response that "no response records" from January 2014 to present existed.

Why did it take four months and a week to provide a response of "no responsive records"?

The Power of Perception and Impact of Police and Cities Hiding Misconduct

The City's failure to provide a timely response did not project transparent policing or comply with the Sunshine Ordinance's assurance that City operations are in "full view of the public." Notably, cities and Police Officer Associations through California—even the State Attorney General's Office—have fought to limit the public's legal right to access these records. Eventually, an appeals court ruled the new law was retroactive. More than one municipality has intentionally, destroyed records rather than disclose them to the public they purportedly "protect and serve."

Prior Requests for Alameda Police Records

Although the City Attorney alleges that there are no prior violations of the Alameda Municipal Code, perhaps the reason that the Chief Litigation Counsel was under the “mistaken impression” that a written response was sent to the complainant is because this was not the first PRA made by the complainant related to the records or actions of the Police Department. And more often than not, there have been challenges accessing these records.

-
- February 22, 2018 request
- for traffic stop data and use of force information by race and gender, years 2015-2017. I did not receive the data until after a June 25, 2018 follow-up email request. In response to a request for records related to search data, the complainant was informed
- these records were not maintained.
-
-
- On February 27, 2018, the
- complainant filed a PRA requesting “Body camera footage from all officers involved in the August 21 incident at the Target Store at Alameda Landing in which three individuals were detained and multiple officers drew weapons.” On September 25, 2018, the Complainant
- used the See Click Fix website to file a public records act request for records related to an August 21, 2017 incident at the Target Store at Alameda Landing. According to reports from witnesses and Alameda Police’s Facebook Page, APD officers drew their guns
- on a group of African Americans. On October 5, 2018, Lt. McMullen denied this request citing exemptions of investigative files and arrest records no longer being arrest records after a certain passage of time.
-

On January 21, 2019, the complainant sent a follow-up request. On February 13, 2019, I finally received the arrest log for August 21, 2017. Notably, AB 748 effective July 1, 2019, now requires certain body-worn camera or audio/video records now be made available to the public.

So while there is “no evidence in the record of the existence of a subsequent similar violation,” there have been prior challenges for the complainant receiving records. Have there been other residents or members of the press that have requests refused or improperly delayed?

Also, as demonstrated in the email thread included below this correspondence, staff of the City Attorney’s Office and City Clerk’s Office did receive my March and April 2019 correspondence. Have there been other errors with the “internal system for tracking records requests”?

The Commission may wish to explore these questions and issues in subsequent meetings.

“Technical” Violation and Recusal of OGC Commissioner Shabazz

The City Attorney’s Office recommends that the Open Government Commission find a sustained “technical violation”.

The City Attorney further recommends and that I, as a member of the Open Government Commission, recuse myself. As a member of the public and an Alameda resident, I support the sustained finding, although I am interested in the distinction between a “violation” and a “technical violation.” I also have further recommendations for future actions.

City Attorney’s Conflict of Interest?

While the City Attorney's office recommended that I recuse myself as a commissioner—which I intend to do—the City Attorney's office does not mention the inherent conflict of interest embedded in this complaint.

The City Attorney's Office which failed to comply with the Sunshine Ordinance and Public Records Act, was in violation—"technical" or otherwise—of the Sunshine Ordinance, yet no recommendation for the City Attorney's Office to recuse itself. There was also no explanation in their correspondence with Commissioners of how their office navigated any perception of conflict was made. Notably, during the OGC's last meeting in February, the question of a conflict of interest was raised in regards to the City Attorney's office being party to OGC complaints.

Although this may be unnecessary, it would've been prudent to address this in the discussion if not the recommendation to the Commission.

Recommendation; Annual Reporting of Public Records Act Requests

While a fine may be unnecessary, it would be beneficial to the public if the City Attorney's office could provide a report to Open Government Commission and/or the City Council regarding Public Records Act requests. The report could provide information on the number of requests received annually, total denied, total fulfilled, etc., and challenges and opportunities to make government accessible. Providing this information every year as part of the Open Government Commission's annual report would also support efforts to increase transparency in our local government's operations.

Below this email is a thread of correspondence with the City Attorney's office in regards to the germane PRA and includes footnotes with related references.

Thank you for your service and consideration to increase transparency of our local government.

Rasheed Shabazz

p.s. The three asterix near my name in correspondence below is to avoid my personal email address being made more public.

----- Forwarded message -----

From: **Rasheed Shabazz** <***>

Date: Tue, Apr 30, 2019 at 5:07 PM

Subject: Request for Update: PRA: AB 1421 Records

To: Lisa Cooper <lcooper@alamedacityattorney.org>

Cc: City Clerk <CLERK@alamedaca.gov>

Greetings,

I'm writing to follow-up on my January 2019 PRA for AB1421 records.

On Fri, Mar 22, 2019 at 8:14 AM Rasheed Shabazz <***> wrote:

Good morning Lisa,

I'm writing to inquire on the status of my PRA for AB1421 records.

Can you advise me as to who in the City Attorney's office will be responsive?

Thank you.

Rasheed

On Tue, Jan 22, 2019 at 5:13 PM Rasheed Shabazz <***> wrote:

Thank you.

On Tue, Jan 22, 2019 at 4:32 PM PAUL ROLLERI <PROLLERI@alamedaca.gov> wrote:

Hello Rasheed,

I am in receipt of your PRA request and have forwarded it to the City Attorney's office for response along with the other similar SB1421 requests we have received.

Sincerely,

Paul Rolleri
Chief of Police
Alameda Police Department
1555 Oak Street
Alameda, Ca 94501
510-337-8300

On Jan 22, 2019, at 1:57 PM, Rasheed Shabazz <***> wrote:

Peace Chief Rolleri,

Attached is a public records act request related to the recent "Right to Know Act" (AB 1421).

January 21, 2019

ALAMEDA POLICE DEPARTMENT
Chief Paul Rolleri
1555 Oak St
Alameda, CA 94501

To Whom It May Concern:

I request the release of records under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution. I seek copies of all records in your office's possession, regardless of who created them. Please provide all records in your agency's possession up until the date that this request was received.

I seek a copy of all disclosable records relating to the report, investigation, findings and administrative discipline of all sworn officers employed by the Alameda Police Department from at least January 2014 to present. This includes all records related to the following conduct:

- An incident involving the discharge of a firearm at a person;
- An incident in which the use of force resulted in death or great bodily injury;
- Any sustained finding involving sexual assault, as defined by Cal. Penal Code §832.7(b)(1)(B)(ii);
- Any sustained finding involving dishonesty directly relating to the reporting, investigation, or prosecution of a crime, including, but are not limited to, any sustained

finding of perjury, false statements, filing false reports, destruction, falsifying, tampering with, or concealing of evidence, receipt or solicitation of bribes, loans, favors, or gifts, misappropriation of property, obstructing an investigation, or influencing a witness

Records include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure. If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9.

To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

Please send any documents in electronic format to: rasheed@berkeley.edu. Otherwise, I can be available to retrieve all documents at the Department in-person.

Because I am a journalist writing for the public interest, I request that you waive any fee. However, should you choose not to do so, please let me know the "direct costs" of copying these records plus postage and if the costs exceed \$5.00, please notify me prior to making the copies. Thank you in advance for providing the records we have requested.

Please do not hesitate to contact me with any questions regarding this letter.

Rasheed Shabazz
rasheed@berkeley.edu

<PRA - Alameda Police Dept - AB1421 - Jan2019.pdf>

--

Rasheed Shabazz (***)

[Twitter](#) | [Linkedin](#) | [Instagram](#) | [Tumblr](#)

"The pillar of the world is hope." – African Proverb

--

Rasheed Shabazz ([**](#))

[Twitter](#) | [Linkedin](#) | [Instagram](#) | [Tumblr](#)

"The pillar of the world is hope." – African Proverb