

EXHIBIT A

City of Alameda



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

FILED
MAY 12 2020

CITY OF ALAMEDA
CITY CLERK'S OFFICE

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission: City attorney's office / police

Name of individual contacted at Department or Commission: Alan Cohen

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

Sunshine Ordinance Section: _____
(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.

See attached

Cohen cites 2nd district court decision County of LA vs. Superior Court to deny request. This is outdated and relies on old version of statute and 2nd district has no authority in Alameda.

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

Name: Scott Morris

Address: _____

Telephone No: 510 871 5114

Scott.morris@gmail.com

Date: 5/6/20

EXHIBIT B



Scott Morris <scott.morris@gmail.com>

Public records request: APD arrest info

6 messages

Alan Cohen <acohen@alamedacityattorney.org>

Mon, Apr 27, 2020 at 6:32 PM

To: "scott.morris@gmail.com" <scott.morris@gmail.com>

Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>

Dear Mr. Morris,

The City of Alameda Police Department is in receipt of your public records request to the City of Alameda City Clerk for "[t]he full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds." Your request seeks information for the period covering Feb. 1, 2020, through April 15, 2020.

While the City can provide you with certain, non-exempt information regarding non-juvenile arrests made during the two weeks preceding this response, historical arrest data is generally not subject disclosure under the California Public Records Act. (CPRA) (Gov. Code, § 6250 et seq.)

The CPRA includes a specific exemption from disclosure for "[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, or any . . . investigatory or security files compiled . . . for correctional, law enforcement or licensing purposes . . ." (Gov. Code, § 6254, subd. (f)); *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.)

While Government Code Section 6254(f)(1) - (3) does require the disclosure of specified information about arrests, arrestees, and complaints to which law enforcement personnel respond, the subdivision is only applicable to those requests made contemporaneously with the creation of the record in which the requested information is contained. *See, County of Los Angeles v. Superior Court* (1993) 18 Cal. App. 4th 588. Beyond current and contemporaneous information, an arrest record becomes criminal history (Penal Code 13300) and is no longer a public record. (*Id.*)

The current and contemporaneous information prepared by the City of Alameda is available at the Public Police Records Counter and Alameda Police Department website: – www.alamedaca.gov/police - Review Crime Activity - Daily Activity Log. The Department makes this information available to the public for a period of 14 days. Some of the information such as the date/time of booking might be available through Alameda County since that is where the booking occurs. The bail amounts are set by the Judicial Council and implemented by Alameda County and not the arresting officer or agency."

I have attached a copy of the Department's arrest log for non-juveniles for the period of April 13, 2020 through April 25, 2020. Juvenile arrests are exempt from disclosure under Government Code section 6254(k) [records exempt or prohibited from disclosure pursuant to federal or state law] and California Welfare and Institutions Code Section 827, California Rules of Court 5.552; and Penal Code sections 11167 and 11167.5 (disclosure of records containing information about juveniles is prohibited). We have also redacted information where disclosure is also prohibited to the extent disclosure would infringe upon the statutory and constitutional privacy rights of third parties, including the victim. *See*, Government Code section 6254(k) [records exempt or prohibited from disclosure pursuant to federal or state law]; *See, also* Penal Code Section 293.

Feel free to contact me, should you have any questions about this determination. I am working remotely during the pandemic so if you wish to discuss, please advise on the best time for me to contact you.

Alan M. Cohen

Assistant City Attorney

City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4755
acohen@alamedacityattorney.org

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From: Scott Morris [mailto:scott.morris@gmail.com]
Sent: Wednesday, April 15, 2020 12:09 PM
To: City Clerk <CLERK@alamedaca.gov>
Subject: Public records request: APD arrest info

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Hi,

I'd like to request the following public records:

Please provide the following information from Feb. 1, 2020, through the date of this request, April 15, 2020:

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

Let me know if you have any questions.

Thanks,

Scott

EXHIBIT C

Alan Cohen

From: Alan Cohen
Sent: Tuesday, May 12, 2020 12:45 PM
To: Scott Morris
Cc: City Clerk; Lisa Cooper
Subject: Re: Public records request: APD arrest info
Attachments: PRA_ArrLogs.pdf

Hi Mr. Morris,

As promised in my April 29, 2020 email, I am producing the supplemental disclosure of APD arrest log information which the Department extracted in response to your request. Please free to contact me if you have any questions or concerns. As I have mentioned, I am working remotely so if you wish to discuss please let me know when to contact you,

Alan M. Cohen
Assistant City Attorney
City of Alameda
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Alameda, CA 94501
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acohen@alamedacityattorney.org

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EXHIBIT D

From: Alan Cohen <acohen@alamedacityattorney.org>

13-May-2020 15:48

To: Scott Morris <scott.morris@gmail.com>

CC: Lisa Cooper <lcooper@alamedacityattorney.org>, LARA WEISIGER <lweisiger@alamedaca.gov>

Subject: Public records request: APD arrest info

Attachments: INTERNET (1964 bytes)

MESSAGE HTML (8249 bytes)

arrests 0201 - 03-28[1].pdf (2943522 bytes)

Mr Morris,

As I promised in our telephone conversation, I am forwarding the City's third and final Alameda Police Department generated report containing a list of historical arrest information for the period of February 1, 2020 and March 28, 2020. This along with the previous two sets of documents I emailed you contains the complete set of data from the City's public arrest logs for the February 1, 2020 and April 15, 2020, time period outlined in your original Public Record's Act request.

The City has voluntarily agreed to generate this information to avoid further administrative entanglements. We, however, remain committed to striking a reasonable balance between the public's right to know and the arrestee's constitutional and statutory right's to privacy which were at the heart of both the *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal. App. 4th 588 and *Fredericks v. Superior Court of San Diego County* (2015) 233 Cal App 4th 209 decisions.

Please feel free to contact me should you have any additional questions.

Alan M. Cohen
Assistant City Attorney
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From: Alan Cohen <acohen@alamedacityattorney.org>
Date: Tuesday, May 12, 2020 at 12:45 PM
To: Scott Morris <scott.morris@gmail.com>
Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>
Subject: Re: Public records request APD arrest info

Hi Mr Morris,

As promised in my April 29, 2020 email, I am producing the supplemental disclosure of APD arrest log information which the Department extracted in response to your request. Please free to contact me if you have any questions or concerns. As I have mentioned, I am working remotely so if you wish to discuss please let me know when to contact you,

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acohen@alamedacityattorney.org

EXHIBIT E

Lara Weisiger

From: Lara Weisiger
Sent: Tuesday, May 19, 2020 10:55 AM
To: Bryan Schwartz (bryan@bryanschwarzlaw.com)
Subject: FW: OGC Complaint and Best Practices for Disclosure of Police Logs

Hi Bryan,
Staff has worked out an agreement with Scott Morris about his complaint (below), so a hearing will not be scheduled for June 1st.
Thanks,
Lara

From: Alan Cohen
Sent: Monday, May 18, 2020 4:00 PM
To: Scott Morris <scott.morris@gmail.com>
Cc: Lara Weisiger <lweisiger@alamedaca.gov>; Lisa Cooper <lcooper@alamedacityattorney.org>
Subject: OGC Complaint and Best Practices for Disclosure of Police Logs

Hi Scott,

Thanks for speaking with me today on the Open Government Commission/Police Log issue. Confirming that you agreed to put the OGC Complaint on hold for 30 to 60 days while you and I work together on a retention/disclosure policy. I will continue to reach out to other police departments, and you agreed to put me in touch with the attorney you've been working with. I appreciate your cooperativeness and look forward to working with you as to develop a policy that balances the public's right to know with the privacy rights of arrestees.

Very Truly Yours,

Alan M. Cohen
Assistant City Attorney
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4755
acohen@alamedacityattorney.org

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