

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 This is outdated and relies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: [REDACTED]

Telephone No: 510 871 5114 E-mail Address: Scott.morris@gmail.com

Date: 5/6/20 [REDACTED]
Signature



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

*** **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. ***

*** **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. ***

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


Scott Morris

Writer/Reporter

(510) 871-5114

@oakmorr

scottmorris.news

 **Arrests 0413 0426.pdf**
181K

Scott Morris <scott.morris@gmail.com>
To: Alan Cohen <acohen@alamedacityattorney.org>

Mon, Apr 27, 2020 at 6:39 PM

Hi,

Is the city's position here that it doesn't retain any record of the people arrested by its Police Department for more than 14 days?

Thanks,

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

@oakmorr
scottmorris.news

[Quoted text hidden]

Scott Morris <scott.morris@gmail.com>
To: Alan Cohen <acohen@alamedacityattorney.org>

Mon, Apr 27, 2020 at 6:44 PM

Hi,

No, I see the problem. You are citing County of Los Angeles v. Superior Court, an outdated precedent that does not have jurisdiction and has since been overturned.

Please see FREDERICKS v. City of San Diego which found the Kusar decision relied on an old version of the statute and has since been amended to remove the "current" language. "On their face, the disclosure requirements in section 6254, subdivision (f)(2), for "the time, substance and location of all complaints or requests for assistance received" by a state or local law enforcement agency, and the responses thereto, are expansive. There is no basis in the plain language of the statute to read into it any 60-day limitation on access to disclosable information."

Given that, there is certainly no basis to read a 14-day limitation either. Please release the requested records without further delay.

Thanks,

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

@oakmorr
scottmorris.news

[Quoted text hidden]

Scott Morris <scott.morris@gmail.com>

Mon, Apr 27, 2020 at 7:34 PM

To: Alan Cohen <acohen@alamedacityattorney.org>

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

Resending to all recipients:

Hi,

No, I see the problem. You are citing County of Los Angeles v. Superior Court, an outdated precedent that does not have jurisdiction and has since been overturned.

Please see FREDERICKS v. City of San Diego which found the Kusar decision relied on an old version of the statute and has since been amended to remove the "current" language. "On their face, the disclosure requirements in section 6254, subdivision (f)(2), for "the time, substance and location of all complaints or requests for assistance received" by a state or local law enforcement agency, and the responses thereto, are expansive. There is no basis in the plain language of the statute to read into it any 60-day limitation on access to disclosable information."

Given that, there is certainly no basis to read a 14-day limitation either. Please release the requested records without further delay.

Thanks,

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

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scottmorris.news

On Mon, Apr 27, 2020 at 6:32 PM Alan Cohen <acohen@alamedacityattorney.org> wrote:

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org>

Wed, Apr 29, 2020 at 5:24 PM

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

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

Mr. Morris,

Thank you for your response. The City is confident that the authorities it cited in its April 27, 2020 determination letter remain settled law. Your Public Records Act request was for the type of information described in Government Code Section 6254(f)(1); namely for information on every individual arrested by the City of Alameda between February 1, 2020 and April 15, 2020.

The authority to place temporal limitations on the disclosure of historical arrest information discussed in the Second District Court of Appeal's decision in *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal. App. 4th 588 remains settled law. The Fourth District Court of Appeal decision in *Fredericks v. Superior Court of San Diego County* (2015) 233 Cal.App.4th 209 did not overrule *Kusar* nor could it have.

Moreover, the issue in *Fredericks* related to a request for information on "complaints and/or requests for assistance" under Government Code 6254(f)(2). As the Fourth District said in *Fredericks, Kusar*, in which the arrest information sought involved Government Code 6254(f)(1), should not be read as establishing a time limitation for disclosures under Government Code 6254(f)(2). Disclosure of information derived from citizen complaints under Government Code 6254(f)(2) raises different legal and policy concerns than does the release of historical information about arrestees.

The City's press log of arrest records is only retained for a short period of time. The unredacted disclosure of historical arrest records would interfere with an individual's constitutional and statutory privacy rights. Given that this data would have to be extracted from the City's investigation reports, the Department would have to undertake a complicated, time-consuming review, redaction, and production process to arrange for the release of nonexempt information. The public interest in disclosure of historical arrest data is not outweighed by the potential privacy concerns of third parties and the fiscal and workload burdens imposed on the City by this request. (See, Government Code Section 6255)

Nevertheless, as an accommodation, the City will review its records for responsive information that falls within the 30 day period preceding your request. Because this information will need to be extracted from a database and redacted for exempt information, the City will require an additional 14 days to process your request. (See Government Code Section 6253.) Accordingly, our updated response will be provided to you no later than **May 11, 2020**.

[Quoted text hidden]

Scott Morris <scott.morris@gmail.com>

Wed, Apr 29, 2020 at 5:38 PM

To: Alan Cohen <acohen@alamedacityattorney.org>

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

Alan,

This is hardly settled law as it is a highly irregular practice by the city of Alameda and relies on court decision from the 2nd District, which does not apply to the city of Alameda.

Kusar relies on an old version of the statute, which contained the word "contemporaneous" that has since been removed. There is no time limitation in the text of 6254f, which should be your only guidance in this matter, not inapplicable court decisions:

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of

a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) 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.

Please release the complete record as requested.

Thanks,

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

@oakmorr
scottmorris.news

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