

Statement from Scott Morris, Alameda Open Government Commission hearing 4/5/21:

I'm here to tell you about my experiences seeking public records in the city of Alameda. In the city's brief, it points out that I received the records I requested. That's true. And I won't argue about whether a specific violation of the city's Sunshine Ordinance remains.

But my interactions with the city attorney's office were so bad that I fear the city is bullying and lying to anyone who seeks their right to public access. I thought it was important for you to hear about it.

I have been a professional journalist in the Bay Area since 2011. I have been published in just about every major publication in the region and last year I worked on a yearlong investigative project for ProPublica. I have submitted Public Records Act requests at hundreds of agencies all over the state.

At issue is a request I made in April 2020 seeking three months of arrest data identified as releasable under California Government Code 6254(f)(1). The language of my request is taken directly from statute. The city at first provided only 30 days of information, citing an appeals court case in Los Angeles from 1993 brought by J. Ara Kusar, which said agencies were only required to release contemporaneous arrest information.

I argued that this caselaw was outdated and a more recent ruling contradicted it. The city released 30 more days of information, still short of fulfilling my request, so I opened this Open Government Commission complaint. The city released 30 more days and asked me to close the complaint, but I refused unless it changed its policy. I've submitted a complete record of our email exchange.

In its submission, the city stands by its position that it need not release more than 30 days of arrest data. It writes: "The Alameda Police Department's current policy is to only release 30 days of contemporaneous arrest records. This policy is generally consistent with policies from other California police agencies and judicial guidance. Moreover, this policy appropriately balances the public's right to information with the privacy rights of persons arrested and is reasonable in light of the police department's limited staffing resources."

However, this policy is not consistent with other area police departments. I submitted the same request to 12 other police departments in Alameda County at the same time. Only the city of Alameda denied my request.

In fact, the decision cited by the city relies on language that has been written out of the statute. At the time, the law specified that the "current address" of arrestees be released, but the legislature amended the statute in 1995 to remove that, leaving no indication that only contemporaneous records could be produced.

The city acknowledges that another case from 2015 contradicts that one, but argues it dealt with a different section of the statute. It is true, *Fredericks v. San Diego* deals with calls for service, not arrests. But in making its ruling the court analyzed the Kusar decision, which only dealt with

arrest records. The word “current” was removed from both parts of the statute, and the court determined that none of it had a time limitation.

And while the city would have you believe that it is trying to protect privacy rights, the Kusar decision does not discuss privacy rights at all. The city made that up.

The city has shown no regard for privacy in these proceedings. In filing its exhibits, the city put my personal email address, cellphone number and home address on a public agenda. As a journalist, in the last year I have covered organized crime and far right movements and I have received threats. I take effort to hide my address and the city could have put me in danger.

In fact, few of the city’s interactions with me appear to be in good faith. In phone calls, assistant city attorney Alan Cohen acknowledged to me that Fredericks likely did contradict the findings in Kusar and said that he was working on a new policy.

But Mr. Cohen’s commitment to creating a new policy evaporated as soon as I agreed to suspend this hearing. On May 18, Mr. Cohen wrote in an email, “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.” That’s the last I heard from him.

It’s become clear from the city’s response that it never had any intent of developing a new policy. In its filings for today’s hearing, the city doubled down on a position it previously acknowledged to be wrong.

The city is telling you that you should disregard my complaint because I received the records, but insists that it could deny another requestor. The city’s refusal to change its policy indicates it will thwart less savvy requestors from receiving what they are legally entitled to. The city’s own lawyers are needlessly exposing the city to liability.

While the state’s Constitution starts from an assumption of disclosure, the city of Alameda starts from a position of obstruction, where only those willing to fight for their rights will be granted them.

Relevant caselaw:

*****caselaw.findlaw.com/ca-court-of-appeal/1761103.html

*****casetext.com/case/fredericks-v-superior-court-of-san-diego-cnty



Scott Morris <scott.morris@gmail.com>

OGC Complaint and Best Practices for Disclosure of Police Logs10 messages

Alan Cohen <acohen@alamedacityattorney.org>

Mon, May 18, 2020 at 4:00 PM

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

Cc: Lara Weisiger <lweisiger@alamedaca.gov>, Lisa Cooper <lcooper@alamedacityattorney.org>

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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Scott Morris <scott.morris@gmail.com>

Mon, Jan 25, 2021 at 3:40 PM

To: Alan Cohen <acohen@alamedacityattorney.org>

Cc: Lara Weisiger <lweisiger@alamedaca.gov>, Lisa Cooper <lcooper@alamedacityattorney.org>

Bcc: rasheed@berkeley.edu

Alan,

It has come to my attention that the city considered this complaint "[Voluntarily suspended by requestor on May 18, 2020.](#)" It is clear from the attached correspondence that this is not what we agreed on, as you wrote on May 18 that I "agreed to put the OGC Complaint on hold for 30 to 60 days" while you developed a new policy. I never heard anything further on this. I find the city's disposition of this complaint dishonest.

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

[@oakmorr](#)
[scottmorris.news](#)

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org>

Mon, Jan 25, 2021 at 5:00 PM

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

Cc: Lara Weisiger <lweisiger@alamedaca.gov>, Lisa Cooper <lcooper@alamedacityattorney.org>

Happy to discuss. I'm out sick today but will call tomorrow

Sent from my iPhone

On Jan 25, 2021, at 3:41 PM, Scott Morris <scott.morris@gmail.com> wrote:

[Quoted text hidden]

Scott Morris <scott.morris@gmail.com>

Mon, Jan 25, 2021 at 5:11 PM

To: Alan Cohen <acohen@alamedacityattorney.org>

Cc: Lara Weisiger <lweisiger@alamedaca.gov>, Lisa Cooper <lcooper@alamedacityattorney.org>

Bcc: rasheed@berkeley.edu

Unless the city has adopted a policy that all arrest logs in the police department's possession are subject to disclosure no matter their age, I do not believe there is anything to discuss. I made clear in our conversations over the phone that absent that, I would not consider this request to be voluntarily withdrawn. I'd prefer any response in writing at this point.

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

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[scottmorris.news](#)

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Scott Morris <scott.morris@gmail.com>

Thu, Feb 25, 2021 at 12:21 PM

To: Alan Cohen <acohen@alamedacityattorney.org>

Cc: Lara Weisiger <lweisiger@alamedaca.gov>, Lisa Cooper <lcooper@alamedacityattorney.org>

It has come to my attention that the city still considers my complaint to be voluntarily suspended. I made it clear in my previous email that this is not the case and apparently my rights in this matter continue to be ignored. Let me be very

clear: I do not consider this to be suspended and I wish for my complaint to proceed as it would had Mr. Cohen not convinced me to suspend it under the pretense of promises he did not keep.

Thanks,

Scott

Scott Morris
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[Quoted text hidden]

Lara Weisiger <lweisiger@alamedaca.gov>

Thu, Feb 25, 2021 at 3:00 PM

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

Cc: Lisa Cooper <lcooper@alamedacityattorney.org>, Alan Cohen <acohen@alamedacityattorney.org>, Elizabeth Mackenzie <emackenzie@alamedacityattorney.org>

Hi Scott,

A hearing regarding your complaint will be added to the April 5, 2021 Open Government Commission meeting. The meeting is at 7:00 p.m. You are required to be present at the meeting (via Zoom). Can you please confirm that you can attend (via Zoom)?

Respectfully,

Lara

Lara Weisiger, City Clerk

City of Alameda

510-747-4800

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Scott Morris <scott.morris@gmail.com>

Thu, Feb 25, 2021 at 3:07 PM

To: Lara Weisiger <lweisiger@alamedaca.gov>

Cc: Lisa Cooper <lcooper@alamedacityattorney.org>, Alan Cohen <acohen@alamedacityattorney.org>, Elizabeth Mackenzie <emackenzie@alamedacityattorney.org>

Yes I will be there. Thank you.

Scott Morris
Writer/Reporter
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[Quoted text hidden]

Lara Weisiger <lweisiger@alamedaca.gov>

Thu, Feb 25, 2021 at 3:10 PM

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

4/1/2021

Gmail - OGC Complaint and Best Practices for Disclosure of Police Logs

Thank you for your response!

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Scott Morris <scott.morris@gmail.com>

Public records request: APD arrest info16 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 information is generally not subject to 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
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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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***** 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
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[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>
To: Alan Cohen <acohen@alamedacityattorney.org>
Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>

Mon, Apr 27, 2020 at 7:34 PM

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

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org>
To: Scott Morris <scott.morris@gmail.com>
Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>

Wed, Apr 29, 2020 at 5:24 PM

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

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scottmorris.news

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org>
To: Scott Morris <scott.morris@gmail.com>
Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>

Tue, May 12, 2020 at 12:45 PM

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,

[Quoted text hidden]

 **PRA_ArrLogs.pdf**
815K

Scott Morris <scott.morris@gmail.com>
To: Alan Cohen <acohen@alamedacityattorney.org>
Cc: City Clerk <CLERK@alamedaca.gov>, Lisa Cooper <lcooper@alamedaca.gov>

Tue, May 12, 2020 at 1:03 PM

Alan,

This response remains incomplete and your reasoning is based on an outdated decision from a court that has no authority here. I submitted the same request in every other jurisdiction in the county. None of them made the unreasonable arguments you've made here and nearly all have provided the requested records in full by now. I've submitted a complaint to the city's Open Government Commission.

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

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scottmorris.news

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org>

Wed, May 13, 2020 at 3:48 PM

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

Cc: Lisa Cooper <lcooper@alamedacityattorney.org>, LARA WEISIGER <LWEISIGER@alamedaca.gov>

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

City of Alameda

2263 Santa Clara Avenue, Room #280

Alameda, CA 94501

(510) 747-4755


acohen@alamedacityattorney.org

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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,

[Quoted text hidden]

 **arrests 0201 - 03-28[1].pdf**
2875K

Scott Morris <scott.morris@gmail.com> Wed, May 13, 2020 at 3:54 PM
To: Alan Cohen <acohen@alamedacityattorney.org>
Cc: Lisa Cooper <lcooper@alamedacityattorney.org>, LARA WEISIGER <LWEISIGER@alamedaca.gov>

Thanks for releasing the records. But as I indicated in our phone conversation, if the city wants to avoid administrative entanglements, it should follow the letter of the statute and not go looking for decisions in appellate courts with no authority here to deny access to public documents, as all other cities in the region have done without making me get into an argument over what is ultimately a really simple request.

Scott

Scott Morris
Writer/Reporter
(510) 871-5114

@oakmorr@scottmorris.news

[Quoted text hidden]

Alan Cohen <acohen@alamedacityattorney.org> Wed, May 13, 2020 at 4:54 PM
To: Scott Morris <scott.morris@gmail.com>

Thanks for the call. Over the next few days, I'll see if I can come up with a policy we all can live with. I appreciate your discussing this matter with me.

Alan M. Cohen

Assistant City Attorney

City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
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acohen@alamedacityattorney.org

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From: Scott Morris <scott.morris@gmail.com>
Date: Wednesday, May 13, 2020 at 3:54 PM
To: Alan Cohen <acohen@alamedacityattorney.org>
Cc: Lisa Cooper <lcooper@alamedacityattorney.org>, Lara Weisiger <LWEISIGER@alamedaca.gov>
Subject: Re: Public records request: APD arrest info

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