



Probity Investigations

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CITY OF OAKLAND
PUBLIC WORKS AGENCY
ADMINISTRATION

2016 JUL 11 AM 8:40

June 29, 2016

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Oakland Police Department
455 7th Street
Oakland, CA 94607

City of Oakland – Public Works
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

Alameda County Public Works Agency
399 Elmhurst Street
Hayward, CA 94544

To you and each of you:

California Public Records Act Request

I am requesting any and all video captured by your agency at the intersection of Alcatraz Avenue and Telegraph Avenue in the City of Oakland, Alameda County on June 18, 2016 between the hours of 6:30 p.m. and 7:30 p.m. The requested records are requested in digital format of a type which is ordinary, customary and commonly available to the average private person. I understand that copy fees are allowable under the law and I am prepared to remit such fees upon notice to me that the requested materials are ready for delivery.

In the event that you intend to object to release of these records because you believe that the request is somehow related to litigation, unless the records requested were expressly prepared for counsel, attorney-client privilege does not apply. Additionally, the fact that litigation exists or might come into play is fundamentally irrelevant to the California Public Records Act. See *City of Hemet v. Superior Court* (Press-Enterprise Co.) (1995) 37 Cal.App.4th 1411, 44 Cal.Rptr.2d 532.

Time for Compliance & Requirement of Written Justification for Refusal
Under Section 6253 of the Government Code you have ten (10) days to comply with this request.

If you believe that I am not entitled to the records I am requesting, you must justify your refusal within (ten) 10 days in writing under Section 6255 of the Government Code. You may only refuse to give me these records if there is an express law prohibiting you from giving them to me. In the case of California State University, Fresno Assn., Inc. v. Superior Court (McClatchy Co.) (2001) 90 Cal.App.4th 810, 108 Cal.Rptr.2d 870 [No. F037383, Fifth Dist. Jul. 16, 2001.] The court held that "The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality. [Citations.] The purpose of the requesting party in seeking disclosure cannot be considered.... It is also irrelevant that the requesting party is a newspaper or other form of media, because it is well established that the media has no greater right of access to public records than the general public...."

Demand to Maintain Evidence

This letter constitutes a formal demand to maintain evidence as it currently exists. If you destroy, lose, misplace, damage or otherwise make these items unavailable prior to the time that a court order or subpoena duces tecum can be obtained, you may be subject to a variety of sanctions (see Willard vs. Caterpillar, Inc. [1995] 40 Cal.App.4th 892. Williams v. Russ (2008) 167 Cal.App.4th 1215 held that:
Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation. (Willard v. Caterpillar, Inc. (1995) 40 Cal.App.4th 892, 907, overruled on other grounds in Cedars-Sinai Medical Center v. Superior Court (1998) 18 Cal.4th 1, 18, fn. 4 (Cedars-Sinai).) Such conduct is condemned because it "can destroy fairness and justice, for it increases the risk of an erroneous decision on the merits of the underlying cause of action. Destroying evidence can also increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both." (Cedars-Sinai, supra, at p. 8.) While there is no tort cause of action for the intentional destruction of evidence after litigation has commenced, it is a misuse of the discovery process that is subject to a broad range of punishment, including monetary, issue, evidentiary, and terminating sanctions. (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subds. (a)-(d); Cedars-Sinai, at p. 12.) A terminating sanction is appropriate in the first instance without a violation of prior court orders in egregious cases of intentional spoliation of evidence. (R.S. Creative, Inc. v. Creative Cotton, Ltd. (1999) 75 Cal.App.4th 486, 497.)

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Such behavior may also be criminal, under California Penal Code Section 135, which states:

Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

Legal Right to Bring Suit to Enforce Right to Access

If you fail to comply with this request, I have a legal right to bring suit to force you to comply under Section 6259 of the Government Code and if I prevail, it is mandatory that the court award me reasonable attorney fees and costs.

Sincerely,


Stan Morgan

CC: 16-249slg