



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF

DAVID O. LIVINGSTON

SHERIFF - CORONER

VIA EMAIL

September 19, 2019

Aaron Swartz Day Police Surveillance Project
Via MuckRock.com
79403-90431255@requests.muckrock.com

Re: Your Public Records Act Requests

To Whom It May Concern:

On August 26, 2019, you simultaneously presented to the Office of the Sheriff, Contra Costa County (CA) ten (10) separate, unrelated requests for records pursuant to the California Public Records Act (Gov't. Code § 6250 *et seq.*). In an email sent to you on September 5, 2019, we advised you that we expected to respond to your requests, pursuant to an extension, on or before September 19, 2019.

These ten PRA requests concern: (1) Agreements with the Federal government; (2) Body Worn Cameras; (3) Cell phone interception; (4) Facial recognition; (5) FLIR Cameras; (6) Gunshot detection; (7) License plate readers; (8) Predictive algorithmic software; (9) Social Media Monitoring; and (10) Unmanned Aerial Vehicles. In each of these ten requests, the records you seek are for the period January 1, 2015 to the date of your letter (August 26, 2019), a period of over 4½ years.

This letter is a consolidated response to your ten requests. This original and copies are being sent to each of your ten separate MuckRock email addresses to assist MuckRock in tracking responses.

Your ten requests are copied below so that the scope and extent of your request may be understood and appreciated. *Italicized* language is quoted

exactly from your requests. Request titling is added for ease of reference, as is the paragraph numbering.

Our response to each request is set forth separately immediately below each request. As detailed below, we either (a) have no records relating to the request; (b) have records that we will release; (c) have records that are subject to a statutory exemption, and accordingly will not be released; or (d) the applicable request would require a search that is beyond the reasonability standards of the Act and accordingly implicates the “undue burden” exemption implicit in Gov’t. Code §6255.

General Objection 1. With respect to any potential or future agreements that are presently being negotiated, any and all in-progress documents are exempt from release under *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, wherein the California Supreme Court concluded that that public disclosure of contractual proposals properly could await conclusion of the negotiation process, and determined that during the negotiation process records pertaining to matters under consideration were exempt under Government Code section 6255 from the disclosure requirements of the Act. Where a proposal or proposals are currently under negotiation, we decline to release such records at this time.

General Objection 2. Should any record sought by these requests, in the event such record exists, implicate security procedures of the Office of the Sheriff, or if its release would otherwise compromise sensitive law enforcement information or endanger officer safety, such records will be withheld from release pursuant to the “security files” exemption found in Gov’t. Code 6254(f) or pursuant to Gov’t. Code 6255 where we determine “that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

General Objection 3. Your requests are numerous and would entail conducting document searches beyond the “reasonableness” standards of the Public Records Act. This objection is set forth in full at the conclusion of our responses. Where, however, it was reasonable to locate a responsive, non-exempt document, we are releasing such documents herewith.

General Direction. With respect to all requests seeking records relating to present or past litigation, you are advised to contact the Contra Costa County Counsel's Office, which maintains records relating to county litigation. The address to which you may write is: Office of the County Counsel, Contra Costa County, 651 Pine Street, 12th Fl., Martinez, CA 94553.

This response includes contracts pertaining to, and the personnel, facilities, and equipment of, the Office of the Sheriff and/or its Contract Cities, or both, as may be applicable to each separate response set forth below.

(1) Agreements with the Federal government

- 1. Please provide copies of all executed agreements with the following federal law enforcement agencies, if any: Homeland Security Investigations, Federal Bureau of Investigation, US Marshalls, Drug Enforcement Administration, Alcohol, Tobacco and Firearms, Joint Terrorism Task Force, Northern California Regional Intelligence Center (NCRIC), San Diego Law Enforcement Coordination Center, Orange County Intelligence Assessment Center, Los Angeles Joint Regional Intelligence Center, and Central California Intelligence Center.*
- 2. Any documents or correspondence during the period encompassing this request regarding possible or planned agreements with the aforementioned federal law enforcement agencies.*
- 3. Any existing or proposed internal protocols, training documents, data-sharing agreements, data storage procedures and prohibited activities governing such agreements or joint activities.*
- 4. Any current or past litigation involving or referencing this department or agency involving joint activities with the above-mentioned federal law enforcement agencies.*

Response to Request 1.

We have located, and are providing to you herewith, the following documents that are responsive to your request:

1. DCESP (marijuana eradication/suppression) – signed in 2019. We have redacted the county bank account number.
2. DCESP (similar MOU) – signed in 2018. We have redacted the county bank account number.
3. US Marshalls – signed in 2011.
4. US Secret Service – signed in 2015.
5. FBI CCE – signed in 2016.
6. FBI modification for one-time equipment purchases – signed in 2017.
7. FBI Safe Streets – signed in 2006.

We are unable to search on any reasonable basis for “*Any documents or correspondence during the period encompassing this request regarding possible or planned agreements with the aforementioned federal law enforcement agencies.*” To conduct such a search would be nearly impossible, and the effort to do so would constitute an “undue burden” as is discussed below.

(2) Body Worn Cameras

1. *Number, if any, of Body Worn Cameras owned by this department or agency, including the manufacturer and whether a data storage package has been provided by the manufacturer.*
2. *Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Body Worn Cameras.*
3. *Any existing or proposed usage policies regarding the use of Body Worn Cameras including protocols, training documents, data storage procedures and prohibited activities.*
4. *Any current or past litigation involving or referencing this department or agency involving the use of Body Worn Cameras.*

Response to Request 2.

The Office of the Sheriff and its Contract Cities have a total of 52 Body-Worn

Cameras. The Body Worn Cameras used by the Danville Police Department are manufactured by AXON and utilize its Evidence.com platform. The Lafayette Police Department uses Body-Worn Cameras manufactured by WatchGuard Video. We do not use a manufacturer-provided “*data storage package*” for this camera system.

We are unable to search on any reasonable basis for “*Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Body Worn Cameras.*” To conduct such a search would be nearly impossible, and the effort to do so would constitute an “undue burden” as is discussed below.

We enclose a copy of our Policy 1.06.82 relating to the use of Body Worn Cameras.

(3) Cell phone interception

1. *Number, if any, of IMSI-catcher or cell phone interception devices (commonly called stingrays or hailstorms) owned by this department or agency.*
2. *Number, if any, of IMSI-catcher or cell phone interception devices (commonly called stingrays or hailstorms) available for use by this department or agency via collaborative agreements that were utilized within the period encompassing this request. Please provide the name of the department or agency that made IMSI-catcher devices available to this department or agency for use.*
3. *Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of an IMSI-catcher device.*
4. *Any existing or proposed usage policies regarding the use of cell phone interception technology including protocols, training documents and data storage procedures.*
5. *Any current or past litigation involving or referencing this department or agency involving the use of cell phone interception technology.*

Response to Request 3.

We have located no records that are responsive to this request.

(4) Facial recognition

- 1. Number, if any, of Facial Recognition software or Facial Recognition-enabled equipment in place with this department or agency. Please specify if software has been purchased or if services are performed by outside contractors for the department or agency. Please include pilot or testing programs within the scope of this request*
- 2. Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Facial Recognition software packages, Facial Recognition-enabled equipment or service agreements.*
- 3. Any existing or proposed usage policies regarding the use of Facial Recognition software or Facial Recognition-enabled equipment, including protocols, training documents, data storage procedures and prohibited activities.*
- 4. Any current or past litigation involving or referencing this department or agency involving the use of Facial Recognition software or Facial Recognition-enabled equipment.*

Response to Request 4.

We have located no records that are responsive to this request.

(5) FLIR Cameras

- 1. Number, if any, of Thermal Cameras (FLIR) owned by this department or agency. Please specify if the equipment is hand-held, pole-mounted or in used in conjunction with aircraft.*
- 2. Number, if any, of Thermal Cameras (FLIR) available for use by this department or agency via collaborative agreements that were utilized within the period encompassing this request. Please*

provide the name of the department or agency that made FLIR devices available to this department or agency for use.

- 3. Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Thermal Cameras or FLIRS.*
- 4. Any existing or proposed usage policies regarding the use of Thermal Cameras or FLIRS including protocols, training documents, data storage procedures and prohibited activities.*
- 5. Any current or past litigation involving or referencing this department or agency involving the use of Thermal Cameras or FLIRS.*

Response to Request 5.

We have two FLIR devices that are mounted on our two helicopters and three FLIR devices on Marine Patrol vessels. Additionally, we have six Unmanned Aerial Vehicles with FLIR technology. We have located no other non-exempt responsive records.

We are providing the above information though we have located no records that show the “*Number, if any, of Thermal Cameras (FLIR) owned by this department or agency,*” or that are otherwise responsive to your request. We have no policies regarding the use of Thermal Cameras, nor do we have any memoranda of understanding covering the use of Thermal Cameras.

(6) Gunshot detection

- 1. Number, if any, of Gunshot Detection Microphones owned or in use by this department or agency.*
- 2. Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Gunshot Detection Microphones.*
- 3. Any existing or proposed usage policies regarding the use of Gunshot Detection Microphones including protocols, training documents, contractual agreements and data storage arrangements*

4. *Any current or past litigation involving or referencing this department or agency involving the use of Gunshot Detection Microphones.*

Response to Request 6.

We have located no records that are responsive to your request.

(7) License plate readers

1. *Number, if any, of License Plate Readers owned by this department or agency, including the manufacturer and whether a data storage package has been provided by the manufacturer.*
2. *Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of License Plate Readers.*
3. *Any existing or proposed usage policies regarding the use of License Plate Readers, including protocols, training documents, data storage procedures and prohibited activities.*
4. *Any current or past litigation involving or referencing this department or agency involving the use of License Plate Readers*

Response to Request 7.

We utilize ALPR devices on some vehicles. We have located no records showing the number of “*License Plate Readers owned by this department or agency.*”

We are unable to search on any reasonable basis for “*Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of License Plate Readers.*” To conduct such a search would be nearly impossible, and the effort to do so would constitute an “undue burden” as is discussed below.

We enclose a copy of our Policy 1.07.08 relating to the use of ALPR devices.

(8) Predictive algorithmic software

- 1. Number, if any, of Predictive Algorithmic [sic, throughout] software packages or service agreements designed to anticipate criminal activities [sic] in place with this department or agency. Please specify if software has been purchased or if services are performed by outside contractors for the department or agency.*
- 2. Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Predictive Algorithmic software packages or service agreements.*
- 3. Any existing or proposed usage policies regarding the use of Predictive Algorithmic software packages or service agreements, including protocols, training documents, data storage procedures and prohibited activities.*
- 4. Any current or past litigation involving or referencing this department or agency involving the use of Predictive Algorithmic Software Packages or Service Contractors.*

Response to Request 8.

We have located no records that are responsive to this request.

(9) Social Media Monitoring

- 1. Number, if any, of Social Media Monitoring software packages or service agreements in place with this department or agency. Please specify if software has been purchased or if services are performed by outside contractors for the department or agency.*
- 2. Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of Social Media Monitoring software packages or service agreements.*
- 3. Any existing or proposed usage policies regarding the use of Social Media Monitoring software packages or service agreements, including protocols, training documents, data storage procedures and prohibited activities.*
- 4. Any current or past litigation involving or referencing this department or agency involving the use of Social Media Monitoring Software Packages or Service Contractors.*

Response to Request 9.

We have located no records that are responsive to this request.

(10) Unmanned Aerial Vehicles

1. *Number, if any, of Unmanned Aerial [sic, throughout] Vehicles (UAV's or drones) owned by this department or agency.*
2. *Number, if any, of Unmanned Aerial Vehicles (UAV's or drones) available for use by this department or agency via collaborative agreements that were utilized within the period encompassing this request. Please provide the name of the department or agency that made the Unmanned Aerial Vehicle available to this department or agency for use.*
3. *Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of an Unmanned Aerial Vehicle.*
4. *Any existing or proposed usage policies regarding the use of Unmanned Aerial Vehicles technology including protocols, training documents, data storage procedures and prohibited activities.*
5. *Any current or past litigation involving or referencing this department or agency involving the use of Unmanned Aerial Vehicles.*

Response to Request 10.

Our office has ten Unmanned Aerial Vehicles (UAVs). We have located no records showing the number of UAVs “*available for use by this department or agency via collaborative agreements.*”

We are unable to search on any reasonable basis for “*Any documents or correspondence during the period encompassing this request regarding possible or planned acquisition of an Unmanned Aerial [sic] Vehicle.*” To conduct such a search would be nearly impossible, and the effort to do so would constitute an “undue burden” as is discussed below.

We enclose a copy of our Policy 1.06.84 relating to the use of unmanned aerial vehicle devices.

You have presented a huge listing, demanding 43 separate requests in 10 categories of records, all requiring that we locate, review, and release an enormous array of documents. Of course, several of the requested records are readily accessible and will be provided to you; however some of your requests raise significant and difficult compliance issues and implicate exemptions from release per the provisions of California Government Code §§ 6254 and 6255, including exemptions per the deliberative and mental process privileges, California Constitution Article 1, Section 1, California Civil Code § 1798.1, and 8 CFR § 236.6, per the provisions of the California Public Records Act and other law.

Thus, we advise you that several of your requests are for records which, should they exist, cannot be located with a reasonable search, and the effort to locate such documents would constitute an undue burden. Some of your requests are subject to specific exemptions under the Public Records Act and other laws or regulations.

With respect to those requests which we have advised we are not fulfilling due to an undue burden, we must advise that our objection is founded on §6255 of the Government Code as that section has repeatedly been interpreted by the judiciary. In the case of *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 757, 761, 110 Cal. Rptr. 257 (1973), the court imposed a judicially created "reasonableness" standard to restrict access to public records where the request was found to be voluminous. In a similar vein, the Court in *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 452-53, 651 P.2d 822, 186 Cal. Rptr. 235 (1982), held that where a public agency can substantiate that a voluminous request, involving extensive segregation of exempt from non-exempt materials, would impose an unwarranted burden on the agency's resources, the public interest in nondisclosure outweighs the public interest in disclosure. *See also Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 166, 78 Cal. Rptr. 847 (1998) ("A clearly framed request which requires an agency to search an enormous volume of data for a 'needle in the haystack' or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome [citations omitted]"). In a more recent decision, *Fredericks v. Superior Court (San Diego)*, 233

Cal.App.4th 209 (2015), the Court noted that,

“The basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*California First Amendment Coalition, supra*, 67 Cal.App.4th 159, 165–166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie, supra*, 26 Cal.4th at p. 1075.)”

The Court went on to say that,

“Section 6255, subdivision (a), expressly provides that an agency can justify withholding any record, even if no express statutory exemption from production applies, if the agency can show ‘that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.’

* * * * *

“Section 6255 ‘imposes on the California courts a duty to weigh the benefits and costs of disclosure in each particular case.’ [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term ‘public interest’ ‘encompasses public concern with the cost and efficiency of government.’ [Citation.] We may thus take it as established that the Act includes a policy favoring the efficiency of government and limitation of its costs. “

Further, the *Fredericks* Court determined, in a situation similar to your request,

“ ... that the Department would have to undertake a complicated, time-consuming review, redaction, and production process to arrange for the release of nonexempt information, as currently sought by *Fredericks*. ... Even though the plain language of section 6254, subdivision (f)(2) imposes no time limitation on disclosure of information sought, not all such requested disclosures must be granted if the trial court is

appropriately presented with relevant competing public interest factors, which may properly include considerations about a fiscal and workload burden being imposed upon a public agency by a particular request. (§6255, subd. (a).)”

Additionally, we object to your request on the ground of substantial financial burden. In the case of *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, the court stated, “The record before us reflects that to generate, copy and disclose the requested information would impose a substantial financial burden on the sheriff which he does not have the budget authority to incur. Yet the Legislature (§ 6257) has provided only for recovery of duplication costs by the law enforcement agency involved. This is a restriction which is both reasonable and appropriate where the mandatory disclosure is limited to current records of contemporaneous activity, but totally unreasonable and inappropriate where both generation and compilation of information from historical archives is required” (at 601).

We have certainly endeavored to provide you with non-exempt documentation that appeared entirely responsive to your several inquiries and could be readily located in a reasonable search. However, it is possible that additional documents, not found in the search conducted to respond to your request, may exist. We do not waive such rights as we have to exclude such documents from disclosure inasmuch as we have not reviewed them and they may be exempt under a variety of legal exemptions, including those previously asserted in this letter, and may additionally be:

(1) Exempt from disclosure based on the deliberative process privilege and mental processes privilege (Gov. Code, § 6255; *The Regents of the University of California v. Sup. Ct.* (1999) 20 Cal.4th 509 (superseded on other grounds); *City of Los Angeles v. Sup. Ct.* (1985) 170 Cal.App.3d 744; *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383; *City of Santa Cruz v. Sup. Ct.* (1995); 40 Cal.App.4th 1146; *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296);

(2) Exempt from disclosure as preliminary notes, drafts, and memoranda (Gov. Code, § 6254(a); *Sander v. State Bar of California* (2013) 58 Cal.4th 300);

- (3) Exempt from disclosure based on pending claims or litigation (Gov. Code, § 6254 (b));
- (4) Exempt from disclosure as investigative and intelligence information and security procedures (Gov. Code, § 6254(f));
- (5) Exempt from disclosure based on the attorney work-product doctrine and/or the attorney client privilege (Gov. Code, § 6254 (k))
- (6) Exempt from disclosure based on the official information privilege (Cal. Evid. Code §1040 and Gov. Code, § 6254 (k); *City Council of Santa Monica v. Sup. Ct.* (1962) 204 Cal.App.2d 68);
- (7) Exempt from disclosure in the interest of the public (Gov. Code, § 6255); and/or
- (8) Are not “public records” within the meaning of the PRA. (*See, California State University, Fresno Assn., Inc. v. Sup. Ct.* (2001) 90 Cal.App.4th 810.

I hope you will appreciate that you presented us with a huge Public Records Act request and that we have responded meaningfully and appropriately.

This fulfills your Public Records Act request.

Sincerely,

DAVID O. LIVINGSTON, Sheriff – Coroner



Dennis S. Kahane
Special Assistant to the Sheriff

cc: 79393-65328667@requests.muckrock.com
79411-45530924@requests.muckrock.com
79397-33459409@requests.muckrock.com
79399-84916233@requests.muckrock.com

79407-45422334@requests.muckrock.com

79401-03468615@requests.muckrock.com

79405-60358504@requests.muckrock.com

79409-53701674@requests.muckrock.com

79395-63980822@requests.muckrock.com