



November 7, 2011

*By electronic and United States mail*

Sergeant Christopher Bolton  
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Oakland Police Department  
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Re: Public Records Request 7124: Oakland Police Department Conduct on October 25, 2011 in Connection with Occupy Oakland

Dear Sergeant Bolton,

We are in receipt of your preliminary response dated November 4, 2011 to our Public Records Act request. There are four matters we wish to address.

First, you asserted that our request numbers 4, 5, 6, 7, 6(b), 9, 10, 12, 13, 14, 15 and 16 seek records that are exempt from release pursuant to Government Code Section 6254(f) because they pertain to an open and on-going investigation. On the contrary, Section 6254(f) is inapplicable and the records should be released at once.

Section 6254(f) exempts only “records of investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred.” *Haynie v. Superior Court*, 26 Cal.4th 1061, 1071 (2001). Here, by contrast, the records sought were prepared not pursuant to an investigation undertaken for the purpose of determining whether a violation of law occurred, but were required to be prepared pursuant to the Department’s Crowd Control Policy. *See generally* Section X-B (“OPD officers involved in demonstrations or crowd events shall prepare reports”); *compare also, e.g.*, Request 4 (records identifying the name of individual giving dispersal order and date and time of each order given), *with* Crowd Control Policy, Section V-G-4 (“The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each other was given is recorded.”). The use of force records sought are thus akin to the report on a throat-slashing incident involving a county jail inmate prepared by a Sheriff’s office at issue in *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal.App.3d 893 (1984). The *Register Division* court found Section

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6254(f) inapplicable to the report because it had been prepared “to discover the facts upon which to determine the County’s civil liability stemming from the incident,” and *not* for “correctional, law enforcement or licensing purposes.” *Id.* at 903-04 (internal quotation marks omitted). Because the records we seek were prepared pursuant to routine OPD reporting procedures and not for “law enforcement purposes” within the meaning of Section 6254(f), they must be disclosed.

In any event, even if the records were exempt under Section 6254(f), the statute requires OPD to “make public ... information” pertaining to “the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.” Gov. Code §6254(f)(2). To the extent OPD intends to withhold records responsive to our requests, OPD is nevertheless obligated to provide us with *information* about the “nature of [its] response to” the October 25, 2011 incident, including “the factual circumstances surrounding the ... incident, and a general description of any injuries, property, or weapons involved.” *Id.* This obligation plainly extends to any weapons used by OPD and the other participating law enforcement agencies. Thus, OPD has a statutory obligation to provide information responsive to our requests 4, 5, 6, 7, 6(b), 9, 10, 12, 13, 14, 15 and 16. We would of course be willing to accept responsive records in lieu of responsive information, to reduce the administrative burden on OPD of extracting information from the records.

Second, in response to item 7(b) seeking records reflecting the number of medical personnel on site during the October 25, 2011 enforcement actions, you stated that the OPD “does not employ medical personnel or maintain rosters of outside agency or company assignments.” OPD’s Crowd Control Policy, however, expressly requires that “[i]f chemical agents are contemplated in crowd situations, OPD shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).” Crowd Control Policy, Section V-H-4-f. If it is OPD’s contention that it has no records responsive to item 7(b), we will assume that OPD failed to ensure, as required by its Crowd Control Policy, that medical personnel were on its prior to its use of chemical agents.

Third, your November 4, 2011 response did not refer to items 11, 17, and 18 in our request. Item 11 sought information about arrestees and is subject to disclosure pursuant to, *inter alia*, Government Code Section 6254(f)(1). Items 17 and 18 were contained in a supplemental

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email to Supervising Deputy City Attorney/Police Counsel Rocio Fierro and forwarded to OPD by Open Government Coordinator Arlette Flores-Medina. For your convenience, I am attaching to this letter a copy of the email exchange containing Items 17 and 18. To the extent you intend to invoke Section 6254(f)'s exemption for law enforcement records for items 17 and 18, we refer you to our discussion above of why that exemption is inapplicable and OPD must at a minimum provide information responsive to these items. We look forward to your prompt response as to items 11, 17, and 18.

Finally, we understand that your November 4, 2011 was not a "completed or all inclusive response." Pursuant to Government Code Section 6253(c), please provide the estimated date and time when the records will be made available.

Thank you for your prompt attention to this matter.

Sincerely,



Linda Lye  
Staff Attorney  
ACLU of Northern California

Also on behalf of

San Francisco Bay Area Chapter of the  
National Lawyers Guild

Enclosure

cc: Rocio Fierro, City Attorney's Office (via email only: [RFierro@oaklandcityattorney.org](mailto:RFierro@oaklandcityattorney.org))  
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