



November 3, 2011

Via email, United States mail, and facsimile

Interim Chief of Police Howard Jordan
Oakland Police Department
455 7th Street
Oakland, CA 94607
Email: ocop@oaklandnet.com and HJordan@oaklandnet.com
Fax: (510) 238-2251

Re: Conduct on November 2, 2011 and November 3, 2011 in connection with Occupy Oakland

Dear Chief Jordan:

The American Civil Liberties Union of Northern California and the San Francisco Bay Area Chapter of the National Lawyers Guild continue to have concerns about the conduct of the Oakland Police Department in connection with its response to Occupy Oakland. We seek information regarding its use of force during the enforcement action on the day of November 2, 2011 and morning of November 3, 2011 (“enforcement action”).

We request that you immediately release the following documents that would further the public’s understanding of recent events. This request is made pursuant to the California Public Records Act (PRA), the Oakland Sunshine Ordinance, and Article I § 3(b) of the California Constitution.¹

In particular, we seek the following records:

- 1) Policies, procedures, guidance, memoranda or any other record relating to any decision not to release individuals arrested on misdemeanor charges, including but not limited to, the forms documenting an articulable objective basis to believe that each individual arrested and not cited out “would continue the same illegal activity for which they were arrested.” *See* Crowd Control Policy, VIII-E.

¹ California Public Records Act (Gov’t. Code § 6250 *et seq.*); Oakland Municipal Code Chapter 2.20; *see* Cal. Const. Art. I § 3(b).

- 2) Records identifying the Incident Commander for the enforcement action.²
- 3) For each dispersal order that was given during the enforcement action, records identifying “the name of individual making the dispersal order and the date/time each order was given,” as required to be documented pursuant to Crowd Control Policy, Section VI-G-4.
- 4) Records reflecting the supervisor(s) or command officer(s) who approved the use of batons for crowd control during the enforcement action and the basis for such use.
- 5) Records reflecting the nature and amount of chemical agent used the enforcement action.
- 6) Records identifying the supervisor(s) or command officer(s) who approved use of chemical agent during the enforcement action and the basis for such use.
- 6) Records identifying the supervisor(s) or command officer(s) who approved use of sound and light devices during the enforcement action and the basis for such use.
- 7) Records reflecting number of medical personnel on site during the enforcement action.
- 8) A list of all participating law enforcement agencies, and all guidelines, memoranda of understanding or agreement, policies, or other documents setting forth the relationship between the Department and other law enforcement agencies participating in yesterday’s events, including but not limited to any consent for outside law enforcement agencies to exercise the powers of peace officers in the City of Oakland.
- 9) All records relating to the use of Direct Fired Special Impact Less-Lethal Munitions (SIM) used in either of these operations, including but not limited to rubber projectiles and “bean bags,” including but not limited to written reports of such use; video recordings of such use; records describing the manner in which Direct Fired SIM were used, identifying the supervisor who directed the use of Direct Fired SIM, the officers who used Direct Fired SIM, and setting forth the basis for all decisions to use Direct Fired SIM.

² As the California Attorney General has made clear, the confidentiality laws that protect peace-officer personnel records do not authorize a police department to withhold the names of officers involved in such incidents. California Attorney General Opinion No. 07-208 at 1, 91 Ops. Cal. Atty. Gen. 11 (2008) (“In response to a request made under the California Public Records Act for the names of peace officers involved in a critical incident, , a law enforcement agency must disclose those names unless, on the facts of the particular case, the public interest served by not disclosing the names clearly outweighs the public interest served by disclosing the names.”).

- 10) All records documenting the use of any other less-lethal weapons or of firearms in connection during the enforcement action.
- 11) With respect to all persons arrested in connection with either of these events, the full name every individual arrested, 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.
- 12) All use of force logs concerning the enforcement action, whether prepared by or pertaining to members of the OPD or other participating law enforcement agencies.
- 13) All incident reports, crime reports, mass arrest reports, after action reports, injury reports, supplemental reports, property damage reports, or other reports concerning the enforcement action.
- 14) The operations plan and any other planning documents for the enforcement action.
- 15) Any and all records of police communications during and pertaining to the enforcement action. This request includes, but is not limited to, all computer records, including records of computer communications as well as records of computer assisted dispatch computer entries; complete audiotapes of all radio communications and dispatch communications on all pertinent channels; all communications reports, dispatch logs and any and all other communications tapes and documents of any kind for the above time period; and records of police email and cellular telephone communications.
- 16) All individual officers', operations center and command center logs, other logs, notes, or chronologies prepared during or after the enforcement action.

We therefore ask that you release to us the documents requested above without delay, and in any event within the 10-day deadline mandated by the PRA and, to the extent it applies, the three-day deadline imposed by the Sunshine Ordinance. If portions of the documents are exempt from disclosure, please provide the non-exempt portions.³ If the documents are available in electronic format please email them to me at llye@aclunc.org and to my assistant Nishan Bhaumik at nbhaumik@aclunc.org.

³ Gov't. Code § 6253(a); Sunshine Ord. § 2.20.240.

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The ACLU and NLG are non-profit organizations dedicated to public service. We therefore request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs.⁴ However, should you be unable to do so, the ACLU will reimburse your agency for the direct costs of copying these records plus postage.⁵ Please copy and send them as soon as possible, and we will promptly pay the required costs. If copying will result in any delays in release of the information, please let us know the soonest time that we can come and examine the records.⁶

If you believe that the records are in fact exempt from disclosure, please provide a written response setting forth the legal authority on which you rely in failing to disclose each document.⁷ In addition, please provide us with any documents that support this position, again under the PRA. If we can provide any clarification that will help comply with this request please contact us. 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

cc: Public Records Request Coordinator (opdpublicrecordsrequest@oaklandnet.com)
Rocio Fierro, Oakland City Attorney's Office (RFierro@oaklandcityattorney.org)
Arlette Flores-Medina, Oakland City Attorney's Office
(AFlores@oaklandcityattorney.org)

⁴ Gov't. Code § 6253.9.

⁵ Gov't. Code § 6253(b).

⁶ Gov't. Code § 6253(a) (records must be made available when office is open).

⁷ Sunshine Ord. § 2.20.250.