



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Edgardo Garcia

SUBJECT: PUBLIC RECORDS APPEAL -
ANDREW HICKS

DATE: January 15, 2020

Approved

D. D. S. Y. L.

Date

1/17/2020

RECOMMENDATION

Deny the appeal from Andrew Hicks regarding the City's response to his request for public records seeking records related to an investigation, specifically body worn camera footage, by the San Jose Police Department.

BACKGROUND

Mr. Hicks represents himself, as a party to the referenced event #19-045-0879.

A request (Attachment A), dated October 7, 2019, was received by the Internal Affairs Unit and forwarded to the Operational Support Services Division, who provided the request to the Body Worn Camera Unit. This request sought "body cam footage" in connection to the referenced incident.

After conferring with the City Attorney's Office, a denial notification (Attachment B) dated October 16, 2019, was provided via email to Mr. Hicks by the Body Worn Camera Unit. This email informed the requestor that the request for body camera footage had been denied by the Body Worn Camera Unit.

On October 24, 2019, Mr. Hicks requested an explanation as to why his request was denied (Attachment C).

On October 25, 2019, the Body Worn Camera Unit provided a further explanation as to why the request was denied (Attachment C).

On November 1, 2019, Mr. Hicks submitted an appeal (Attachment D), dated October 31, 2019, to the Body Worn Camera Unit regarding the denial of his request for body camera footage related to the incident. The same appeal was received by the Office of the City Manager and Office of the City Clerk.

January 15, 2020

Subject: Public Records Appeal – Andrew Hicks

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ANALYSIS

Mr. Hicks requested body worn camera footage pertaining to an investigation conducted by the San Jose Police Department.

The California Public Records Act generally exempts most records of law enforcement investigative records from public disclosure under Government Code Section 6254(f). Specifically, this Section defines the circumstances in which a party would be entitled to the requested body worn camera footage. The incident does not meet the definition of a crime and therefore, there was no crime victim or other entitled party. The incident does not meet the circumstances in which Mr. Hicks would be entitled to the investigative records.

The number of legally mandated Public Records Act responses that the Department must satisfy dramatically increased with the passage of Senate Bill 1421 and we are therefore reticent to deviate from the letter of the law when considering waiver requests. It is also important to note, that if the City were to waive this exemption under Government Code Section 6254(f) and provide these investigative records without a subpoena or court order to a person for whom the Public Records Act does not require disclosure be made, the City would then have to provide these specific investigative records to any member of the public that requests them.

CONCLUSION

Based on the foregoing, staff made the decision to withhold the requested records. Staff recommends that the decision to withhold the requested records be upheld by the Rules and Open Government Committee.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

/s/
EDGARDO GARCIA
Chief of Police

For questions, please contact Lt. Paul Cook, Research & Development Unit, at (408) 277-5200.

Attachments

Fw: Update?

Morales, Daniel R (PD)

Tue 10/8/2019 10:21 AM

To: Rocha, Cynthia <Cynthia.Rocha@sanjoseca.gov>



Officer Daniel Morales #4315

San Jose Police Department

Office of the Chief

Internal Affairs Unit

777 N. 1st Street, Suite #666

San Jose, CA 95112

(408) 277-4094

From: Andrew Hicks <[REDACTED]>

Sent: Monday, October 7, 2019 4:57 PM

To: Morales, Daniel R (PD)

Subject: Update?

Officer Morales,

How's that biased investigation going?

I would like a copy of the body cam footage. Can you help with that, sir?

Respectfully,
Andrew Hicks

PRA request 19-045-0879 for BWC

Morales, Daniel R (PD)

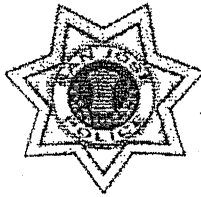
Mon 10/7/2019 6:39 PM

To: Rocha, Cynthia <Cynthia.Rocha@sanjoseca.gov>

Cynthia,

As discussed, Mr. Andrew Hicks is requesting BWC footage for event # 19-045-0879. I've advised him I forwarded the request.

Thanks much



Officer Daniel Morales #4315
San Jose Police Department
Office of the Chief
Internal Affairs Unit
777 N. 1st Street, Suite #666
San Jose, CA 95112
(408) 277-4094

ATTACHMENT B

PRA Request For 19-045-0879

Bodycameras

Wed 2019-10-16 1:25 PM

To: [REDACTED]
Cc: Bodycameras <bodycameras@sanjoseca.gov>

Dear Andrew Hicks,

We are in receipt of your request for body-worn camera footage related to SJPD Case # 19-045-0879 / BWC # 19-712.

We are denying your request for body-worn camera video. The requested body-worn camera video is exempt from public disclosure under the California Public Records Act. The video generated by the body-worn camera comes under the police investigation records exemption, California Government Code Section 6254(f). The video is also privileged from disclosure as confidential official information pursuant to California Evidence Code Section 1040 and is exempt from public disclosure pursuant to California Government Code Section 6254(k).

Questions regarding this response should be directed to the Body Worn Camera Administrative Unit, at bodycameras@sanjoseca.gov or 201 West Mission Street, San Jose, CA 95110. Should you desire to appeal this response, please submit your appeal to:

Open Government Manager
Clerk
City of San Jose, Office of the City Manager
200 East Santa Clara Street
San Jose, CA 95113
PublicRecordsRequest@sanjoseca.gov

Or

City of San Jose, Office of the City
200 East Santa Clara Street
San Jose, CA 95113
cityclerk@sanjoseca.gov

Sincerely,

Mayra Sosa

Analyst | Body-Worn Camera Video Custodian
Body-Worn Camera Administrative Unit | San Jose Police Department
408.537.1985

ATTACHMENT C

From: [Bodycameras](#)
To: [Villarreal, Monique](#)
Cc: [Bodycameras](#)
Subject: Fw: PRA Request For 19-045-0879
Date: Wednesday, October 30, 2019 2:12:01 PM

Hi Monique,

The requesting party stated he wanted to appeal his BWC denial. Please see email thread below.

Thank you,
Mayra

From: Bodycameras <bodycameras@sanjoseca.gov>
Sent: Monday, October 28, 2019 8:25 AM
To: Andrew Hicks <[REDACTED]>; Bodycameras <bodycameras@sanjoseca.gov>
Subject: Re: PRA Request For 19-045-0879

Hello Andrew,

As I've mentioned several times, you may appeal the BWC request denial to the Open Government Manager or the City of San Jose, Office of the City Clerk.

Open Government Manager
Clerk
City of San Jose, Office of the City Manager
200 East Santa Clara Street
San Jose, CA 95113
PublicRecordsRequest@sanjoseca.gov

Or

City of San Jose, Office of the City
200 East Santa Clara Street
San Jose, CA 95113
cityclerk@sanjoseca.gov

Thank you,

Mayra Sosa
Body Worn Camera Admin Unit
San Jose Police Department
Office : 408.537.1985
Direct : 408.537.1336

From: Andrew Hicks <[REDACTED]>
Sent: Friday, October 25, 2019 4:38 PM
To: Bodycameras <bodycameras@sanjoseca.gov>

Subject: Re: PRA Request For 19-045-0879

Mayra,

You are forgetting about the burglary of my firearms by your officers.

Violations of the 4th and 14th Amendments are also not considered legal.

Also, if the department won't release the footage, then hearsay captured therein shouldn't be sent to the court system. Compiling a transcript provides too much opportunity for redaction and the cherry-picking of evidence.

Hope you're well.

Respectfully,
Andrew Hicks

On Oct 25, 2019, at 06:20, Bodycameras
<bodycameras@sanjoseca.gov> wrote:

Hello Andrew,

As mentioned in your denial letter your BWC request was denied because BWC files are public records that that come under the police records exemption in Government Code Section 6254(f) for police investigation records. BWC requests are only approved if the requesting party is also a crime victim or entitled party who is entitled to similar specific records and information under an exception to the general exemption for police investigation records in subdivision (f) of Government Code Section 6254:

"However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951."

The incident you are requesting is not a crime within subdivision (b) of Section 13951. If your appeal is approved, the BWC unit will be notified of the decision

and the records will be produced at that time. The BWC Unit does not transcribe BWC files.

Thank you,
Mayra Sosa

From: Andrew Hicks <[REDACTED]>
Sent: Thursday, October 24, 2019 9:18 PM
To: Bodycameras <bodycameras@sanjoseca.gov>
Subject: Re: PRA Request For 19-045-0879

Mayra,

I'll submit an appeal to both, probably by the end of next week.

Can I get more information about why the request was denied?

The BWC footage should have captured some verbal abuse and constitutional violations, things I would like to discuss with the appeals court. I will write up my thoughts on the matter and submit them to both offices you mentioned.

Also, a transcript of a conversation with my mother is being used against me in court, which transcript is truncated in suspicious places. Until I manage to get the BWC footage released, would it be possible for you to work on producing a full, un-redacted transcript that can be submitted to the appeals court?

If the hearsay captured in the video is being used against me, I believe that I should be allowed to view such evidence, and to view it in full.

Hope you're well.

Respectfully,
Andrew Hicks

On Mon, 21 Oct 2019 at 08:26, Bodycameras
<bodycameras@sanjoseca.gov> wrote:

Hello Mr. Hicks,

You may appeal the BWC request denial to the Open Government Manager or the City of San Jose, Office of the City Clerk.

Open Government Manager
Office of the City Clerk

Or

City of San Jose,

City of San Jose, Office of the City Manager
Clara Street
200 East Santa Clara Street
San Jose, CA 95113
cityclerk@sanjoseca.gov
PublicRecordsRequest@sanjoseca.gov

200 East Santa
San Jose, CA 95113

Thank you,

Mayra Sosa
Body Worn Camera Admin Unit
San Jose Police Department
Office : 408.537.1985
Direct : 408.537.1336

From: Andrew Hicks [REDACTED]
Sent: Sunday, October 20, 2019 12:27 AM
To: Bodycameras <bodycameras@sanjoseca.gov>
Subject: Re: PRA Request For 19-045-0879

Mayra,

I took a look at the sections you mentioned, and I don't believe they apply to this situation. Hearsay captured on the BWC footage is being used against me in court, for the disposition of four of my firearms. As I read the sections you mention, it seems that they would permit my review of the footage.

If the BWC footage is not released to me, I think it would be reasonable that a full transcript, un-redacted, be provided to me and to the appeals court, of the full interaction between my mother and the officers who interrogated her.

It is my opinion that the body cam footage would likely be able to confirm ~~4th Amendment violations on the night the officers ransacked my home and stole my firearms.~~ I would like to review the footage for such a thing.

Can I more succinctly write up my thoughts in a future email, or do I actually need to go to the trouble of submitting a letter to the city clerk's office? My case is currently in the process of being appealed, and I have every intention of making the case to the court that the BWC footage should be part of the deliberations, given how egregiously some of the hearsay captured therein is being used to erode away my constitutional rights.

Refusing to release the BWC footage is, in my opinion, one more indication of how far your department will go to twist facts and manipulate information.

Hope you're well.

Respectfully,
Andrew Hicks

> On Oct 16, 2019, at 13:25, Bodycameras <bodycameras@sanjoseca.gov>
wrote:
>

ATTACHMENT D

Andrew Hicks
[REDACTED]
[REDACTED]

October 31st, 2019

Appeal for Release of BWC Footage
SJPD Case #19-045-0879
BWC #19-712

Dear City Clerk,

I am writing this letter to appeal the decision made by the San Jose Police Department's Body-Worn Camera Administrative Unit, denying my request for the release of body-worn camera (BWC) footage. I received an email on October 16th, 2019 from one Mayra Sosa, of the administrative unit mentioned above. In this email, Ms. Sosa makes reference to the CA Public Records Act, CA Government Code Section 6254(f), CA Evidence Code Section 1040, and CA Government Code Section 6254(k). In my scribbling below I will make an effort to demonstrate that these sections of the law, far from supporting the decision to refuse or delay disclosure, in fact support the disclosure of such video in the interest of justice. I will devote a brief paragraph to each section below in an effort to make this self-evident.

Considering CA Evidence Code Section 1040 first, I am not convinced that this section is relevant to the BWC footage in this situation. Section 1040 applies specifically to official information that has been acquired in confidence by a public employee. I am primarily interested in reviewing BWC footage for details about how my mother was interrogated, and what specifically was said. This hearsay is not being held in confidence, as it is currently being used against me in a petition by the City of San Jose for the disposition of four firearms of mine that were seized. This is Case #19CV344580 in the Santa Clara County Superior Court system, and will be soon considered again as Case #H047370 by the Sixth Appellate District of the Court of Appeal. A redacted transcript from the BWC footage has been previously submitted to the court, so this information should not be considered held in strict confidence at this point. Also, by Section 1040, disclosure may only be refused if forbidden by Congress or if the "necessity of preserving the confidentiality of the information outweighs the necessity for disclosure in the interest of justice". Given that the outcome of the City of San Jose's current petition revolves to a considerable degree around facts that may only be corroborated by disclosure of the BWC footage, considerable weight should be placed on such disclosure in the interest of justice. From that same

paragraph, we also can read, "no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding". I have discussed this case frequently with my mother, and she agrees with me that if a transcript can be used against me in court, then the corresponding BWC footage from which such transcript is derived should also be presented. She has thus granted her permission. Yet further on in Section 1040, we can read that the "interest of the public entity as a party in the outcome of the proceeding may not be considered". Given that the BWC footage likely contains, in my opinion, evidence of violations of the 4th and 8th Amendments, along with violations of the Due Process and Equal Protection Clauses of the 14th Amendment, I can understand why the City of San Jose would prefer that it not be released. Such interest may not be considered in refusing to disclose the footage. A consideration of Section 1040 alone thus provides several reasons to disclose the BWC footage, rather than to withhold it.

In taking a quick look at Section 6254(f), I believe we can find further support for the disclosure of the BWC footage. This subsection clearly states that "state and local law enforcement agencies shall disclose . . . statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident". Ms. Sosa has explained that this section applies only to victims of crimes as listed in Section 13951(b), but this section of the law is very vague, and refers only to a crime or public offense that would constitute a misdemeanor or felony if committed in California by a competent adult. Given the potential violations of the Constitution mentioned in the preceding paragraph, I believe we can consider this requirement to have been amply satisfied.

My analysis of Section 6254(k) will be brief indeed. This subsection protects "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege". I have sufficiently dissected the relevant portion of the Evidence Code in my writing above, and I will not repeat the analysis here. Simply stated, if CA Evidence Code Section 1040 is not relevant to the prevention or delay of the disclosure of the BWC footage, then Section 6254(k) will also lack such relevance.

To conclude, I will once again state that I do not feel that the Body-Worn Camera Administrative Unit has demonstrated a good reason for withholding the release of the BWC footage. The laws referenced by Ms. Sosa in the denial of my request do not, by my reading of the laws, support this position. Given that the City Attorney's Office is stubbornly using sections of the video against me in the petition for the disposition of my firearms, I feel that I should be granted the chance to review said footage. And I would like to mention one more thing. In referencing Section 6254, the Body-Worn Camera Administrative Unit conveniently skips over some sections of this law that are, in fact, quite relevant. In Section 6254, we can read that the clear and convincing evidence standard is used for delaying disclosure of BWC footage. This is a stringent standard of proof, and one that I do not believe

the Administrative Unit can satisfy. Elsewhere in Section 6254 we can read that, in the case that footage is redacted or truncated, "the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording shall not otherwise be edited or altered". In the transcript of the BWC footage submitted to the Santa Clara County Superior Court in the 'Declaration of Keith Neumer in Support of City of San Jose's Motion to Strike Answer and Vacate Hearing', the transcription has been sufficiently and suspiciously truncated so as to bring it out of alignment with the choice bit of Section 6254 that I have mentioned directly above. Following some of the legal reasoning of *Anderson vs. Creighton (1987)*, I will admit that the Administrative Unit's reading of the relevant law is "reasonably unreasonable". This does not, however, bring such reasoning to the level of "objective legal reasonableness", the touchstone of *Harlow*. I would appreciate the release of the BWC footage so that I can provide an analysis of its contents to the Court of Appeal. Thank you for reading.

Respectfully,

A handwritten signature in black ink, appearing to read "Andrew Hicks". The signature is written in a cursive style with a large, stylized initial "A".

Andrew Hicks