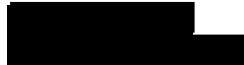


Andrew Hicks


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 large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates.

Andrew Hicks