

# Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE FROM: Edgardo Garcia

SUBJECT: PUBLIC RECORDS APPEAL - KATHERINE ELLIS DATE: September 5, 2018

Approved D. D. SyL Date 9/6/18

## RECOMMENDATION

Deny the appeal from Katherine Ellis regarding the City's response to her request for public records seeking records related to an investigation, specifically photographs and body worn camera footage, by the San Jose Police Department.

## BACKGROUND

Ms. Ellis represents the homeowner where an incident, resulting in an investigation, occurred on July 15, 2017. This incident is referenced as event #17-196-0616.

A request, dated July 18, 2018, was received from Katherine Ellis (Attachment A). This request sought any records in connection to the referenced incident.

A separate request, dated July 23, 2018, was received from Katherine Ellis (Attachment B). This request specifically sought "any and all photographs" and "any and all body camera footage" related to the referenced incident.

A denial letter, dated July 31, 2018 (Attachment C), was provided to Ms. Ellis by the Operations Support Services Division (OSSD). This letter informed the requestor that the request for photographs and body camera footage had been denied by the Homicide/Crime Scene Unit and the Body Worn Camera Unit respectively. A separate denial letter written by the Body Worn Camera Unit (Attachment D) specifically addressing the request for body camera footage, dated July 30, 2018, was included as an attachment to OSSD's denial letter.

On August 2, 2018, Ms. Ellis submitted an appeal (Attachment E) to the Office of the City Manager regarding the denial of her request for photographs and body camera footage related to the incident.

On August 21, 2018, Ms. Ellis contacted OSSD staff via phone and asked to view the photographs. Ms. Ellis was advised via phone by OSSD staff that the Department was denying her request, and a subpoena or court order would be required to obtain the photographs (Attachment F).

### **ANALYSIS**

Ms. Ellis requested photographs and 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). The Public Records Act exemption for records of investigation encompasses routine investigations undertaken to determine if a violation of law has, or may have, occurred, and the exemption does not lapse when the investigation that prompted the records' creation ends. The Public Records Act does provide that local agencies shall disclose an investigative report, including photographic evidence, to certain specifically enumerated persons, including the victim of an incident or a person that has suffered property damage as the result of a crime. Ms. Ellis's client does not fall within one of these categories that would be entitled to the investigative records.

It is important to note, that if the City were to waive the exemption under the Government Code Section 6254(f) and provide these investigative records without a subpoena or court order to a person to 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

Attachments

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

ATTACHMENT A

CLAPP MORONEY VUCINICH BEEMAN SCHELEY

A PROFESSIONAL LAW CORPORATION

July 18, 2018

Reply to: East Bay/Pleasanton  
Katherine Ellis, Esq.  
[REDACTED]

San Jose Police Department  
Records Unit  
201 West Mission Street  
San Jose, CA 95110

Re: Insured : Patricia Skovron  
Date of Loss : 07/16/2017  
Our File No. : 9565-05638  
[REDACTED]

To Whom It May Concern:

My office has been retained to represent [REDACTED] on for an incident which arises out of a July 15, 2017, [REDACTED] incident that occurred [REDACTED] in the City of San Jose.

Please allow this letter to serve as our request for copies of any records you may have in connection with this incident, including but not limited to, photographs, videos and police body camera footage of witness interviews, 911 and dispatch logs, as well as any related correspondence. Please also allow this letter to authorize personnel from Neilson & MacRitchie Investigators to act as my agent to obtain said records. Should you have any questions regarding this request, please contact the undersigned.

Very truly yours,

  
Katherine Ellis

P:\Data\DOCS\9565\05638\0718ltr1.sjpd

www.clappmoroney.com

SAN FRANCISCO

505 Montgomery St.  
11th Floor  
San Francisco, CA 94111  
TEL 415.874.3562  
FAX 415.874.3627

PENINSULA

1111 Bayhill Drive  
Suite 300  
San Bruno, CA 94066  
TEL 650.989.5400  
FAX 650.989.5499

EAST BAY/CENTRAL VALLEY

5860 Owens Drive  
Suite 410  
Pleasanton, CA 94588  
TEL 925.734.0990  
FAX 925.734.0888

SACRAMENTO

Esquire Plaza  
1215 K Street, 17th Floor  
Sacramento, CA 95814  
TEL 916.503.2242  
FAX 916.503.2401

SAN JOSE/MONTEREY

2033 Gateway Place  
5th Floor  
San Jose, CA 95110  
TEL 408.292.2378  
FAX 408.292.8063

LOS ANGELES

515 S. Flower Street  
36th Floor  
Los Angeles, CA 90071  
TEL 213.236.3760  
FAX 213.236.3501

ATTACHMENT B

CLAPP MORONEY VUCINICH BEEMAN SCHELEY

A PROFESSIONAL LAW CORPORATION

July 23, 2018

Reply to: East Bay/Pleasanton  
Katherine Ellis, Esq.  
[REDACTED]

San Jose Police Department  
Records Unit  
201 West Mission Street  
San Jose, CA 95110

Re: Insured : [REDACTED]  
Date of Loss : 07/16/2017  
Our File No. : 9565-05638  
[REDACTED]

Dear Chief of Records:

Under the California Records Act (Govt. Code §§ 6250-6270), we are requesting the following information from your Department:

1. Any and all photographs referenced in GO# SJ 2017-171960616, relating to the investigation of the [REDACTED] on July 15, 2017.
2. Any and all body camera footage referenced in GO# SJ 2017-171960616 relating to the investigation [REDACTED] on July 15, 2017.

Please call me at (925) 598-1133 if you have any questions or need additional information. Also please notify me within 10 days when these records and tapes are available to be picked up.

Thank you for your cooperation with this request.

Very truly yours,

  
Katherine Ellis

[www.clappmoroney.com](http://www.clappmoroney.com)

SAN FRANCISCO

■ 505 Montgomery St.  
11th Floor  
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FAX 415.874.3627

PENINSULA

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SACRAMENTO

■ Esquire Plaza  
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TEL 916.503.2242  
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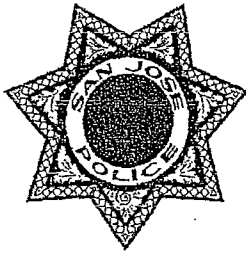
SAN JOSE/MONTEREY

■ 2033 Gateway Place  
5th Floor  
San Jose, CA 95110  
TEL 408.292.2378  
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Los Angeles, CA 90071  
TEL 213.236.3760  
FAX 213.236.3501

ATTACHMENT C



*San José Police Department*  
BUREAU OF ADMINISTRATION  
*Operation Support Services Division*

Date: 07/31/18  
Incident #17-196-0616

Clapp Moroney | Vucinich | Beeman Scheley  
Attn: Katherine Ellis  
5860 Owens Dr STE 410  
Pleasanton, CA 94588

The San Jose Police Department is in receipt of your recent Public Records Act request wherein you request "Any and all photographs referenced in GO# SJ 2017-171960616 relating to the investigation [REDACTED] on July 15, 2017" and also "Any and all body camera footage referenced in GO# SJ 2017-171960616 relating to the investigation of the [REDACTED] on July 15, 2017".

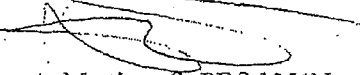
After submitting your request to the appropriate units, I regret to inform you that the request for photos and body camera has been denied by Lt. Spagnoli #2924 of Homicide/Crime Scene Unit and the Bodyworn Camera Unit respectively.

Please see attached letter from Body-Worn Camera Video Custodian

If you wish to appeal this response to your request, please contact Tamara Becker of the City Manager's Office at [REDACTED] or via email at [REDACTED]. You may also appeal to the City Council Rules and Open Government Committee by contacting the Office of the City Clerk at [REDACTED] or via email at [REDACTED].

Sincerely,

EDGARDO GARCIA  
CHIEF OF POLICE

  
A. Martinez Sr PDS 1251N

For: Veronica Andrade  
Acting Division Manager  
Operations Support Services Division  
Bureau of Technical Services

ATTACHMENT D



*San José Police Department*  
Bureau of Technical Services  
Body-Worn Cameras Administrative Unit

July 30, 2018

Clapp Moroney | Vucinich | Beeman Scheley  
Attn: Katherine Ellis - Attorney  
5860 Owens Drive, Suite 410  
Pleasanton, CA 94588

Re: Request Public Records – Body-Worn Camera Videos  
Your Client(s): [REDACTED]  
Your File No: 9565-05638  
SJPD Case #17-196-0616 / BWC #18-510

Dear Katherine Ellis,

We are in receipt of your request for body-worn camera footage related to the above referenced incident.

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).

If you wish to appeal this response to your request, please contact the Open Government Manager of the City Manager's Office at [REDACTED] 20 or via email at [REDACTED]. You may also appeal to the City Council Rules and Open Government Committee by contacting the Office of the City Clerk at (408) 535-1260 or via email at [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Mayra Sosa".  
**Mayra Sosa**

Analyst | Body-Worn Camera Video Custodian  
Body-Worn Camera Administrative Unit | San Jose Police Department  
408.537.1985  
[bodycameras@sanjoseca.gov](mailto:bodycameras@sanjoseca.gov)

ATTACHMENT E

**From:** PublicRecordsRequest [mailto: [REDACTED]]  
**Sent:** Monday, August 06, 2018 4:19 PM  
**To:** Katherine A. Ellis  
**Cc:** Taber, Toni  
**Subject:** Re: Denial of Public Records Act request related to Incident #: 17-196-0616

Hi Katherine,

Thank you for reaching out to our offices. I just left you a voice message. You spoke to Arlene Silva last week regarding this request. The Police Department still stands by the decision. If you would like to appeal this, please let us know (in writing). Here's additional information regarding the process: <http://www.sanjoseca.gov/DocumentCenter/View/1078>

If you decide that you would like to appeal this decision, we will schedule a time/date with the Rules and Open Government Committee: <http://www.sanjoseca.gov/index.aspx?nid=3581>

If you have any questions, please let me know.

Thank you!  
Anh Tran

Open Government Manager  
City of San José | Office of the City Manager  
200 East Santa Clara Street - Tower, 17th Floor | San José, CA 95113  
(408) 525-8120 | (408) 220-7007  
[REDACTED]  
[REDACTED]  
[Learn More About the Public Records](#)  
[Website](#) [Twitter](#) [Facebook](#) [RSS](#) [Notify Me](#)

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**From:** Katherine A. Ellis [mailto: [REDACTED]]  
**Sent:** Thursday, August 2, 2018 3:19:37 PM  
**To:** Becker, Tamara  
**Cc:** City Clerk; PublicRecordsRequest  
**Subject:** RE: Denial of Public Records Act request related to Incident #: 17-196-0616

Dear Ms. Becker:

Allow this email to serve as our appeal to the response received on July 31, 2013 in which the request for "Any and all photographs referenced in GO# SJ 2017-171960616, relating to the investigation of the [REDACTED] on July 15, 2017" and also "Any and all body camera footage referenced in GO# SJ 2017-171960616 relating to the investigation of the [REDACTED] on July

15, 2017." Our request was summarily denied without explanation by the San Jose Police Department, Lt. Spagnoli #2924 of the Homicide/Crime Scene Unit, and the Bodyworn Camera Unit respectively.

Our law firm, Clapp, Moroney, Vucinich, Beeman+Scheley, has been retained to represent and defend the homeowner, [REDACTED], in a pending claim arising from the July 15, 2017 incident. Our client is the owner of the property where this incident occurred. She is entitled to request and obtain this information. We are entitled to request and obtain this information on behalf of our client, as well as pursuant to the California Public Records Act. The photographs requested are of our client's property. Therefore, there is no valid basis in which to withhold them.

Regarding the request for body-worn camera footage, the San Jose Police Department cited the information requested as being exempt pursuant to Govt. Code § 6254 (f). This is an improper application of the code section as it pertains to this particular request. It appears to be a blanket form denial. The death of [REDACTED] No charges have been filed and the investigation is not ongoing. Furthermore, the citations to Evidence Code § 1040 and Govt. Code § 6254 (k) are also inappropriately cited. Both the photos and body camera footage will be subject to subpoena power.

For all of the foregoing reasons, we ask that you reconsider the denial of our request for photographs and body camera footage referenced in GO# SJ 2017-171960616. Please call me at (925) 598-1133 if you have any questions or need additional information. Also please notify me within 10 days when these records, photographs and tapes are available to be picked up.

Thank you for your cooperation with this request.

Sincerely,

Katherine A. Ellis

Attorney

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Pleasanton, CA 94588

CLAPP MORONEY VUCINICH BEEMAN & SCHELEY

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Bureau of Technical Services  
Operations Support Services Division

SUBPOENA CASE #: \_\_\_\_\_  
PRA REQUEST: Neilson & MacRitchie Investigators  
COMPLIANCE DATE: ASAP  
TITLE: 17-196-0616

[illegible]