



Memorandum

TO: Rules Committee

FROM: Mayor Chuck Reed

SUBJECT: San José Police Department's
Response to Public Record
Requests

DATE: January 12, 2007

APPROVED:

Chuck Reed

DATE:

1/12/07

I recommend that a discussion regarding the San José Police Department's response to public record requests by Californians Aware ("Law enforcement agencies woeful in providing records," Mercury News article published 1/12/07) be added to the January 24, 2007 Rules agenda.



RULES COMMITTEE: 01-24-07

ITEM: Ha

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Robert L. Davis

SUBJECT: SJPD RESPONSE TO SAN JOSE
MERCURY NEWS ARTICLE

DATE: January 19, 2007

Approved *Vilvia Rodriguez for Les White* Date *1/19/07*

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Accept the Police Department's report on the Public Records Act request related to a January 12, 2007 *San Jose Mercury News* article.

OUTCOME

This report summarizes the Department's actions taken to respond to a December 4, 2006 Public Records Act request that resulted in a January 12, 2007 *San Jose Mercury News* article.

BACKGROUND

On January 12, 2007, the *San Jose Mercury News* published an article entitled "*Law enforcement agencies woeful in providing records*," written by Leslie Griffy. The article was the result of a self-described audit conducted by "Californians Aware," a Sacramento-based group that advocates for transparent government and records access.

The Police Department would like to offer background detail on activities leading to the publication of the article to provide greater context for the Rules & Open Government Committee discussion.

The San Jose Police Department remains committed to honoring and following state law as it pertains to the release of public records. The Department recognizes the value that the authorized release of such information can have in a democracy.

ANALYSIS

The *Mercury News* article stated that "*On Dec. 4, 31 journalists visited more than 200 law enforcement offices in 34 California counties. Presenting themselves as ordinary citizens with*

HONORABLE MAYOR AND CITY COUNCIL

Re: *San Jose Mercury News* Article Dated January 12, 2007

January, 19, 2007

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no special affiliation, they requested public records both orally and in writing. No journalist went to an agency in an area he reports on."

In the article, the *Mercury News* presented the various responses from each police agency visited, concluding that "*According to a recent audit, six Santa Clara counties received an F- grade*" and "*In the Bay Area, nearly 67% of agencies failed.*" The San Jose Police Department received an "F-" grade, with a statement indicating that the "*Auditor says chief's aide yelled at her, which police deny; no info on chief disclosed; refuses to accept written request for public records.*"

As background, the SJPD sergeant assigned as an aide in the Chief's Office received a phone call from a uniformed officer who was assigned to the Information Center that day. The Information Center is located in the lobby of the Police Department. The primary responsibilities of officers at this location are to take crime reports from individuals who walk into the headquarters, as well as provide direction to residents who are self-surrendering on warrants, being fingerprinted as the result of an arrest, and checking in as sex registrants. To facilitate police records requests, in the lobby are self-counters where the public may request copies of police reports.

In this instance, the journalist walked into the lobby and asked an officer at the Information Center for a copy of the "financial records" of the Chief of Police. The officer acknowledges that the journalist asked for a form that was identified by a number (Form 700), but there was confusion between the term "financial records" and the requested form. Additionally, the officer did not have knowledge of the Form 700, which further complicated the ability to respond. The officer asked the requestor for the purpose/nature of the request and for her name. It should be noted that these are common questions that the City asks when trying to work with an individual and respond to a records request and, more important, identify the exact documents requested. The requestor correctly told the officer that she did not have to provide her name. Acknowledging that this is a common practice for the City to work with an individual by name on records requests that require discussion to identify documents, the officer then asked for her name again and the nature/reasons of the request. The requestor repeated the request for copies of the Chief's financial forms and told the officer her first name was Quynh. Contrary to statements made in the *Mercury News* article, at no time did she provide a written document for a request for records.

Because the officer was not clear regarding the specific information the requestor was requesting, and in an effort to respond to the request for records, the officer first made contact with a Police Data Specialist (PDS) working in the Records area of the Information Center lobby. The PDS stated she had no knowledge of this type of financial form. The officer then contacted the Office of the Chief for further assistance. The officer spoke with the Chief's aide and advised him there was a person at the front counter asking for copies of the "investments" of Chief Davis. Because of the nature of the request, and the fact that the officer was unclear as to what the requestor was asking for, the officer asked the Chief's aide for his assistance and direction. It is important to note, no one at the Department can recall an incident in which a person came to the Information Center and asked for information about the personal financial records of the Chief of Police, and the overwhelming majority of officers are not aware of the intricate details of the State of California's *Statement of Economic Interest* form because officers are not required to complete one. It also should be stated that the officer used precaution in

protecting the Police Chief's privacy regarding personal financial records and wanted to better understand the nature of the request to facilitate identifying the responsive public records. This effort was taken because there are a lot of individuals who come in asking for personal information about officers and, for security purposes, officers will usually try to determine the "need-to-know" and "right-to-know" elements of such requests prior to providing any such information.

Upon the officer's communication, the Chief's aide immediately responded to the front lobby and made personal contact with Quynh. The Chief's aide asked the requestor to clarify the type of information she was requesting. She stated she wanted the "financial investments" of Chief Davis. Because the Chief's aide was still not clear as to what she was requesting, he asked, "Do you mean, such as his personal investments?" She replied, "Yes." The Chief's aide then asked, "You mean, things like boats, cars?" Quynh replied, "Yes."

She then stated she wanted "a Form 700 that the Chief has to fill out." The Chief's aide asked who she was representing and she responded that she was "just a citizen." She then further stated that she also wanted all crime statistics for one year.

The Chief's aide asked her for her contact information (i.e., name and phone number) so that he could look into her request and get back to her. She provided her full name, Quynh Tran, and gave the Chief's aide her personal cell phone number. Ms. Tran asked the Chief's aide for his name and he provided her with his business card, telling her he would call her back as soon as possible. At no time during this discussion did the Chief's aide raise his voice or yell at Ms. Tran, as was printed in the news article. This conversation occurred inside of the Police lobby, in full view of the Information Center officers and other members of the public sitting in the lobby waiting area.

After meeting with Ms. Tran, the Chief's aide immediately went to the SJPD Fiscal Unit to determine which type of investment information might be available for disclosure. A Fiscal Unit employee thought Ms. Tran might be asking for the Chief's investment proposals/business plans for Police resources, i.e., budgetary investments. The Chief's aide then personally checked the City public website and confirmed that the Public Safety budget documents were posted.

The Chief's aide also confirmed the Police Department's public website, www.SJPD.org, had available crime statistics for viewing and printing. On this website, crime statistics can be sorted by crime type, district, exact address, and date, and users have choices for how they wish to view the information presented (i.e., crime type, numbers, graphs, etc.).

After confirming the availability of this information on the Internet and believing this may be the quickest way for Ms. Tran to get the requested information, the Chief's aide contacted Ms. Tran within three hours and left a voice mail message stating the availability of information on the City's website. In the voice mail message, the Chief's aide provided Ms. Tran with the information he had researched and told her that some of the information was available to the public through the www.SJPD.org and City of San Jose public web sites. Under the California Public Records Act, an agency has 10 days to respond to a Public Records Act request.

The Chief's aide also advised Ms. Tran that he was unable to provide her with Chief Davis's personal financial investments, but was able to provide her with information related to investments made by the Chief on behalf of the San Jose Police Department. The Chief's aide also was not aware of the State's *Statement of Economic Interest* form, nor was he aware that copies are available at the City Clerk's Office. Because the Chief's aide was still not clear whether or not this was responsive to the request, he left his name and contact numbers and encouraged her to contact him should she have any further questions. The Chief's aide received no further phone calls or contacts from Ms. Tran.

Prior to the *Mercury News* article being published on January 12, Sgt. Nick Muyo, Press Information Officer for the Police Department, received a phone call from Matt Krupnick, a reporter for the Contra Costa Times, on January 10, 2007. Mr. Krupnick informed Sgt. Muyo that an article was coming out in the news related to the results of an audit regarding public access to records. Mr. Krupnick advised Sgt. Muyo that a self-described statewide audit had been conducted related to responsiveness of police to Public Record Act requests, and that the San Jose Police Department had failed. Mr. Krupnick was seeking comments in advance of the story's release. Shortly after receiving that phone call, Sgt. Muyo received another call from Leslie Griffy, the author of the *Mercury News* article. Ms. Griffy restated the information previously provided by Mr. Krupnick, and also added that the San Jose Police Department had failed the self-described audit. Ms. Griffy also provided Sgt. Muyo with additional statements from Ms. Tran, telling him that Ms. Tran alleged the Chief's aide sat down next to her in the lobby, leaned in close to her, spoke very loudly, and tried to intimidate her. At this time Sgt. Muyo was unaware of the events that had occurred, and in answering Ms. Griffy's questions stated, "If anyone comes in and volunteers to leave a request in writing, we should take it." Sgt. Muyo then researched the incident.

As a result of that review by Sgt. Muyo and others in the Department, the following additional details were learned. These details, clarifications, and/or article corrections are provided immediately after the corresponding quotes from the *Mercury News* article, as follows:

"About 13 percent of the agencies -- including San Jose police -- refused to accept a written request for information. State law requires them to accept such requests."

Ms. Tran did not provide or leave any written request for information. No Police personnel refused to accept any written request.

"Among other things, they asked to see information about sexual assaults, armed robberies and burglaries between Nov. 1 and 15. They also left a written request for further information."

Ms. Tran asked for the Chief of Police's financial records and one entire year's worth of criminal statistics. Again, Ms. Tran did not leave any written request for further information. The Police Department used precaution in protecting the Police Chief's personal financial privacy and attempted to identify documents relating to investments that could be made public. Unfortunately, because those attempting to respond were not aware of the State of California's Statement of Economic Interest Form (Form 700), there was a breakdown in the City's ability to respond. However, it should be noted that the detailed information requested would not have appeared in the Form 700.

"According to the report, San Jose police refused to release crime data, failed to accept a written request for information, and didn't provide information about a state-mandated form that outlines the economic interests of the chief of police."

Ms. Tran was contacted with instructions on how she could expeditiously obtain the crime statistics sought. Ms. Tran was also encouraged to contact the Chief's aide if she had any further questions regarding her request, which she did not do. As stated, Ms. Tran did not leave any written request for further information. Police personnel did not refuse to accept any written request.

"Auditor says chief's aide yelled at her, which police deny; no info on chief disclosed; refuses to accept written request for public records."

The Chief's aide did not yell at Ms. Tran. This aide did immediate research on her request and followed up with a telephone call within three hours, in which he left a voice message on her cell phone. Ms. Tran never returned the aide's call.

PUBLIC OUTREACH/INTEREST

As requests from the public are received regarding our Public Records Act policy and/or this incident in general, Department staff members are reiterating the Department's commitment to complying with the Public Records Act requirements and the City's open government principles.

COORDINATION

This response was coordinated with the City Manager's Office and City Attorney's Office.

CEQA

Not a project.



ROBERT L. DAVIS
Chief of Police

RLD:MK:CE