



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Robert L. Davis

SUBJECT: ACLU PUBLIC RECORD REQUEST **DATE:** August 3, 2006

Approved

Date

8/4/06

RECOMMENDATION

Acceptance of staff information report on the ACLU Public Record Request.

BACKGROUND

On July 6, 2006, the American Civil Liberties Union (ACLU) of Northern California sent a letter to the Mayor and City Council members regarding the San Jose Police Department's response to a recent ACLU Public Record Act (PRA) Request. The purpose of this memorandum is to address assertions made by the ACLU that the San Jose Police Department did not cooperate with providing information related to the PRA requests for vehicle stop data. This report will underscore the high degree of effort and commitment made by the Research and Development Unit of the San Jose Police Department to provide the ACLU with the information it requested.

As brief background, when the first and subsequent Vehicle Stop Demographic Studies (VSDS) were released, beginning in 1999, the old Computer Aided Dispatch (CAD) system captured the demographic stop data by event type, with codes created to identify demographics specific for the purpose of the study. Officers entered this data into the CAD system by typing in what are called "disposition codes" into their computers when closing out vehicle stop events. The Crime Analysis Unit of the Research and Development Unit then gathered the information on an annual basis and provided the information to the public, with the most recent report being released in June of 2004.

When the new CAD was implemented in June 2004, officers continued to use the same methodology. When programmers attempted the first trial retrieval of the vehicle stop data with the new CAD system in the Fall of 2005, it became apparent there was a problem with obtaining the data in the previous format. Due to a variety of issues, including the transition to a more complex system and human error in capturing and saving the reported data, it was discovered that demographic data was incomplete and/or not collected.

At the time that the second status report on the CAD system was presented to Council in October 2005, staff was unaware of any problems associated with collecting vehicle stop data. It was not until November 2005, when staff made its first attempt to retrieve VSDS data, that the problem became apparent. Previous to this discovery, efforts had been concentrated on rectifying specific

issues related to functionality raised by CAD end-users. It was to this extent that staff informed Council of its progress related to these mission-critical issues.

Since the discovery of this issue, members of the Research and Development Unit have struggled to juggle their day-to-day responsibilities with the effort to rehabilitate the new CAD system to provide VSIDS data. Unit members were working with Bureau of Technical Services staff to address various mission-critical issues arising from the new CAD system, including public and officer safety issues associated with dispatching calls quickly and efficiently, allowing vehicle GPS tracking, map availability, and receipt of calls in the officers' vehicles.

The Vehicle Stop Demographic Study has always been a priority for the Department. The results of previous Vehicle Demographic Stop Studies have shown that officers do not target specific racial or ethnic groups when making vehicle stops. Based on the past five years of comparative data, there is no indication that the data lost during the CAD transition would be dissimilar to that previously reported. The Department is committed to continuing this study and will use the June 1, 2006 through May 31, 2007 timeframe for the next annual report in an effort to provide valid and accurate information.

ANALYSIS

Given that the ACLU requests for information associated with vehicle stops and demographic data were being coordinated over several months, it is important to provide a timeline of the requests made by the ACLU and the Department's efforts to respond. This information is provided below, as well as copies of all responses provided to the ACLU.

On November 22, 2005, the ACLU requested various documents related to the Police Department's traffic stop activity, vehicle stop procedures, citations issued, and police actions in a specific geographic location. Verbal communications took place between Mr. Bery and Research and Development staff, concluding with a formal report on January 25, 2006. A letter was provided to the ACLU, which outlined the reasons for the delays and acknowledged Mr. Bery's cooperation in understanding the reasons for these delays. (Attachment A).

In the January 25, 2006 response, Mr. Bery was informed of the problems the Department had encountered in attempting to retrieve demographic data associated with vehicle stops from the new CAD system. Mr. Bery was kept apprised as to the complexity of our problems in producing data specific to his request as the Department worked through a solution. During this period, staff made a number of phone and email contacts with Mr. Bery regarding the problems and delays.

The Department received two subsequent yet similar PRA requests from the ACLU, the first on March 6, 2006 and the second on May 4, 2006. During this time, additional phone contacts were made with Mr. Bery, during which time staff continued to explain the ongoing problems with retrieval of vehicle stop data from the new CAD, as well as the problems related to the programming issues, and stressed that staff was investigating these issues to develop a solution.

In early June 2006, a special programming script was written to gather the car stop demographic data as requested by the ACLU, identifying all vehicle stops within the specific geographic

boundaries, within the specific time periods and with valid vehicle stop disposition codes. For the purposes of demographic data collection and the resulting reports, the Department provides a specific citywide analysis of vehicle stop data associated to the ethnicity of the driver, the reason and outcome of stops, and search criteria. The annual reports did not provide demographic data based on specific dates, times and locations. It is important to note that during this time, the programmer was unsure whether a script could be written that would provide any discernable information matching the criteria of the ACLU's request.

Gathering the ACLU Data

As noted above, the SJPD Vehicle Stop Demographic Study data is normally generated on an annual basis, and breaks out vehicle stops Citywide, by Division and District, providing a driver's racial/ethnic make-up, reason for stop, the action taken, and search information. The ACLU request called for data that was very specific to a very small geographical area, and specific dates and times. The Department has never collected its VSIDS data in such a way. It would take a customized computer program to gather the data.

Because of the complex issues related to the Department's response to the ACLU's request and pending costs, all of the written responses and progress on the issue were coordinated with the Office of the City Attorney.

The City Public Record Act Policy allows that "Requestors of electronic records shall pay for production costs, including the cost to construct the record and the cost of programming and computer services necessary to produce the copy if the request would require the production of a record that is otherwise only produced at regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record."

Additionally, the San Jose Municipal Code, Section 1.17.010 specifically prohibits waivers of fees and charges unless they are authorized in the Municipal Code or by ordinance.

The ACLU's request falls under all of the above: cost to construct/determine the script to pull this information and costs for programming.

Based on the Police Fee Schedule, costs to compile the ACLU data were computed accordingly:

Senior Systems Applications Programmer:	\$43.08 Hourly/36.46% Fringe
	\$15.71 Fringe = Total Hourly Rate: \$58.79
Total hours worked: 28.5	\$1,675.52 Sub Total
Supervising Applications Analyst:	\$50.61 Hourly/29.12% Fringe
	\$14.74 Fringe = Total Hourly Rate: \$65.35
Total hours worked: 4.0	\$261.40 Sub Total
Total programming costs:	\$1,936.92 Total Billable Programming Costs*

*A \$0.24 overcharge was discovered when staff reviewed calculation costs associated to this PRA. The Department will notify the ACLU of this error and adjust charges accordingly.

On June 21, 2006, Lt. Gary Kirby, Commander of the Research and Development Unit contacted the ACLU, as they had requested, to notify them that the report was ready and that there were costs incurred to produce the data. There were no further calls, emails or correspondence to the Department from the ACLU or Mr. Bery until a copy of the July 6, 2006 letter to the Mayor and City was received.

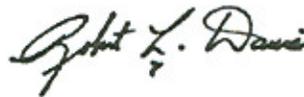
After receipt of the July 6, 2006 letter and issuance of the press release by the ACLU on the same date, the Department sent a formal letter to the ACLU, which reiterated the information provided to Mr. Bery in the June 21 phone call (Attachment B). To date, no response has been received. Staff has also provided responses to each of the questions raised by the ACLU in the July 6, 2006 letter in Attachment C of this report.

In an effort to communicate fees related to future Public Records Act requests in excess of \$20.00, the Department has initiated a process wherein the requestor will be informed, via written communication, of the direct or estimated costs associated to their request. The Department will process the request upon written confirmation and agreement of the associated fees.

The San Jose Police Department has been a leader in establishing trust and confidence with its residents. Indeed, Department efforts over the last few years have only served to strengthen such relationships. As always, the Department has been and will continue to be forthright in its efforts to comply with the numerous Public Record Act requests made to it, even though the effort it takes to respond to the increasingly complex requests creates ongoing hardships to the day-to-day operations of a reduced administrative staff.

COORDINATION

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



ROBERT L. DAVIS
Chief of Police

Attachment A



San José Police Department

January 25, 2006

Sanjeev Bery, San Jose Office Director
American Civil Liberties Union of Northern California
111 N. Market St. #940
San Jose, CA 95113

Re: PRA Request - Ambassador/B-Hive Lounge October 22, 2005

Dear Mr. Bery,

I am writing on behalf of Chief Davis in response to the above referenced Public Record Request dated November 22, 2005.

The Department's responses to your requests are provided below:

Request #1: All documents or records reflecting traffic stop activity¹ in the area bordered by S. Almaden Blvd., E. Julian Street, N. 1st Street, and W. Santa Clara Street between the dates of October 1, 2005 and November 10, 2005. We would like the data either in electronic form so that we can sort it and perform analysis ourselves or, at the very least, broken down by day and time of day so that comparisons can be made.

SJPD Response: The Department cannot retrieve the information using the broad street borders as parameters as stated in your request. The Department would need specific street names and addresses to conduct further research for this request.

Additionally, the footnote in your request makes reference to the San Jose Police Department's Annual Vehicle Stop Demographic Study. The data used for previously issued demographic studies was extracted from the Department's Computer Aided Dispatch (CAD) system, which was replaced in June 2004. An initial test run of the demographic data from the new CAD indicates inconsistencies with the demographic data entries previously used specifically for the CAD demographic module. It has been determined that during the new CAD transition phase, officers and dispatchers experienced numerous problems related to the use of a more complex CAD system. The demographic data entries were inconsistent and flawed due to human error. This problem was identified and corrected in December 2005. Until the Department has

¹ It is our understanding that the San Jose Police Department has a traffic stop data collection program aimed at monitoring racial profiling. This program collects the race or ethnicity, reason for the stop, outcome of the stop, etc. The program is also referenced in today's Mercury News article. We seek data collected pursuant to this program.

completed validation of the demographic data and is satisfied with the accuracy of the report, the Vehicle Stop Demographic Study data will not be available.

Request #2: Copies of all traffic tickets issued on October 28 and 29 and November 4 and 5 between 9 p.m. and 3 a.m. for the above listed geographic location.

SJPD Response: The Department does not have a searchable database for citations. Copies of citations are stored by date in the Department's Operations Support Services Division -Warrants Unit. A hand search located 52 citations written within the times, dates, and geographic areas as stated in your request. Appropriate information was redacted and copies are enclosed for your review.

Request #3: All incident reports, police reports, and incident logs documenting actions taken by San Jose Police Officers on October 28 and 29 and November 4 and 5 between 9 p.m. and 3 a.m. for the above listed geographic location.

SJPD Response: The records you have requested are exempt from disclosure under California Government Code Section 6254(f) as records of "investigations conducted by . . . any state or local police agency. . . or any investigation. . . files compiled by any other state or local agency for correctional, law enforcement or licensing purposes . . ."

Request #4: Any orders, bulletins, e-mails, or other documents issued by the department discussing traffic stop strategies, who to stop, what to look for in making a stop, or strategies for patrolling around the downtown nightclubs issued after October 22, 2005.

SJPD Response:

The San Jose Police Department does not have any documents responsive to Request #4.

Request #5: Any police documents, training bulletins, or other documents describing the circumstances under which San Jose police officers may or may not use race or ethnicity in determining whether or not to take law enforcement action.

SJPD Response:

The following documents are enclosed for your review:

Department Orders:

- Order #99-033 - Vehicle Stop Demographic Information Study, 05/26/1999
- Order #00-028 - Profile Stops, 09/12/2000
- Order #02-028 - Vehicle Stop Demographic Study Disposition Code Update, 06/12/2002
- Order #05-037 - Lost or Stolen Mexican Consular ID Card, 09/27/2005

Sanjeev Bery, San Jose Office Director, ACLU
Mark Schlosberg, Police Practices Policy Director
Attachment A
RE: Public Record Act Request - Ambassador/B-Hive Lounge 10/22/2005
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San Jose Police Department Memorandums:

11/06/2001 - ID Cards from Mexican Consulate
12/18/2001 - Mexican National Official Identification

San Jose Police Department Duty Manual:

Sections L 2800 - L2806: Detention and Arrest
Sections L2400 - L2412: Enforcement - Traffic Law
Sections C1300 - 1307: Ethical Responsibilities - General Provisions
Section L 7911: Immigration and Naturalization Service
Section L 8209: Minor Offenses by Consular Officers

I would also like to thank you for your patience in our delayed response to this PRA request. I sincerely appreciate and value your ongoing cooperation while we work to respond to various requests for information and hope it has not caused you any inconvenience.

Should you have any questions regarding this information please contact Lt. Gary Kirby, Commander, Office of the Chief - Research and Development Unit at 408.277.5250 or email: gary.kirby@sanjoseca.gov.

Sincerely,

ROBERT L. DAVIS
Chief of Police

Lt. Gary L. Kirby
Research and Development Unit

RLD:GLK
Encl.



Attachment B

San Jose Police Department

July 7, 2006

Sanjeev Bery, San Jose Office Director
American Civil Liberties Union of Northern California
111 N. Market St. #940
San Jose, CA 95113

Re: PRA Request - Traffic Stop Data

Dear Mr. Bery,

I am writing on behalf of Chief Davis in response to the above referenced Public Record Request dated March 6 and follow-up request dated May 4, 2006.

As previously stated in our January 25, 2006 response to your Public Records Act (PRA) request, the San Jose Police Department transitioned to a new CAD system on June 15, 2004. This transition to a more complex CAD system included several procedural and business practice changes that resulted in problems with the demographic data for vehicle stops entered into the new CAD system. The problems were determined to be the result of human error during data entry of disposition codes. This error resulted in minimally collected and inaccurate demographic data for vehicle stops made. As a result, the Department decided not to produce a vehicle-stop demographic report until the procedural problems were corrected and the demographic data could be validated.

Because the Department did not have reliable demographic data for the time period you are requesting, a custom programming script had to be written in order to extract the information that had been collected in the CAD system. Because the date range for the vehicle-stop demographic data that you requested falls within the time period when the data input was so inaccurate and incomplete that the Department could not produce a report, we strongly caution you not to draw any conclusions from the data, other than that it is incomplete in that it does not reflect a complete account of vehicle-stop demographics for the dates and locations of your request. As an example, using the geographic boundaries and the time period of your request, October 1 through November 10, 2005, the programming script identified a total of 79 vehicle stops being made; however, the data query could only pull the demographic data for 25 of those stop events.

Additionally, the geographical area from your initial PRA request was amended in your March 6, 2006 request to include, *"If there were additional traffic stops in the region that were not specifically linked to one of the actual street addresses in the region, we would like that documentation as well."* When conducting a search for data not specific to an address, the Beat Building Block (BBB) is the smallest geographical increment of measurement. To that extent, BBB 166 was used to extract the data presented on the final report. It is somewhat larger in scope but it does include the areas of your request. A Beat Building Block map of BBB 166 will be provided to you, which will identify the geographic boundaries included in the search. You may refer to the 'SJPD.org' web site and enter "Beat Building Blocks" or "BBB" in the "search" utility for additional information regarding Beat Building Blocks.

Attachment B

The prepared report, "Car Stop Demographics for BBB 166" includes:

TABLE 1	Date, event type (car stop), geographic location (BBB 166), and demographic data
TABLE 2	Event type definitions
TABLE 3	SQL statement for extracting the total number of car stops in BBB 166
TABLE 4	Car stop disposition codes
TABLE 5	Reason for stop disposition codes
TABLE 6	Ethnicity disposition codes
TABLE 7	Search disposition codes

In your March 6, 2006 letter you requested that "If you anticipate that these costs will exceed \$20, please notify us of this fact prior to making the copies."

The City of San Jose's Public Record Act Policy states: "Requestors of electronic records shall pay for production costs, including the cost to construct the record and the cost of programming and computer services necessary to produce the copy if the request would require the production of a record that is otherwise only produced at regularly schedule intervals, or the request would require data compilation, extraction, or programming to produce the record." This policy is based upon Subdivision (b) of Government Code Section 6253.9.

Over 32 hours of programming time alone is associated to your request, totaling \$1,937.16. On June 21, 2006, Lt. Gary L. Kirby contacted your office by phone to notify you that the Department had finalized the report and that due to the extensive and extremely complex nature of your request, there would be charges related to the specialized programming necessary to complete the report. As of today's date we have not received any response from the ACLU as to whether or not you still wish to receive the completed report.

If you wish to receive this report please contact Lt. Gary Kirby, Commander, Office of the Chief - Research and Development Unit at 408.277.5200 or email gary.kirby@sanjoseca.gov. A check for the amount of the programming costs should be made out to the City of San Jose.

Sincerely,

ROBERT L. DAVIS
Chief of Police



Lt. Gary L. Kirby
Research and Development Unit

RLD:GLK

Response to ACLU Letter Dated July 6, 2006

In the ACLU letter to Council, they posed several questions. In the interest of expediency, the Department is providing answers to those questions as follows:

1. What is SJPD's current commitment to the Vehicle Stop Demographic Study?

The Department is committed to continuing this study for the time being and will use the June 1, 2006 through May 31, 2007 timeframe for the next annual report. Indeed, the only things that have created any recent delays for the Research and Development Unit of the Department have been the time and effort necessary to address all of the issues associated with the new CAD system; the numerous, new technology projects staff in the Unit have been assigned to tackle in order to allow the Department to allocate its resources more effectively for the actual day-to-day work of the Department (including wireless broadband and electronic citations); the numerous Urban Area Security Initiative (UASI) Projects that the Unit staff are spearheading (including the Radio Interoperability Project); the annual gathering and reporting of the Department's crime statistics that lead to San Jose's designation as the Safest Big City in America; and the fact that staff is attempting to do all these things with a staff that had been cut due to ongoing budget constraints.

2. What is SJPD's timeline for addressing alleged errors in its data collection system and releasing past information?

Rather than relying solely upon officers to enter VSDS data into the new CAD system, the Department has implemented a revised process for data collection by having dispatchers enter the data into the system when closing vehicle stop events for officers. Training is ongoing for newly hired personnel and those returning back to patrol from other assignments. There will be no attempt to retrieve previous vehicle demographic stop data associated to demographic information during the timeframe for which the Department knows data is missing or incomplete. The Department does not have the staffing necessary to go back and reconstruct or rehabilitate the data.

3. How often will SJPD publicly release data from the Vehicle Stop Demographic Study?

For the time being, the Vehicle Stop Demographic Studies will be released on an annual basis.

4. Will SJPD make vehicle stop data since June 2004 available on its website?

The data for the time period from June 2004 until May 2006 will not be recovered due to the issues previously discussed. Demographic data will be made available for the June 1, 2006 through May 31, 2007 time period.

5. **What is SJPD's current policy on honoring California Public Records Act requests?**

The Department has always been and will continue to be responsive to PRA requests within legal timelines and capabilities of the Department.

6. **What steps will SJPD take to ensure that future requests for information under the California Public Records Act request are honored?**

There has never been a request made of the San Jose Police Department that was not honored or responded to.

7. **What steps will SJPD take to ensure that it complies with the response deadlines required under the California Public Records Act?**

The Department makes every effort to comply with response deadlines as required under the CPRA. Based on some unique requests that require extensive staff work such as this ACLU request, the Department diligently contacts the requestors and makes them aware of the issues. In an effort to rectify any misunderstanding in what is trying to be accomplished with a PRA request, a change in business practice for the Department will be to rely less on verbal contacts with requesting individuals and resort to a more formalized and written method of correspondence for tracking and documentation purposes.