
From: Robinson, James H. [mailto:JHRobinson@mercurynews.com]
Sent: Wednesday, May 27, 2009 3:19 PM
To: City Clerk; Price, Lee
Cc: Manheim, Tom; Norris, Tom; McGurk, Michelle
Subject: appeal of public records denial

May 27, 2009

To the San Jose City Clerk's Office,

The Mercury News is respectfully requesting that the City Council's Rules and Open Government Committee take under consideration our appeal of the San Jose Police Department's refusal to release its 911 tapes regarding the fatal shooting of Daniel Pham by city police officers on May 10, 2009.

The department rejected our public records act request for the tapes on May 13, 2009.

Sincerely,

Bert Robinson
Assistant Managing Editor/News
San Jose Mercury News
408-920-5970

As background, here is the department's e-mailed explanation:

San Jose Police Department Response:

The Public Records Act treats communications records of complaints and/or requests for service as part of the record of investigation which is exempt from disclosure under Government Code Section 6254(f). The Department will provide the information specified in subdivision (f) regarding the time, substance, and location of the complaint or request for assistance received by the Department, and the time and nature of the police response and outcome of the incident. Please advise if you wish for me to proceed further regarding the specified information listed above.

Fred Mills
San Jose Police Dept.
Office of the Chief
Research and Development Unit
fred.mills@sanjoseca.gov
(408) 277-5229

This was in response to our PRA which follows:

Dear San Jose Police Department,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a CD recording (or to be transmitted electronically if possible) of the 911 calls made May 10 regarding the knife attack at 961 Branbury Way.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record in question.

If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 408-920-5002.

Thank you for your time and attention to this matter.

Sincerely,

Lisa Fernandez
Mercury News staff writer
408-920-5002

The department reiterated their refusal to release this - and any 911 tape - through Sgt. Ronnie Lopez, the department spokesman.