



Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

**FROM: Tom Manheim
Communications Director**

SUBJECT: PHAM RECORDS REQUEST

DATE: October 30, 2009

Approved

Date

10/30/09

In addition to the Mercury News request for 911 tapes and records related to the Pham Shooting, the City received a separate Public Records Request from a number of organizations requesting similar information. The deadline for responding to this request was Thursday, October 29, 2009. The attached response is provided as additional information for the Committee's review.

TOM MANHEIM
Communications Director

Manheim, Tom

From: Herrick, Lisa
Sent: Thursday, October 29, 2009 5:05 PM
To: 'Silicon Valley De-Bug'
Cc: Melissa Kinyalocets
Subject: Public Records Request Regarding Officer Involved Shooting Death of Daniel Pham

Dear Mr. Jayadev -

This email responds to your request for public records dated October 19, 2009.

As you may know, the San Jose Mercury News made a similar request for the 911 recording (your request #1) and police report (your request #3(a)) in the Daniel Pham matter some months ago. We denied the request because the recording and report were exempt under Government Code Section 6254(f) since the Grand Jury proceeding had not yet been concluded. When the Mercury News appealed the decision to the Rules and Open Government Committee, the Committee upheld the denial but directed the Chief of Police and the District Attorney to return after the Grand Jury determination was final. The Mayor has scheduled this matter for discussion next week on Wednesday, November 4, at 2 pm.

We intend to recommend that the Rules Committee agree to disclose the 911 recording or a transcript of the recording - as long as the people recorded during the 911 call do not express any privacy concerns which could clearly outweigh disclosure. We are in the process of scheduling a meeting with them so that we can report their wishes to the Rules Committee. Although not required under the California Public Records Act, we believe that disclosure of the 911 recording or a transcript of the recording is appropriate now because there is no on-going criminal investigation and we do not believe that disclosure will interfere with any administrative review by the Police Department.

We also intend to recommend that the Rules Committee agree to provide a detailed summary of the police report, consistent with the California Public Records Act and the City Council's action on October 20, 2009. We will not recommend disclosure of "all police reports written in the Daniel Pham case" (your request #3(a)), "all witness statements, no matter how memorialized, including the statements of the officers alleged to have killed Daniel Pham" (your request #3(b)), "all crime scene photos, videos, etc. taken during the course of the investigation in the Daniel Pham case" (your request #4), "any and all diagrams or related documents/reports reflecting the manner in which the shooting, tasing and death of Daniel Pham occurred" (your request #5), "the entire case file in the Daniel Pham case" (your request #8) or other records "related to the Daniel Pham case" (your request #9) because they are exempt under Government Code Section 6254(f)(2).

Ultimately, however, the Rules Committee will make the decision about whether to disclose the 911 recording or a transcript of the recording and the detailed summary of the police report.

We intend to disclose the content of the dispatch recording (your request #1), subject to any appropriate redactions. We are in the process of reviewing it and we will let you know when it is ready. As with the 911 recording, we believe that disclosure of the content of the dispatch recording is appropriate now, because there is no on-going criminal investigation and we do

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not believe that disclosure will interfere with any administrative review by the Police Department.

We also intend to disclose the content of a log of computer communications (your request #2), subject to any appropriate redactions. We are in the process of reviewing the log and we will let you know when it is ready. Again, although not required under the California Public Records Act, we believe that disclosure of the content of the log is appropriate now, because there is no on-going criminal investigation and we do not believe that disclosure will interfere with any administrative review by the Police Department. No other recorded communications - beyond the 911 recording, dispatch recording and log of computer communications - exist.

We will not disclose "all medical reports, autopsy reports, etc., prepared during the course of the Daniel Pham investigation" (your request #6) or "all forensic tests and related conclusions that have thus far been performed/completed in the Daniel Pham case" (your request #7) because those records are the public records of the County of Santa Clara Medical Examiner-Coroner. I have forwarded your request to Melissa Kiniyalocts, Lead Deputy County Counsel, who works with the Medical Examiner-Coroner. She is copied on this message and will be contacting you shortly to respond to your request.

Pursuant to Government Code Sections 6253(c)(2) and (3), we will need up to an additional 14 days to prepare the records that we have agreed to disclose. However, I will contact you as the records become available so that you may have access to them as soon as possible.

Thank you for your patience.

LISA HERRICK | Senior Deputy City Attorney
Office of the City Attorney | City of San Jose
200 East Santa Clara Street, 16th floor | San Jose, CA | 95113
Tel: 408.535.1963 | Fax: 408.998.3131
lisa.herrick@sanjoseca.gov

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Please consider the environment before printing this e-mail.

From: Silicon Valley De-Bug [mailto:svdebug@newamericamedia.org]
Sent: Monday, October 19, 2009 12:21 PM
To: Dolores Carr; David Howe; Doyle, Richard
Cc: aram james; sscala@pacbell.net; Van Le; tien nguyen; miguel.marquez@cco.sccgov.org
Subject: Public Records Request Regarding Officer Involved Shooting Death of Daniel Pham

To:
Santa Clara County District Attorney Dolores Carr
Santa Clara County Assistant District Attorney David Howe
San Jose City Attorney Richard Doyle

10/30/2009

Re: Public Records Request Regarding Officer Involved Shooting Death of Daniel Pham

Date of Request: October 19, 2009

On behalf of the Asian Law Alliance, the Coalition for Justice and Accountability, the Vietnamese American Community of Northern California, and Silicon Valley De-Bug, and pursuant to the CPRA (California Public Records Act) we are requesting the following:

- 1) A copy of the dispatch/911 tape reflecting any and all calls made to the San Jose Police Department on May 10, 2009--related to the Daniel Pham case.
- 2) A copy of all other radio communications, computer communications, and all other forms of recorded communications related to the Daniel Pham case.
- 3(a) All police reports written in the Daniel Pham case.
- 3(b) Copies of all witness statements, no matter how memorialized, including the statements of the officers alleged to have killed Daniel Pham--officers Matthew Blackerby and Brian Jeffrey.
- 4) Copies of all crime scene photos, videos, etc., taken during the course of the investigation in the Daniel Pham case.
- 5) Any and all diagrams or related documents/reports reflecting the manner in which the shooting, tasing and death of Daniel Pham occurred.
- 6) A copy of all medical reports, autopsy reports, etc., prepared during the course of the Daniel Pham investigation.
- 7) Copies of all forensic tests and related conclusions that have thus far been performed/completed in the Daniel Pham case.
- 8) A copy of the entire case file in the Daniel Pham case.
- 9) Any and all other materials, no matter how memorialized, related to Daniel Pham case--- that are subject to release pursuant to the California Public Records Act.

We are requesting that compliance with the above requests be completed within the time frame required by the California Public Records Act.

Thank you for your time and attention to this matter.

Sincerely,

**Aram James, Coalition for Justice and Accountability
Nguyen Tien N., Vietnamese American Community of Northern California
Richard Konda, Asian Law Alliance
Raj Jayadev, Silicon Valley De-Bug**

10/30/2009