



*Office of the City Manager*  
COMMUNICATIONS OFFICE

May 13, 2009

Evan Keyser  
SpotCrime  
2400 Boston Street, Suite 354  
Baltimore, MD 21224

Dear Mr. Keyser:

This letter is in response to your appeal of the denial of your request for public records to the San José Police Department, dated April 17, 2009, seeking Computer Aided Dispatch (CAD) system data, and follows our telephone conversation on April 27, 2009, and your email message from later that day.

Your April 17 request asked for Part I crime data for "all of the territory that the San José PD covers," including:

- Address of where crime occurred;
- Date of incident;
- Type of crime;
- Police Department incident number;
- Short description of the incident;

You requested this data for 2008 and 2009, and for the data to be available to update your maps "on a daily basis." In a later email, you stated that you are seeking "the same type of data that's being transmitted to Crime Reports [CrimeReports.com]."

We will not be providing the data you seek. The CAD system records are records of investigations by the San Jose Police Department that are exempt from public disclosure under subdivision (f) of Government Code Section 6254.<sup>1</sup> Furthermore, although you requested information dating back to 2008, the California Public Records Act only requires the Department to provide information on contemporaneous activity by the Department to the extent it exists in Police Department records. In addition, the CPRA only applies to records that are currently in existence at the time of the request and does not require the acceptance of "rolling" or standing requests.

<sup>1</sup> Some CAD data may also be subject to statutory confidentiality laws; for example, juvenile records are protected under Welfare and Institutions Code Sections 827 and 828 and official government information is protected under Evidence Code Sections 1040 et seq. These confidentiality and privilege laws constitute a separate ground for exemption from public disclosure under subdivision (k) of Government Code Section 6254.

While the CAD system records include some information that is required to be disclosed under the CPRA (as long as disclosure will not endanger the safety of a person involved in an investigation or the successful completion of the investigation or a related investigation), the City already provides that data to the public on the CrimeReports.com site.<sup>2</sup> In fact, the CrimeReports.com site was developed in order to provide access to information that must be released pursuant to Government Code Section 6254(f)(2) to the public at no cost.

We believe that since the CAD records you seek are exempt from public disclosure under Government Code Sections 6254(f) and (k), the City is under no obligation to provide those records to you in an electronic format. The requirement to provide an identifiable electronic record in an electronic format does not apply to information that is exempt from disclosure pursuant to the CPRA. Subdivision (a) of Government Code Section 6253.9 states in relevant part:

Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person . . . . (Emphasis added.)

Even though the CAD system records include some information that must be disclosed under the CPRA (as long as disclosure will not endanger the safety of a person involved in an investigation or the successful completion of the investigation or a related investigation), the City is unable to extract that data. To produce the data that must be disclosed, the City would have to contract for special programming and you would be responsible for the cost of the programming under Government Code Section 6253.9(b). However, to even begin to identify the extent and the cost of the programming would require the City to expend resources it does not have, including developing a request for proposal.

In sum, because the CAD records are exempt from disclosure, the City cannot extract the data without contracting with a vendor to provide non-exempt information, and the City already provides the non-exempt information to the public at CrimeReports.com, the public's interest in non-disclosure of the data you seek clearly outweighs the public's interest in disclosure. See Government Code Section 6255.

Should you wish to do so, you may further appeal the response to your request with the City Council Rules and Open Government Committee. For information, contact the Office of the City Clerk by calling (408) 535-1260 or by writing to [cityclerk@sanjoseca.gov](mailto:cityclerk@sanjoseca.gov).

Regards,



Thomas D. Norris  
Public Records Manager

---

<sup>2</sup> Public Engines, the company that operates CrimeReports.com, uses its proprietary software under a contract with the Department to extract and publish the public information.

LISA HERRICK  
Sr. Deputy City Attorney  
Direct Line: 408-535-1963

July 21, 2009

Evan Keyser  
SpotCrime  
2400 Boston Street, Suite 354  
Baltimore, MD 21224

Dear Mr. Keyser:

This letter responds to your letter to Richard Doyle dated June 29, 2009, in which you ask for "an explanation. . . justifying giving preferential access to public data to one entity, and allowing that entity to profit from the preferential access." You state that you have "made numerous requests for crime data" from the San Jose Police Department which you contend is "being provided to CrimeReports.com."

We disagree with your characterization that "CrimeReports.com [is] a publisher because of their partnership with the San Jose Mercury News and because this data is being resold to other news entities." We understand that CrimeReports.com makes public information available to the San Jose Mercury News at the request of the Police Department and that the information is not being resold to "other news entities."

In addition, we are aware that Thomas D. Norris, Public Records Manager, wrote to you on May 13, 2009, about your request to the San Jose Police Department, a copy of which is enclosed. We advised Mr. Norris on his response and agree with the explanation he has given you; the Computer Aided Dispatch (CAD) system records are records of investigations by the San Jose Police Department that are exempt from public disclosure under subdivision (f) of Government Code Section 6254.

While the CAD system records include some information that is required to be disclosed under the CPRA (as long as disclosure will not endanger the safety of a person involved in an investigation or the successful completion of the investigation or a related investigation), the City provides that data to the public on the CrimeReports.com site. Public Engines, the company that operates CrimeReports.com, uses its proprietary software under a contract with the Police Department to extract and publish the public information. Public Engines is the City's vendor.

---

As Mr. Norris explained, the City is unable to extract the data that is made available to the public by Public Engines. To produce the data that must be disclosed, the City would have to contract for special programming and you would be responsible for the cost of the programming under Government Code Section 6253.9(b). However, to even begin to identify the extent and the cost of the programming would require the City to expend resources it does not have, including developing a request for proposal.

In sum, because (1) the CAD records are exempt from disclosure; (2) the City cannot extract the data without contracting with a vendor to provide non-exempt information; and (3) the City already provides the non-exempt information to the public at CrimeReports.com, the public's interest in non-disclosure of the data you seek clearly outweighs the public's interest in disclosure. See Government Code Section 6255.

You may challenge this response to your request with the City Council Rules and Open Government Committee. For information, contact the Office of the City Clerk by calling (408) 535-1260 or by writing to [cityclerk@sanjoseca.gov](mailto:cityclerk@sanjoseca.gov).

Thank you.

Very truly yours,

RICHARD DOYLE, City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney