

**BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA**

In Re The Complaint of

Scott Morris

Scott Morris,

Case No. 21-02

Complainant

DECISION OF THE

The City of Alameda,

OPEN GOVERNMENT COMMISSSION

Respondent

OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

Complainant Scott Morris alleges that the Alameda City Attorney's Office and Alameda Police Department improperly denied his request for documents under the California Public Records Act, Cal. Gov. Code § 6540, et seq. and the City of Alameda's Sunshine Ordinance (Mun. Code § 2-92 et seq.).

On April 15, 2020, Mr. Morris submitted a request seeking identified items of information for every person arrested by the city police from February 1, 2020 to April 15, 2020. Specifically, he requested the following:

The full name and occupation of every individual arrested by the agency, the individual's physical description including the date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

The City responded to Mr. Morris stating that its policy was to disclose only contemporaneous arrest records, and provided Mr. Morris with arrest records for the time period between April 13, 2020 and April 25, 2020. This disclosure was made on April 27, 2020.

The City made a second disclosure of arrest records on May 12, 2020, which included records for the time period between March 29, 2020 and April 12, 2020.

Mr. Morris filed his complaint on May 12, 2020, alleging that the City initially improperly denied his Public Records Act request.

On May 13, 2020, the City made its third and final disclosure to Mr. Morris, providing to him arrest records for the time period between February 1, 2020 and March 28, 2020.

The City noted that it was making the disclosure to "avoid further administrative entanglements." The City maintained that case law required the City only to disclose contemporaneous arrest records and that the City "remain[ed] committed to striking a reasonable balance between the public's right to know and the arrestee's constitutional and statutory right to privacy." Mr. Morris contended that the case law cited by the City was outdated.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the Open Government Commission, created under the Sunshine Ordinance, hears the complaint and renders a formal written decision. The complainant and the City shall appear at a hearing. During the hearing, the Open Government Commission considers the evidence and the arguments of the parties before making its decision. Section 2-93.2 (b). The Open Government Commission conducted the hearing on April 5, 2021 and considered the evidence and arguments of Mr. Morris and the City.

Discussion and Decision

The OGC finds that the City's response to Mr. Morris was late, in that it was provided on April 27, 2020, 12 calendar days after Mr. Morris' April 15, 2020 request. Section 6253(c) of the California Public Records Act requires that a determination be provided to the requesting party within 10 days of the request.

The OGC further finds that the City failed to respond to Mr. Morris' request "promptly" as is required in the Public Records Act, though it acknowledged that Mr. Morris had ultimately received all of the records that he had requested.

For the above reasons, the complaint is sustained.

Dated: April 26, 2021

DocuSigned by:
Ruben Fios, Chair

DocuSigned by:
Rashied Shabazz, Vice-Chair

DocuSigned by:
Carmen Reid, Member

Members not in favor of the Decision:

DocuSigned by:
Serena Chen, Member

DocuSigned by:
Krystal LoPinto, Member