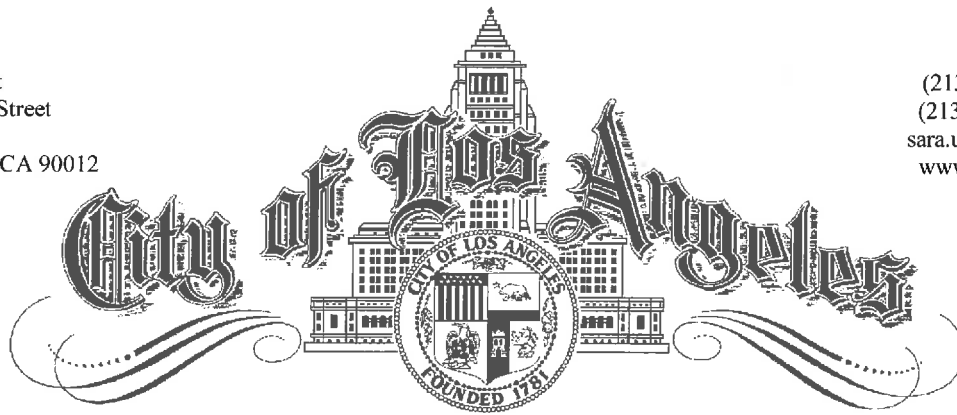


City Hall East  
200 N. Main Street  
8<sup>th</sup> Floor  
Los Angeles, CA 90012

(213) 978-2283 Tel  
(213) 978-8787 Fax  
sara.ugaz@lacity.org  
www.lacity.org/atty



MIKE FEUER  
City Attorney

August 10, 2018

Colleen Flynn, Esq.  
Law Office of Colleen Flynn  
3435 Wilshire Blvd., Suite 2910  
Los Angeles, CA 90010

SENT VIA EMAIL TO [cflynnlaw@yahoo.com](mailto:cflynnlaw@yahoo.com) & U.S. Mail

Re: *Stop LAPD Spying Coalition v. City of Los Angeles*, LASC Case Number  
BS172216

Dear Ms. Flynn:

I am writing in response to your letter dated July 25, 2018, regarding Requests Numbers 1, 2, and 9.

**Request Number 1**

Your letter claims that Grant Adjustment Notices from 12/31/2015 to 3/31/2016 and No cost extension explanations from 12/31/2015 to 3/31/2016 were missing from the production.

According to the Officer-in-Charge of the Grants Section, no grant adjustments or extensions exist for the above-specified time periods. The initial Smart Policing grant was for \$499,959 with a grant period of 10/1/2009 - 9/30/2011. Extensions were made to that award through 9/30/2014. In 2014, the federal government invited the Department to apply for supplemental funding of \$400,000 with a grant period of 10/1/2014-3/31/2016. The new award was added to the initial award and the new grant end date became 3/31/2016. Produced herewith is a 14-page grant acceptance letter package, which reflects the new grant end date of 3/31/2016, and a summary of the Department's federal grant awards. (These documents are entitled on the enclosed thumb drive as "Grant Acceptance Smart Policing\_1" and "Grantee Federal Awards.") Therefore, there was no extension requested from the federal government because the new supplemental award essentially extended the initial grant.

### Request Number 2

Your letter claims that all 4-week reports and many quarterly and semi-annual reports are missing from the production.

#### **1) 4-week Reports**

The Department is continuing to search for responsive documents and will send you a follow-up letter regarding the outcome of its search.

#### **2) Quarterly Reports**

Produced herewith are all quarterly reports, referred to as PMT reports, for the Smart Policing Initiative ("SPI").

#### **3) Semi-Annual Reports**

Produced herewith are all semi-annual reports, referred to as Progress Reports, for SPI.

### Request Number 9

#### Waiver

You contend that because the Department produced Dashawn Sutton's Chronic Offender Bulletin that we have waived the ability to withhold other documents. This is not so. The remaining Chronic Offender Bulletins are exempt from disclosure under Government Code section 6254, subdivisions (c), (f) and (k), Government Code section 6255, Evidence Code section 1040, and Article 1, Section 1 of the California Constitution. You have not provided any authority to support your proposition that the disclosure of a particular, specific document requires the disclosure of other, different documents.

"The right of access to public records under the CPRA is not absolute." (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1320.) The CPRA "states a number of exemptions that permit government agencies to refuse to disclose certain public records." (*Id.*) To a large extent, these exemptions reflect legislative concern for privacy interests. (*Id.*) The CPRA features two categories of exemptions: (1) materials expressly exempt from disclosure pursuant to Government Code section 6254; and (2) the 'catchall exception' of Government Code section 6255. (*Id.*)

Exemptions, however, can be waived. (*See Gov. Code, § 6254.5.*) Section 6254.5 states:

"Notwithstanding any other provisions of law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law..."

Letter to Colleen Flynn

August 10, 2018

Page 3

“Disclosure to one member of the public would constitute a waiver of the exemption, requiring disclosure to any other person who requests a copy.” (*County of Santa Clara, supra*, 170 Cal.App.4th at 1322, citing Gov. Code, § 6254.5.) In other words, once an agency discloses an exempt record to a person who is not authorized to receive it, then it must disclose that record to all who request it.

Here, a Department employee disclosed a single Chronic Offender Bulletin—that of Dashawn Sutton—during a 2013 conference, and it has in turn disclosed that bulletin to you. A Department employee also disclosed a single Chronic Offender Bulletin to Professor Brayne. But, the Department cannot disclose that bulletin to you because it does not know whose bulletin was given to Professor Brayne; nor can it find out because Professor Brayne will not tell the Department whose bulletin she was given or who gave it to her. An internal investigation into this issue would be futile given that Professor Brayne was performing fieldwork in the Department for two and a half years and during that time interviewed 75 sworn officers of various ranks as well as civilian employees. (*See Big Data Surveillance: The Case of Policing*, pgs. 978, 983.) Incidentally, the Department is endeavoring to have Mr. Sutton’s bulletin removed from the internet.

There is no evidence that the Department disclosed any (or all) of the other bulletins. No case holds that a disclosure of a single document constitutes a disclosure (and waiver of applicable exemptions) to all similar documents. For example, if a waiver to a single confidential attorney-client communication, the Court would not find that all other confidential communications are likewise waived and disclosable. Therefore, the Department has not waived any of the applicable exemptions for the remaining bulletins. Accordingly, they will not be produced.

### **Burden**

Notwithstanding the Department’s position that Chronic Offender Bulletins (other than Mr. Sutton’s) are privileged and will be withheld, a burden does exist with disclosing the remaining bulletins. Your letter claims that there should be no burden associated with producing all Chronic Offender Bulletins because they are all stored in a single repository, namely on the M: drive and in a shared electronic folder.

The LASER Program began in 2011 in the Newton Division. From 2011-2013, Newton Division stored its Chronic Offender Bulletins on the M: drive and in a shared electronic folder, but it stopped doing so. The other divisions that implemented the LASER Program did not store their bulletins in a single repository. I am continuing to investigate where all Chronic Offender Bulletins are stored and will provide you with the information in a subsequent letter. All documents produced herewith are saved on the enclosed thumb drive. If you have any questions, please feel free to contact me at (213) 978-2283. Thank you.

Sincerely,

  
SARA UGAZ, Deputy City Attorney

Encls.