

From: Anonymous Person

10/12/2020 

Subject: California Public Records Act Request: Recent Police Critical Incident Records - Immediate Discl...

Email

To Whom It May Concern:

Pursuant to the CPRA and the Sunshine Ordinance, I hereby request the following records as an Immediate Disclosure Request:

- All records related to the shooting and death of Cesar Vargas by SFPD (including but not limited to incident reports, statements, photos, exhibits, attachments, bodycam footage, CAD reports, 911 calls, and audio recordings of officers and dispatch during the incident, "investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports;" (PC 832.7(b)(2)), and also any emails or text messages sent or received by the officers involved in the incident or by Chief Scott regarding the incident)

The records listed above are disclosable due to one or more portions of state or local law, including but not limited to:

- Gov Code 6254(f)(2)(A) and 6254(f)(4) - exceptions to the law enforcement investigation exemptions requiring disclosure
- SF Admin Code 67.24(d)
- Penal Code 832.7(b)(1)(A) "(A) A record relating to the report, investigation, or findings of any of the following:
  - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
  - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury."

Furthermore: "Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action."  
"

No complaint or misconduct need be alleged - these records are disclosable due to the shooting and death of person involved.

You must provide exact copies and rolling responses. Electronic records must not be printed and scanned as that does not constitute a "copy" (see ruling against SFPD in SOTF 19098). You must justify every withholding of any information in writing. You must provide footnotes or other clear references to justify each and every redaction (see ruling against SFPD in SOTF 19098). If you do not provide correct copies of electronic records or do not justify by footnote or other clear reference each and every redaction, we will ask SOTF to again file official misconduct charges against Chief Scott before the Ethics Commission, as we did in SOTF 19112, pursuant to SFAC 67.34.

Thank you in advance for your anticipated cooperation in this matter.

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the [MuckRock.com](https://www.muckrock.com) FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be disclosable public records.

Sincerely,  
Anonymous

**From: Muckrock Staff**

10/22/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following California Public Records Act request, copied below, and originally submitted on Oct. 12, 2020. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

**From: Muckrock Staff**

11/06/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following California Public Records Act request, copied below, and originally submitted on Oct. 12, 2020. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

**From: San Francisco Medical Examiner**

11/06/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

Hello,

This is in response to your request under the California Public Records Act submitted on October 12, 2020.

At this time, the Office of the Chief Medical Examiner has no records in response to your request other than records that are exempt from release under the California Public Records Act. The Department does not maintain peace officer personnel records described by Penal Code 832.7(b), nor law enforcement information pursuant to SF Admin Code 67.24(d). The Department does not possess recordings that relate to a critical incident pursuant to Gov Code 6254(f)(4). Insofar as the Department has information described in Gov Code 6254(f)(2)(A), pursuant to the

Department's Administrative Guidelines 19-3 and 19-4, case records are not available prior to case closure. At this time, the Department is not providing records that you have requested pertaining to this case because they are protected from disclosure by the official information privilege. California Government Code § 6254(k) provides an exemption for records "the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." California Evidence Code § 1040 provides an exception under state law for official information. This includes information acquired in confidence by a public employee in the course of his or her duties.

When non-exempt records are available for release, the Department will produce them as soon as reasonably possible.

Thank you,

Office of the Chief Medical Examiner  
City and County of San Francisco  
1 Newhall Street  
San Francisco, CA 94124

From: Anonymous Person

11/06/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

Department Administrative Guidelines cannot create exemptions and have no bearing on whether or not information is disclosable.

We will file immediate appeals. Do not destroy any records.

From: Anonymous Person

11/06/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

Supervisor of Records Dennis Herrera,

This is a 67.21(d) petition against the Office of the Medical Examiner for a determination in writing that the records withheld are, in whole or in part, public, and for an order for their disclosure.

We requested via this email address:

> All records related to the shooting and death of Cesar Vargas by SFPD (including but not limited to incident reports, statements, photos, exhibits, attachments, bodycam footage, CAD reports, 911 calls, and audio recordings of officers and dispatch during the incident, "investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports;" (PC 832.7(b)(2)), and also any emails or text messages sent or received by the officers involved in the incident or by Chief Scott regarding the incident)

Some of these records are disclosable under Gov Code 6254(f)(2)(A) and 6254(f)(4), SF Admin Code 67.24(d), and/or Penal Code 832.7(b)(1)(A), and 832.7(b)(2).

Autopsy results of Vargas are explicitly disclosable, notwithstanding under any other exemption, under PC 832.7 / SB 1421. The fact that they are in the possession of the Medical Examiner instead of a police agency has no relevance (*Becerra v Superior Court*).

The agency appears to claim that all of these records are "official information". First, if the interpretation is that official information overrides SB 1421, then essentially all SB 1421 records can

be withheld. EC 1040 can be used to withhold nearly any record. SB 1421 makes autopsy reports in police shootings disclosable, notwithstanding any other exemption.

Regardless, to be exempt pursuant to EC 1040, not only does information need to be "official information," but the agency \*also\* must make one of the following findings (EC 1040(b)):

- (1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.
- (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

No federal or state law has been identified forbidding the disclosure.

The public interest in understanding the circumstances of the death of a person at the hands of law enforcement is extraordinarily high, and thus even if you do consider the balancing in (2) (though you should not), thus the balance is in favor of disclosure.

Sincerely,  
Anonymous

**From: Muckrock Staff**

11/23/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following California Public Records Act request, copied below, and originally submitted on Oct. 12, 2020. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

**From: Muckrock Staff**

12/08/2020 


Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following California Public Records Act request, copied below, and originally submitted on Oct. 12, 2020. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

**From: San Francisco Medical Examiner**

12/17/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

Hello,

This is in response to your request under the California Public Records Act submitted October 12, 2020.

At this time, the Office of the Chief Medical Examiner is able to provide the attached record under the California Public Records Act. When the investigation is complete and the non-exempt records are available for release, the Department will produce them as soon as reasonably possible.

Thank you,

Office of the Chief Medical Examiner  
City and County of San Francisco  
1 Newhall Street  
San Francisco, CA 94124

p: (415) 641-3603

e: [kalima.collymore@sfgov.org](mailto:kalima.collymore@sfgov.org)<mailto:kalima.collymore@sfgov.org>



ME Register with 2020-1262

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From: Anonymous Person

12/17/2020 

Subject: RE: California Public Records Act Request: Recent Police Critical Incident Records - Immediate D... [Email](#)

You have not provided me a written legal justification citing appropriate statutory justification for withholding all other records, in violation of SF Admin Code 67.27. Please do so before noon.