

Dear Ms. Hickey,

I received your letter dated March 5, 2025, denying my Public Records Act request for data collected and recorded by the Fairfax Police Department in accordance with its obligations under the California Racial and Identity Profiling Act (RIPA). I hope you will take this opportunity to reverse that decision which violates Fairfax's duties under the Public Records Act and is at odds with the uniform cooperation I have received from other Marin County law enforcement agencies.

The following agencies have provided all of the requested RIPA data in a standard format in response to my recent Public Records Act requests: Marin County Sheriff's Office, Belvedere Police Department, Central Marin Police Department, Mill Valley Police Department, Novato Police Department, San Rafael Police Department, Sausalito Police Department, and Tiburon Police Department.

The primary ground for denial asserted in your letter is that "the Town is not required to create a new record to respond to a public records act request." To clarify, my request seeks an *existing record* that the Fairfax Police Department is *required to create* and maintain in accordance with RIPA. Gov. Code § 12525.5(b); see *City of San Jose v. Superior Court* (2017) 2 Cal.5th 651, 623 (CPRA disclosure requirements apply to documents "which the law requires the agency to prepare or which the agency has decided for its own reasons to create." quoting *Yeager v. Drug Enforcement Administration* (D.C. Cir. 1982) 678 F.2d 315, 321 [a FOIA case]).

You indicate that the Fairfax PD has enlisted a third party to store its data and deliver the requisite annual reports to the State RIPA Board. This does not relieve the Town of its disclosure obligations under the Public Records Act.

The [California Public Record Act's] clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency's possession.... [An agency may not] evade the CPRA by transferring public records to an intermediary not bound by the Act's disclosure requirements.

City of San Jose v. Superior Court, 2 Cal.5th at 624.

You mention that Fairfax, like most or all Marin law enforcement agencies, participates in the FBI's National Incident Reporting System. I fail to see the relevance of this information. Your citation of *Sander v. State Bar of California* (2018)26 Cal.App.5th 651, is also inapposite. In that case, the information sought (extensive State Bar records pertaining to members) was not a legally mandated record; the information included great quantities of exempt private information; and compliance with the request would have required the agency to establish new data categories, recategorize existing data, calculate new numerical values and develop software to accomplish these ends.) Nor does the data I have requested include incident reports or investigative records which you note "are generally exempt from disclosure."

I look forward to your prompt response through the original [Muckrock.com](https://muckrock.com) channel remedying the erroneous denial of my Public Records Act Request. Please let me know if you have any questions.

Sincerely,

Frank Shinneman

Sent by email 3/13/25 to Hickey, cc: Tabaranza, Abrams