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Attorney for Petitioner
JOSHUA FERGUSON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JOSHUA FERGUSON,) Case No.: 30-2019-01103679-CU-WM-CJC
) Judge James Crandall
Petitioner/Plaintiff,) VERIFIED PETITION FOR WRIT OF
) MANDATE, INJUNCTIVE AND
v.) DECLARATORY RELIEF FOR
) VIOLATIONS OF THE CALIFORNIA
CITY OF FULLERTON,) PUBLIC RECORDS ACT WITH
) EXHIBITS A THROUGH M.
Respondent/Defendant.)
)
) <i>[Cal. Gov't. Code Section 6250 et seq.]</i>

This action seeks relief from the failure of Respondent/Defendant CITY OF FULLERTON to perform as required by the California Public Records Act, Government Code section 6250, *et seq.* ("CPRA") and the California Constitution, Article I, Section 3.

Petitioner/Plaintiff JOSHUA FERGUSON seeks a writ of mandate, injunctive and declaratory relief under California Code of Civil Procedure sections 1085 and 1060 and Government Code sections 6258 and 6259. In this verified Petition, Petitioner alleges as follows:

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1 **INTRODUCTION**

2 1. In recent years, the issues of police accountability and transparency have
3 been the subject of significant public attention and controversy as part of a broader
4 public debate regarding criminal justice reform.

5 2. The public's right to find out about these issues, and all issues affecting
6 government, is protected by the California Public Records Act ("CPRA") and the
7 California Constitution.

8 3. With the passage of Senate Bill 1421 ("SB 1421"), the State of California
9 made certain records related to law enforcement misconduct publicly available under
10 the CPRA, declaring that "[c]oncealing crucial public safety matters such as officer
11 violations of civilians' rights...undercuts the public's faith in the legitimacy of law
12 enforcement, makes it harder for tens of thousands of hardworking peace officers to do
13 their jobs, and endangers public safety."

14 4. SB 1421 amended the law to make law enforcement personnel records
15 public where there is an officer-involved shooting, use of force resulting in serious bodily
16 injury or death, sexual assault by an officer, or a sustained finding that the officer
17 engaged in dishonesty. The law took effect on January 1, 2019.

18 5. As it pertains to public personnel other than law enforcement, the law is
19 well settled and provides for a broad right of access to public records concerning
20 complaints and discipline against public servants.

21 6. The CITY OF FULLERTON is unlawfully delaying and withholding access
22 to public records in response to several of requests submitted by JOSHUA FERGUSON,
23 including records related to police misconduct, a complaint against a City Parks and
24 Recreation Commissioner, an accident involving a City Parks and Recreation vehicle,
25 and the separation of two public employees arising from misconduct. Therefore,
26 Petitioner brings this suit to obtain a court order requiring the CITY OF FULLERTON
27 to provide access to these important public records.

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8. Respondent/Defendant CITY OF FULLERTON (“Respondent” or “City”) is a “local agency” as defined by Government Code § 6252(a), and is, therefore, subject to the CPRA. The City is governed by a publicly-elected, five-member City Council (“City Council”). The City’s main office is located at 303 W. Commonwealth Ave., in the City of Fullerton, located in Orange County, California.

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10. Venue is proper in this court as Respondent is located within Orange County and the acts and events giving rise to the claims occurred, in part, in Orange County.

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VERIFIED PETITION FOR WRIT OF MANDATE

1 12. On January 9, 2018, the City responded via email inquiring as to whether
2 the requests naming specific officers was meant to narrow the first request for all SB
3 1421 records. The City further stated that it needed clarification as to what records within
4 the scope of SB 1421 Petitioner was requesting. Petitioner responded the same day,
5 confirming that while the more specific requests named officers Petitioner suspected
6 had records subject to disclosure under SB 1421, but that he still sought all records within
7 the scope of SB 1421. A true and correct copy of the City's January 9 email and
8 Petitioner's response are attached as **Exhibit B**.

9 13. On March 1, 2019, the City sent an email regarding the SB 1421 requests.
10 In its email, the City stated that it was "still in the process of preparing the records for
11 production" and that it expected to make files available on a rolling basis beginning on
12 March 11, 2019. A true and accurate copy of the City's March 1 email is attached as
13 **Exhibit C**. The City did not state whether it determined that disclosable records existed
14 for each of the specific officers named in the second and third requests or whether it
15 would be withholding any requested records from disclosure as required by Government
16 Code section 6253(b).

17 14. The City did not begin releasing the SB 1421 records on March 11, 2019.

18 15. Instead, it was not until June 24, 2019, when the City informed Petitioner
19 via email that "[i]nitial SB 1421 responsive records have been posted on the City's
20 website." The City stated that it would continue to produce responsive records on a
21 rolling basis "as review and redaction of confidential information is completed," and the
22 City provided a link to www.cityoffullerton.com/sb1421. A true and accurate copy of the
23 City's June 24 email is attached as **Exhibit D**. However, at no time has the City
24 informed Petitioner whether it intends to release records for each of the named officers
25 in the second and third requests, whether it intends to permanently deny Petitioner
26 access to records for certain officers, whether it intends to withhold any responsive
27 records, or the date upon which it intends to make additional SB 1421 records publicly
28 available.

1 16. While the City has not released a list of officers for whom it intends to
2 release SB 1421 records, Petitioner is informed and believes and on that basis alleges
3 that the City has engaged in negotiations with certain officers to amend past disciplinary
4 notices to remove SB 1421 eligible allegations, thereby circumventing transparency
5 requirements. Petitioner is informed and believes and on that basis the City and former
6 Fullerton police officer Kathryn Hamel entered into an agreement after the City issued
7 a Notice of Intent to Discipline Hamel for various allegations relating to “dishonesty,
8 deceit, untruthfulness, false or misleading statements” and/or “ethics or maliciousness.”
9 Petitioner is informed and believes and on that basis alleges that a true and accurate
10 copy of the Draft Settlement Agreement is attached as **Exhibit E**. In that agreement, the
11 City agreed to revise the Notice of Intent to Discipline to remove those allegations if
12 Hamel resigned, to not release the file pursuant to SB 1421, and agreed to defend against
13 any SB 1421 request in court.

14 **The Cox Complaint Request**

15 17. On August 20, 2018, Petitioner filed a complaint against Gretchen Cox, a
16 City Parks and Recreation Commissioner, alleging that Cox violated City policy by
17 engaging in harassment and by improperly criticizing the City Council in a public forum.
18 On January 5, 2019, Petitioner requested all information related to the complaint,
19 including any emails, communications, investigation materials and findings. A true and
20 correct copy Petitioner’s January 5 request is attached as **Exhibit F**.

21 18. On January 7, 2019, the City denied Petitioner’s request via email. The City
22 withheld all records, asserting that responsive records are exempt under Government
23 Code § 6254(c), Evidence Code § 950 *et seq.*, and Code of Civil Procedure § 2018.010. A
24 true and correct copy of the City’s denial is attached as **Exhibit G**.

25 19. On February 19, 2019, the City released a letter to Petitioner regarding the
26 Cox complaint. As to the allegation that Commissioner Cox engaged in harassment, the
27 City confirmed Cox engaged in the alleged behavior, but denied the conduct violated City
28 policy. The City sustained the allegation that Cox violated policy by publicly criticizing

1 the City Council. A true and accurate copy of the Cox complaint response letter is
2 attached as **Exhibit H**.

3 **The Corbett Body Camera Footage Request**

4 20. Petitioner is informed and believes and on that basis alleges that on
5 December 19, 2016, a member of the public made a complaint against Fullerton Police
6 Sergeant Jeff Corbett alleging, in pertinent part, that Sergeant Corbett made special
7 accommodations for former City Manager Joseph Felz while investigation a DUI and hit
8 and run. Petitioner is further informed and believes that the complaint alleged that
9 Sergeant Corbett, as part of the accommodation, engaged in dishonesty by falsifying a
10 police report and that a January 23, 2018, Fullerton Police Department Administrative
11 Investigation report confirmed the allegations, finding that Sergeant Corbett “purposely
12 failed to conduct a proper investigation and provided false information under FPD case
13 #16-74804, in violation of PC – 118.1 False Report by a Peace Officer.” Petitioner is
14 informed and believes and, on that basis, alleges that a true and accurate copy of the
15 Administrative Investigation report is attached as **Exhibit I**.

16 21. On February 4, 2019, Petitioner submitted a CPRA request for six clearly
17 identified clips of body camera footage used by the City to make the sustained finding of
18 dishonesty against Officer Jeff Corbett. Petitioner identified the case number, the
19 Officers who uploaded the videos, and the statement from the City’s investigation which
20 confirms the City reviewed the body camera footage as evidence in making its sustained
21 finding. A true and accurate copy of Petitioner’s February 4 request is attached as
22 **Exhibit J**.

23 22. On February 14, 2019, denied Petitioner’s request as to all records. In so
24 doing, the City asserted that the records Petitioner sought are exempt under
25 Government Code §§ 6254(c), 6254(f), and 6254(k), as well as Penal Code §§ 832.7 and
26 832.8, and Government Code § 6255, but failed to provide any reason as to why the
27 records were not made disclosable by SB 1421. A true and accurate copy of the City’s
28 February 14 denial is attached as **Exhibit K**.

1 **The St. Paul/Phan and Parks and Recreation Vehicle Request**

2 23. On February 5, 2019, Petitioner submitted a CPRA request for two
3 categories of records: (1) all information regarding the terminations of two city
4 employees, Bob St. Paul and Trung Phan and (2) all information relating to an accident
5 in which a City Parks and Recreation vehicle, license plate #121521, was overturned.
6 Petitioner included a photo of the overturned vehicle. A true and accurate copy of
7 Petitioner's February 5 request, including the photo, is attached as **Exhibit L**.

8 24. On February 15, 2019, the City responded, denying Petitioner's request as
9 to all records. As to the St. Paul/Phan records, the City claimed both that "there are no
10 records" and that the records are exempt under Government Code §§ 6254(c) and 6255.
11 As to the overturned vehicle request, the City claimed that all records relating to the
12 accident are exempt under Government Code §§ 6254(b), 6254(c), 6254(f), and 6254(k);
13 Government Code § 54963, Evidence Code § 950 *et seq.*, Code of Civil Procedure §
14 2018.010, and Government Code § 6255. A true and accurate copy of the City's February
15 15 denial is attached as **Exhibit M**.

16 25. Petitioner is informed and believes and, on that basis alleges, that
17 employees St. Paul and Phan's employment with the City was terminated after
18 allegations of misconduct and that the responsive records related to their departure from
19 the City exist and are not exempt, as the City claimed.

20
21 **CAUSE OF ACTION**

22 **FOR VIOLATIONS OF THE CALIFORNIA PUBLIC RECORDS ACT**

23 (RELIEF PURSUANT TO GOV. CODE § 6258; CODE CIV. PROC. §§ 1060, 1085)

24 26. Petitioner hereby realleges and incorporates herein by this reference
25 Paragraphs 1 thorough 25 of this Petition as though set forth herein in full.

26 27. The CPRA defines terms relevant to this cause of action as follows:
27
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1 **"Public records"** includes any writing containing information relating to the
2 conduct of the public's business prepared, owned, used, or retained by any state
3 or local agency regardless of physical form or characteristics....

4 **"Local agency"** includes a county; city, whether general law or chartered; city
5 and county; school district; municipal corporation; district; political subdivision;
6 or any board, commission or agency thereof; other local public agency; or entities
7 that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of
8 Section 54952.

9 **"Writing"** means any handwriting, typewriting, printing, photostating,
10 photographing, photocopying, transmitting by electronic mail or facsimile, and
11 every other means of recording upon any tangible thing any form of
12 communication or representation, including letters, words, pictures, sounds, or
13 symbols, or combinations thereof, and any record thereby created, regardless of
14 the manner in which the record has been stored.

15 28. Government Code § 6253(b), provides, in pertinent part, that:

16 Except with respect to public records exempt from disclosure by express
17 provisions of law, each state or local agency, upon a request for a copy of records
18 that reasonably describes an identifiable record or records, shall make the records
19 promptly available to any person upon payment of fees covering direct costs of
20 duplication, or a statutory fee if applicable. Upon request, an exact copy shall be
21 provided unless impracticable to do so.

22 29. All records sought by Petitioner were prepared, owned, used or retained
23 by the City, and are, therefore, deemed to be public records pursuant to Government
24 Code § 6252(e).

25 30. Government Code § 6253(c) requires that:

26 Each agency, upon a request for a copy of records, shall within 10 days from
27 receipt of the request, determine whether the request, in whole or part, seeks
28 copies of disclosable public records in the possession of the agency and shall
29 promptly notify the person making the request of the determination and the
30 reasons therefor.

31 31. In unusual circumstances, Government Code § 6253(c) allows for the time
32 limit prescribed above to be extended by 14 days. As used this section, "unusual
33 circumstances" is defined as one of the following circumstances:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or amount two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

32. Notwithstanding, Government Code § 6253(d) clarifies that, “[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.”

33. The People of California have elevated the right to open government to one protected by their State Constitution. The California Constitution, Article 1, Section 3, Paragraphs (a) - (b) states:

The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

34. The City has failed to respond as required by the CPRA.

35. As to the SB 1421 requests, the City has failed to identify whether Petitioner's requests sought disclosable records as to each named officer, thereby violating Government Code § 6253(c). Further, the City has obstructed the production of these public records, thereby violating Government Code § 6253(d), and, in at least in

one instance, the City has used the obstruction to renegotiate past disciplinary notices in order to improperly attempt to circumvent the transparency mandated by SB 1421.

36. As to the Cox complaint requests, the City cannot meet its burden to withhold the records under the cited statutory exemptions and is therefore unlawfully withholding these records in violation of Government Code §§ 6253(a) and 6253(b). This obstruction to access of these public records also violates Government Code § 6253(d).

37. As to the Corbett bodycamera footage request, the City cannot meet its burden to withhold the records under the cited statutory exemptions and is therefore unlawfully withholding these records in violation of Government Code §§ 6253(a) and 6253(b). This obstruction to access of these public records also violates Government Code § 6253(d).

38. As to the St. Paul/Phan and overturned Parks and Recreation vehicle request, the City cannot meet its burden to withhold the records under the cited statutory exemptions and is therefore unlawfully withholding these records in violation of Government Code §§ 6253(a) and 6253(b). The City also failed to assist Petitioner in making a focused and effective request that reasonably describes an identifiable record, in violation of Government Code § 6253.1. This obstruction to access of these public records also violates Government Code § 6253(d).

39. Petitioner has exhausted his administrative remedies. Petitioner has requested copies of disclosable public records and information from the City, but the City has refused to provide access to those public records. The only plain, speedy, and adequate remedy left to Petitioner is the relief provided by Government Code § 6258.

40. Government Code § 6258 provides:

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.

41. Government Code § 6259 provides:

1 Whenever it is made to appear by verified petition to the superior court of the
2 county where the records or some part thereof are situated that certain public
3 records are being improperly withheld from a member of the public, the court
4 shall order the officer or person charged with withholding the records to disclose
5 the public record or show cause why he or she should not do so. The court shall
6 decide the case after examining the record in camera, if permitted by subdivision
7 (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral
8 argument and additional evidence as the court may allow.

9 42. Code of Civil Procedure § 1060 provides:

10 Any person interested ... who desires a declaration of his or her rights or duties
11 with respect to another ... may, in cases of actual controversy relating to the legal
12 rights and duties of the respective parties, bring an original action or cross-
13 complaint in the superior court for a declaration of his or her rights and duties in
14 the premises, including a determination of any question of construction or
15 validity arising under the instrument or contract. He or she may ask for a
16 declaration of rights or duties, either alone or with other relief; and the court may
17 make a binding declaration of these rights or duties, whether or not further relief
18 is or could be claimed at the time....

19 43. Petitioner has demonstrated that an actual controversy exists between the
20 parties regarding the City's responsibility to disclose records under the CPRA

21 44. The City has a ministerial duty to perform according to the laws of State of
22 California, including the CPRA.

23 45. Petitioner has an interest in having the laws executed and public duties
24 enforced and, therefore, has a beneficial interest in the outcome of the proceedings.

25 46. Petitioner has a clear, present, and legal right to the City's performance of
26 its ministerial duties, as required by the CPRA.

27 47. The City has a present legal duty and present ability to perform its
28 ministerial duties, as required by the CPRA.

48. The City has failed to perform its ministerial duties as required by the
CPRA.

49. Through this action, Petitioner seeks no greater relief than would be
afforded to any other member of the public.

1 50. Therefore, this Court should find that the records and information
2 requested by Petitioner are disclosable public records and that the City has violated the
3 CPRA by refusing to release these records, and should order the City to immediately
4 release unredacted copies of all responsive public records.

5
6 **WHEREFORE, PETITIONER PRAYS AS FOLLOWS:**

7 1. That after a trial of this action, to be held on notice, this Court issue a
8 declaration that:

9 (a) The records requested by Petitioner are public records;

10 (b) No exemption applies to their disclosure;

11 (c) The City must immediately respond to Petitioner's CPRA Requests
12 regarding SB 1421 and inform Petitioner whether it has responsive
13 records for each identified officer, whether it will be withholding
14 any of the responsive records, and, the estimated date of disclosure
15 for all disclosable record; and,

16 (d) Respondent CITY OF FULLERTON violated the California Public
17 Records Act by failing to properly respond to Petitioner's request
18 for records.

19 2. That this Court issue a writ of mandate ordering Respondent CITY OF
20 FULLERTON to perform as required by the California Public Records Act and to
21 immediately release the requested records to Petitioner;

22 3. That Petitioner/Plaintiff JOSHUA FERGUSON recover attorneys' fees
23 incurred in this action pursuant to Government Code Section 6259 and/or Code of Civil
24 Procedure Section 1021.5;

25 4. For an award of costs incurred in this action; and,

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5. For such other and further relief as the court deems just and proper.

DATED: October 2, 2019

LAW OFFICES OF KELLY AVILES

Kelly Ayles

Kelly Aviles
Attorney for Petitioner
JOSHUA FERGUSON

Exhibit A

From: data@thehourlystruggle.com [<mailto:data@thehourlystruggle.com>]
Sent: Wednesday, January 02, 2019 12:36 PM
To: Mea Klein <MeaK@ci.fullerton.ca.us>
Cc: Lucinda M. Williams <LucindaW@ci.fullerton.ca.us>; Kenneth Domer <KDomer@cityoffullerton.com>
Subject: 02 January 2019 Public Records Request re: SB1421

Hello Fullerton City Staff. Happy New Year and also Happy SB1421 Day.

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc if necessary. Otherwise, please send the files to data@thehourlystruggle.com <<mailto:data@thehourlystruggle.com>>.

The following request is related to SB1421 and is for all information including investigative reports, photographic evidence, audio and video evidence, transcripts of recording of interviews, autopsy reports, all material compiled for review to the District Attorney or to any person or body charged with determining whether to file criminal charges, documents setting forth findings or recommended findings, 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 for any officer employed or formally employed by the Fullerton Police Department.

Thank you as always for your time.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

From: "data@thehourlystruggle.com" <data@thehourlystruggle.com>
To: Mea Klein <MeaK@ci.fullerton.ca.us>
Cc: Lucinda M. Williams <LucindaW@ci.fullerton.ca.us>; Kenneth Domer <kdomer@cityoffullerton.com>
Sent: Wednesday, January 2, 2019 2:39 PM
Subject: 02 January 2019 Public Records Request -02

Happy SB1421 Day.

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc if necessary. Otherwise, please send the files to data@thehourlystruggle.com <<mailto:data@thehourlystruggle.com>>.

The following requests are related to SB1421 and are meant to include all information including investigative reports, photographic evidence, audio and video evidence, transcripts of recording of interviews, autopsy reports, all material compiled for review to the District Attorney or to any person or body charged with determining whether to file criminal charges, documents setting forth findings or recommended findings, 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.

Please consider these separate requests and return each as they become available. I opted to not flood inboxes with separate emails for each officer. Where I write "Officer" please understand this to mean sworn or unsworn and regardless of actual rank.

01. The above records and related records regarding Officer Corbett.
02. The above records and related records regarding Officer Goodrich.
03. The above records and related records regarding Officer Irish.
04. The above records and related records regarding Officer Siliceo.
05. The above records and related records regarding Officer Rincon.
06. The above records and related records regarding Officer Mejia.
07. The above records and related records regarding Officer Hughes.
08. The above records and related records regarding Officer Roesler.
09. The above records and related records regarding Officer Tong.

10. The above records and related records regarding Officer Hamel.
11. The above records and related records regarding Officer Cicinelli.
12. The above records and related records regarding Officer Wolfe.
13. The above records and related records regarding Officer Ramos.
14. The above records and related records regarding Officer Gibert.
15. The above records and related records regarding Officer Chocek.
16. The above records and related records regarding Officer Reynoso.
17. The above records and related records regarding Officer Tim Petropulos.
18. The above records and related records regarding Officer Mater.
19. The above records and related records regarding Officer Hagopian.
20. The above records and related records regarding Officer Sellers.
21. The above records and related records regarding Officer Steven Rodriguez.
22. The above records and related records regarding Officer Radus.
23. The above records and related records regarding Officer Wren.
24. The above records and related records regarding Officer Bolden.
25. The above records and related records regarding Officer Ray Flores.
26. The above records and related records regarding Officer Boline.
27. The above records and related records regarding Officer Hugo Garcia.
28. The above records and related records regarding Officer Frank Nguyen.
29. The above records and related records regarding Officer Paez.
30. The above records and related records regarding Officer Hampton.
31. The above records and related records regarding Officer Haid.

32. The above records and related records regarding Officer Baughman.
33. The above records and related records regarding Officer Lemoine.
34. The above records and related records regarding Officer Michael Hines.
35. The above records and related records regarding Officer Bair.
36. The above records and related records regarding Officer Baas.
37. The above records and related records regarding Officer Lira.
38. The above records and related records regarding Officer Song.
39. The above records and related records regarding Officer Lyman.
40. The above records and related records regarding Officer Francisco Sepulveda.
41. The above records and related records regarding Officer San Angelo.
42. The above records and related records regarding Officer Hendricks.
43. The above records and related records regarding Officer Oliveras.
44. The above records and related records regarding Officer Bastreri.
45. The above records and related records regarding Officer Christopher Chiu.
46. The above records and related records regarding Officer Gharah.

Please provide any portion of this request as the items become available. I would like as original of data as possible and not cut and pasted and rearranged data as has been the case in some past instances.

Thank you for your time.

From: joshua@joshuaferguson.com

Subject: PRR 05 Jan 2019 - re: Corbett/Felz

Date: January 7, 2019 at 4:29:48 PM PST

To: Mea Klein <MeaK@ci.fullerton.ca.us>

Cc: "Lucinda M. Williams" <LucindaW@ci.fullerton.ca.us>, Kenneth Domer <kdomer@cityoffullerton.com>, Kelly Aviles <kaviles@opengovlaw.com>

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc if necessary. Otherwise, please send the files to joshua@joshuaferguson.com.

These are SB1421 timed requests so please provide all information as now available pursuant to the law change regarding the following officers:

01) Jeff Corbett.

02) Manuel "Sonny" Siliceo.

03) Paul Irish.

04) Cary Tong.

05) Albert Rincon.

Please send me these files as they become available and consider this as a hold on all such files for current and former officers pending possible litigation.

Thank you for your time.

Exhibit B

On Jan 9, 2019, at 08:08, Mea Klein <MeaK@ci.fullerton.ca.us> wrote:

Please let me know if your subsequent records requests relating to SB 1421 and providing specific names were meant to replace this request. If not, the City will need some clarification from you of the request as is it not clear what records within the scope of SB 1421 are being sought. Thank you.

Mea Klein

Assistant City Clerk
City of Fullerton
714-738-6571

From: "data@thehourlystruggle.com" <data@thehourlystruggle.com>

Date: Wednesday, January 9, 2019 at 8:43 AM

To: Mea Klein <MeaK@ci.fullerton.ca.us>

Cc: Kelly Aviles <kaviles@opengovlaw.com>

Subject: Re: 02 January 2019 Public Records Request re: SB1421

That other request is for specific officers we suspect have sustained complaints. This request you are inquiring about is for all of the records of all sustained complaints since we have no way to narrow it down.

Per a previous request the city cannot be compelled to create a list and has decided to charge us to do as much so instead we are simply requesting all of the pertinent records.

Logically it would make sense to exclude the specific records from the list of named officer specific requests so as to not be redundant.

Also please consider this a hold on such records pending possible litigation.

Exhibit C

From: Mea Klein <MeaK@ci.fullerton.ca.us>
Subject: 19-28 Response to SB 1421 Records
Date: March 1, 2019 at 5:08:44 PM PST
To: "joshua@joshuaferguson.com" <joshua@joshuaferguson.com>

Joshua,

We are still in the process of reviewing and preparing the records for production. We anticipate the first files will be ready on or after March 11, 2019. We will be let you know when records are available. They will likely be made available on a rolling production basis.

Thank you for your patience,

Mea Klein
Assistant City Clerk
City of Fullerton
714-738-6571

Exhibit D

From: Mea Klein <MeaK@ci.fullerton.ca.us>

Date: June 24, 2019 at 13:36:10 PDT

To: "'data@thehourlystruggle.com'" <data@thehourlystruggle.com>

Subject: Response to SB 1421 Records Request (19-15)

Initial SB 1421 responsive records have been posted on the City's website. We will continue to produce responsive records on a rolling basis as review and redaction of confidential information is completed.

Records may be found at: www.cityoffullerton.com/sb1421.

Thank you,

Mea Klein

Assistant City Clerk

City of Fullerton

714-738-6571

Exhibit E

SEVERANCE AGREEMENT, GENERAL RELEASE AND
COVENANT NOT TO SUE

THIS SEVERANCE AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE ("Agreement") relates to the resignation of Kathryn Hamel ("Hamel") from the City of Fullerton ("the City").

WHEREAS, Hamel was employed by the City as probationary Lieutenant; and

WHEREAS, the City released Hamel from her probationary employment, thereby instating her to the rank of Sergeant; and

WHEREAS, the City investigated a complaint of alleged wrongdoing against Hamel, which resulted in a Notice of Intent to impose discipline (IA Case No. 18-0125); and

WHEREAS, there is an ongoing Internal Affairs investigation against Hamel (No. 18-0229), which is not completed and has not resulted in any recommended discipline); and

WHEREAS, Hamel and the City (collectively "the Parties") have engaged in settlement discussions in an effort to resolve the matter; and

WHEREAS, the City has made no final determination of wrongdoing by Hamel, as this agreement was reached before Hamel could respond in a *Skelly* hearing or otherwise appeal from any discipline; and

WHEREAS, the City did not impose any discipline on Hamel; and

WHEREAS, Hamel and the City (collectively "the Parties") now wish to enter into a structured severance agreement in order to resolve fully and forever any potential claims that Hamel may have against the City;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In exchange for the promises made by Hamel in this Agreement, including but not limited to the releases in Paragraph 2, the parties agree to the following terms:

CONFIDENTIAL SETTLEMENT DISCUSSIONS
DRAFT DATED 010719

- (a) Hamel has an outstanding workers' compensation claim – an alleged work-related injury to her left thumb. In exchange for dismissal of this claim with prejudice, the City will pay to Hamel the value of her accrued sick leave (\$34,157, less any applicable Federal, State and Local withholding). Hamel will execute a Compromise and Release ensuring a binding release of all workers' compensation claims related to her employment with the City.
- (b) Hamel will be reinstated to the rank of Lieutenant effective January 14, 2018. Hamel will irrevocably resign from the rank of Lieutenant effective January 15, 2018 (the "Resignation Date"). Hamel waives any claim to back pay for the period from when she was release from probation to the Resignation Date. Notwithstanding the agreement outlined above in section (a), the City will pay Hamel the value of other accrued leave banks, consistent with the current provisions of the Management Memorandum of Understanding for the City of Fullerton. Hamel agrees to execute any documents necessary to implement Hamel's resignation as of the Resignation Date. If Hamel fails to submit a written resignation or to execute documents necessary to effectuate the resignation, Hamel hereby authorizes the City to effectuate the resignation as of the Resignation Date, and to execute any necessary documents in connection with the resignation on Hamel's behalf. Nothing in this agreement shall be construed to mean that Hamel is resigning in lieu of termination. Hamel will make mutually agreeable arrangements with Human Resources Director Gretchen Beatty to retrieve her personal belongings, and to return all City property, including without limitation keys, City and police identification, telephone(s), police equipment and computer devices. The City agrees to revise Hamel's California POST Profile records to reflect her rank of Lieutenant, effective January 14, 2018.

Commented [GC1]:

CONFIDENTIAL SETTLEMENT DISCUSSIONS
DRAFT DATED 010719

(c) The City will revise its Notice of Intent to Discipline Hamel to remove allegations relating to dishonesty, deceit, untruthfulness, false or misleading statements, ethics or maliciousness. The Interim Police Chief will place a notice in the file indicating that, pursuant to settlement, all charges against Hamel, including charges relating to dishonesty, deceit, untruthfulness, false or misleading statements, ethics or maliciousness were never resolved or proven because there was no *Skelly* hearing or opportunity for appeal and, accordingly, are not sustained. The IA investigation, and related materials including the revised Notice of Intent to Discipline, will be sealed and maintained in the Human Resources Department, and only in the Human Resources Department, with a notice reading: "THIS IS A SEALED FILE AND SHOULD NOT BE DISCLOSED OR OTHERWISE PRODUCED WITHOUT WRITTEN PERMISSION FROM THE CITY MANAGER, AND ONLY AFTER RECEIVING A WRITTEN OPINION FROM THE CITY ATTORNEY THAT SAID RELEASE OF INFORMATION IS REQUIRED UNDER APPLICABLE LAW." All electronic versions of the IA Investigation and related materials residing on any form of digital media shall be consolidated in one location and also stored only in the Human Resources Department under the same sealed file. In the event a person or entity takes some action in an effort to obtain any information in the sealed file, the City shall promptly give notice to Hamel at khamel1287@gmail.com. The City asserts, based on a "not sustained" finding of all charges, that any and all records relating to this investigation are not subject to release under Senate Bill 1421. The City further asserts that any challenge to this legal opinion by any entity will be defended by the City – in court if necessary – to the fullest extent. If the City or any of its agents release any information from the sealed file not consistent with this

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provision or other legal requirement, Hamel reserves the right to pursue legal remedies for breach of contract, etc. (See also subdivision (g) *infra*).

- (d) The City will issue to Hamel a Fullerton I.D. card indicating she is a “Honorably Separated Lieutenant.” In addition, the City will provide a qualification certificate to Hamel indicating she is an “Honorably Separated Lieutenant” pursuant to the Law Enforcement Officers Safety Act.
- (e) The City agrees to defend and indemnify Hamel in connection with the litigation *Wagner v. City of Fullerton*, Case No. 30-2018-01031122-CU-CR-CJC, subject to limitations under the California Government Code and with a reservation of rights.
- (f) Upon separation, Hamel will receive a commemorative flat badge indicating her rank as Lieutenant with the Fullerton Police Department.
- (g) The City shall advise appropriate personnel that any entity inquiring about any aspect of Hamel’s employment shall be referred to the Department of Human Resources. Human Resources shall only verify dates of employment, and offer no further information, even if the entity inquiring produces a waiver or authorization to release information signed by Hamel; provided, however, that the City will follow all requirements for disclosure provided by law in the event the inquiry is for the purpose of Hamel seeking a sworn position in a law enforcement agency and, further, this provision shall not be construed to prevent the City from providing truthful information pursuant to subpoena or other lawful discovery process.

2. (a) In consideration of the provisions of paragraph 1, and for other promises in this Agreement, and for other good and sufficient consideration, Hamel, for herself, Hamel's heirs, executors, administrators, assigns and successors, fully and forever releases and discharges the City, its constituent departments, councils, commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers,

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directors, councilmembers, attorneys, trustees, agents, employees and assigns (collectively "Releasees") from any and all liabilities, claims, demands, contracts, debts, damages, acts or omissions, obligations and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or unknown, which heretofore do or may exist, in any way arising out of, connected with or related to Hamel's employment with the City, including without limitation the negotiation, terms and execution of this Agreement, up to and including the date that Hamel signs this Agreement (the "Signature Date"). The release in this Paragraph 2 includes, but is not limited to, release of any matter, cause or thing in any way arising out of, connected with or related to any and all past, pending or contemplated lawsuits; claims; EEOC and DFEH complaints; administrative appeals; grievances; unfair practice charges or other administrative charges of any kind; including any grievances brought by or on behalf of Hamel against any Releasee not set forth herein, in any way arising out of, connected with or relating to Hamel's employment with the City through the Signature Date.

(b) The release contained in this Paragraph 2 is a complete and general release that will forever bar Hamel from pursuing any released claims or rights against any Releasee. Hamel covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings against any Releasee. Hamel understands and agrees that Hamel is waiving any rights Hamel may have had, now has, or in the future may have to pursue any and all remedies available to Hamel under any cause of action in any way arising out of, connected with or related to Hamel's employment with the City, and which arose at any time through the Signature Date. Such causes of action shall include without limitation claims of wrongful discharge, defamation, invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, violation of the provisions of the California Labor Code, the California Government Code, the City's Administrative Code, ordinances, personnel rules, and other City enactments, the Meyers-Milias-Brown Act, violation of any memoranda of understanding covering Hamel, and claims under Title VII of the 1964

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Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the California Family Rights Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Civil Rights Acts of 1866, and any other laws and regulations relating to employment or to discrimination. .

(c) Hamel understands and expressly agrees that the release contained in this Paragraph 2 extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived.

Section 1542 of the California Civil Code reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

3. In further consideration of the foregoing, Hamel hereby agrees, acknowledges and recognizes that this Agreement is a “no fault” settlement, and that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by the City, which liability or wrongdoing is expressly denied by the City.

4. Hamel represents and warrants that she has full power to make the releases and agreements contained herein. Hamel expressly represents and warrants that Hamel has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Hamel acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement. Hamel agrees to defend and indemnify the affected Releasee for any claims brought against any Releasee by purported assignees of Hamel, including costs of judgment and reasonable attorneys’ fees.

5. All parties shall bear their own attorneys’ fees, legal expenses and costs.

CONFIDENTIAL SETTLEMENT DISCUSSIONS
DRAFT DATED 010719

6. The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supersedes any prior oral or written agreements, and that it may be modified only by a writing signed by all parties to this Agreement and approved by the Fullerton City Council.

7. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of laws.

8. Hamel acknowledges that Hamel consulted with an attorney concerning this Agreement, including the releases contained herein.

9. Hamel acknowledges that she has read and understands this Agreement and that she agrees to its terms and signs this Agreement voluntarily and without coercion. Hamel further acknowledges that the release and waivers Hamel has made herein are knowing, conscious and with full appreciation that Hamel is forever foreclosed from pursuing any of the rights or claims so released or waived.

10. This Agreement has been reviewed by the parties and their respective attorneys, and each have had full opportunity to negotiate the contents of this Agreement. The parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

11. In connection with the Age Discrimination in Employment Act ("ADEA"), Hamel acknowledges that the City has advised Hamel to consult with an attorney prior to signing this Agreement. As set forth in the ADEA, 29 U.S.C. Section 626(f)(1), Hamel hereby acknowledges the following: (1) that this Agreement is written in a manner calculated to be understood by Hamel and that Hamel in fact understands the Agreement; (2) that this Agreement specifically refers to and waives rights or claims arising under the ADEA; (3) that this Agreement applies only to claims arising up to and including the date that Hamel signs this Agreement; (4) that in exchange for this Agreement, Hamel received value beyond that to which

CONFIDENTIAL SETTLEMENT DISCUSSIONS
DRAFT DATED 010719

Hamel is already entitled; (5) that the City has advised Hamel in writing to consult with an attorney before executing the Agreement; and (6) that Hamel has been provided with an adequate period of time to review this Agreement. Hamel further acknowledges that Hamel is entitled to consider this Agreement for twenty-one (21) days before signing and that Hamel expressly waives this notice period and confirms that she has made a knowing and voluntary decision to sign this Agreement before expiration of the twenty-one (21) day period. Hamel may revoke her agreement to waive age discrimination claims for a period of seven (7) days after the date she executes the Agreement; provided, however, that in the event Hamel revokes the agreement to release any actual or possible age discrimination claims, the City may in its discretion rescind the entire Agreement. Any such revocation must be communicated in writing to the City Manager within the seven-day revocation period.

12. The effective date of this Agreement shall be the eighth day after the City Council approves the Agreement, or the eighth day after Hamel signs the Agreement, whichever is later. No payments shall be made pursuant to this Agreement prior to the effective date.

13. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall constitute one single instrument. The parties agree that their signatures on any facsimile or electronic transmission thereof shall be fully binding upon them in the same manner as if the parties had each signed the same original Agreement.

DATED: _____

KATHRYN HAMEL

DATED: _____

CITY OF FULLERTON

APPROVED AS TO FORM AND SUBSTANCE:

CONFIDENTIAL SETTLEMENT DISCUSSIONS
DRAFT DATED 010719

By: _____ DATED: _____
Attorney for Kathryn Hamel

CITY OF FULLERTON

By _____ DATED: _____
ARTHUR A. HARTINGER
Labor and Employment Counsel
City of Fullerton

Exhibit F

From: joshua@joshuaferguson.com [<mailto:joshua@joshuaferguson.com>]
Sent: Saturday, January 05, 2019 1:08 PM
To: Mea Klein <MeaK@ci.fullerton.ca.us>
Cc: Lucinda M. Williams <LucindaW@ci.fullerton.ca.us>; Kenneth Domer <KDomer@cityoffullerton.com>; Kelly Aviles <kaviles@opengovlaw.com>
Subject: PRR 05 January 2019 re: Cox

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc, which I will pay for, if necessary. Otherwise, please send the files to joshua@joshuaferguson.com.

1) I'd like to request all information relating to the Cox complaint I filed in August of 2018 including all emails, communications, investigation materials and findings.

Please provide any portion of this request as the items become available.

Thank you for your time,

Joshua Ferguson

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

Exhibit G

From: Mea Klein <MeaK@ci.fullerton.ca.us>
Subject: 19-25 Response - PRR 05 January 2019 re: Cox
Date: January 7, 2019 at 2:56:15 PM PST
To: "'joshua@joshuaferguson.com'" <joshua@joshuaferguson.com>

Joshua,

The records regarding the Cox complaint are exempt from disclosure pursuant to Government Code section 6254(c)(personnel), Evidence Code section 950 *et seq.* (attorney-client privilege), and Code of Civil Procedure 2018.010 (attorney work product).

Regards,

Mea Klein
Assistant City Clerk
City of Fullerton
714-738-6571

Exhibit H

From: "Josh Ferguson" <joshua@joshuaferguson.com>
Subject: Formal Complaint about Conduct Unbecoming a Commissioner
Date: August 29, 2018 at 2:12:36 PM PDT
To: gretchenb@cityoffullerton.com

Dear Ms. Beatty,

I would like to formally complain about abusive conduct by Fullerton City Parks and Recreation Commissioner Gretchen Cox.

For over a year now she has been abusive to me in online forums, including her own Fullerton's First Facebook Group, and has tried to turn people against me because she disagrees with my politics and activism. She has impugned my character and characterized me as not representing "normal people", going so far as to compare me to OJ Simpson in a comment on the Facebook page of the largest Radio station in the LA/OC metro area.

I have attached screenshots from her Facebook activity as evidence of her behavior.

I believe her actions constitute abusive conduct as outlined in Fullerton Resolution No. 2015-36, section 8.

I also believe her actions constitute a violation of the Commissioner's Handbook as quoted as follows;

"Commissioners should remember they represent the City of Fullerton. Fullerton serves a diverse population and has specific policies against discrimination. Commissioners need to avoid statements that might be interpreted as discriminatory against any group."

And specifically from page 23:

"Commissioners / board members should also keep relationships with the City Council in mind when communicating with the public or the media. The public sees commissioners / committee members as members of, and spokespersons for, the official City family."

On 21 October 2014 Councilwoman Jennifer Fitzgerald stated it very nicely at about the 3:38:40 mark during the city council meeting when she said "The handbook that every commissioner gets when they sign up to wear a name tag for the city says that 'If personal, ethical problems arise resignation from the commission is the appropriate response.'"

Councilwoman Fitzgerald further went on to state, to her credit, that

"Freedom of speech is a right that we all have but being on a commission in this city is a privilege and that privilege comes with a greater responsibility. To treat the people of this city with dignity and honor."

Personally I don't care if Ms. Cox wants to attack me but I worry about the chilling effect on the general public and I might feel differently if she didn't attack other members of the public as well. What message does it send when the citizenry sees a City Council Appointed member of one of our most active committees attacking people for speaking in public?

Further still, the Commission handbook makes it clear commissioners are not to publicly voice opposition to a decision the council makes.

Ms. Cox, on her Fullerton First Facebook Page (screenshot attached), has a post complaining about council approving a bee ordinance. She states "I guess Chaffee and Whitaker don't care about potential risks to others."

Clearly this Commissioner cannot fulfill her obligations, follow the guidelines or stop herself from spitting venom at those she opposes.

Again, it is not that Ms. Cox feels she needs to attack people on her FB page or the pages of others but it sends a terrible message to the community. It also sends a contradictory one when her appointer, Mrs. Fitzgerald, is on record opposing the very behaviors put forth by Ms. Cox.

Thank you for your time and I look forward to seeing this resolved in the most appropriate way possible.

Sincerely,

Joshua Ferguson



Gretchen Gregory Cox ►
Fullerton First

May 17, 2017 · 🌐



It's budget season for the city council. The June 6 meeting will focus on the 2017-2018 budget. To no one's surprise, Embriano and Levenson (forever forward to be known as "the dog and pony), Joshua Ferguson, David Curlee and others will be working overtime to convince us that our entire city government is corrupt beyond measure. As concerned as they all are about where our money goes, am I the only one who wonders how much of our city's money and resources they waste on unending Public Records Requests? In no way am I suggesting they shouldn't have the right to make those requests, but they seem to take it to an extreme. When you consider that while some of their requests can be filled fairly easily, but often are they extremely detailed and all encompassing. This could mean requiring someone to not only look up old records which may not even be computerized, but then someone has to go thru and redact private info., which could take hours. One can only imagine the number of hours it takes to meet these requests within the required timeframe of 10 days. How much city business is bogged down, how much staff time do they tie up, taking time away from the day to day business of running a city, in their never ending demand for the gnat's ass in details. Just so they can get up at meetings, complain and insinuate, to their hearts content, but often to no annarent benefit Maybe they are iust aning for their



Gretchen Gregory Cox ▶
Fullerton First



June 7, 2017 · 🌐

Joshua Ferguson complained that the city should not increase some of the fees it charges... (many of those have not been increased in years).... his point was that it would require more staff time to process increased fees... huh??!!!!!! How much staff time is currently spent processing the combined many Public Records requests from him and the rest of the "Chronic Malcontents" every month!!!!????



Like



Share



1



Denise Graubart Fares

Isn't this site supposed to be fun, not political ?

1y

Like



Gretchen Gregory Cox

Not " partisan" political...and I did say upfront there will sometimes be commentary

1y

Like



Gretchen Gregory Cox

John and Ken- Interviewing Josh Ferguson about anything to do with any official in Fullerton , especially the police dept., is like asking OJ his opinion about Marsha Clark! He is a "chronic malcontent who lives just to do nothing but complain and accuse every single city employee of being somehow unqualified or criminal. He is a bitter, failed city council candidate. Why would you talk to him? He DOES NOT represent the "normal" people living in Fullerton



Gretchen Gregory Cox

March 15



Did you know unlimited bee keeping is now allowed in Fullerton? City council approved this at the Mar. 6 meeting, led by Mayor Chaffee and Councilmember Whitaker. Good for bees and plants... but, if you have an allergy to bee stings... "bee" aware and "bee" prepared.



4

3 Comments



Like



Share



Peggy Jarman Ciley Very allergic 🤔

Like · 23w



Eric V. Bergeron We need more bees.

Like · 23w



Gretchen Gregory Cox People who want to keep bees are SUPPOSED to let just their immediate neighbors know that they plan to do so, so those neighbors, if they have allergies to bees can then (at their own expense) get forms signed by their Dr. acknowledging the allergy. Then the bees will not be allowed. But, since bees travel several miles daily to forage, and each hive can house tens of thousands of bees, and there is no limit to the number of hives someone can keep, that does nothing to protect people with allergies. So **Peggy Jarman Ciley**, people like you and I are on our own. Some common sense limits to see how this goes would seem to be in order here but that is not going to happen. Since most of the people who spoke up in favor of beekeeping have already been doing so against city ordinances for a long time anyway, what are the odds they will follow any requirements now? I guess Chaffee and Whitaker don't care about potential risks to others.

Like · 23w



Gretchen Gregory Cox By the way, not one person who expressed concerns asked for NO beekeeping, just limits.

Like · 23w

Exhibit I

FULLERTON POLICE DEPARTMENT
ADMINISTRATIVE INVESTIGATION

TO: Chief D. Hendricks

FROM: Sergeant T. Petropulos

DATE ASSIGNED: 09/07/2017

DATE SUBMITTED: 1/23/2018

CASE #: 16-74804 / PSB# 16-0048

FPD PERSONNEL INVOLVED:

Lieutenant Andrew Goodrich

Sergeant Jeff Corbett

FPD WITNESSES:

Corporal Jim Boline

Officer Tim Haid

Officer Jonathan Ferrell

Officer Eric Franke

PCO Luis Rubio

Ex-Officer Tim Gibert

Summary and Investigator Notes/Actions

On September 6, 2017, independent RCS Investigator, Steve Rodig presented his findings to the Fullerton PD Command Staff regarding a citizen complaint alleging employee misconduct which was connected to the incident involving the Former Fullerton City Manager, Joe Felz on November 9, 2016 (FPD case# 16-74804 / PSB# 16-0048). Please refer to the attached RCS investigation for further on what they covered as it pertains to this investigation.

On September 7, 2017, Chief Hendricks assigned this incident to me for further investigation (see attached memo).

On September 7, 2017, FPD Records personnel performed a CAD search to reveal how many DUI investigations Sergeant Jeff Corbett conducted within the last 5 years. Zero investigations were located (see attached).

In September of 2017, Sergeant Jose Arana viewed seven of Corbett's random body-worn-camera (BWC) samples in which he was a follow-up officer. In all samples, Corbett's BWC was canted to the left, similar to the BWC on the Felz incident.

On September 14, 2017, I obtained Corbett's training documentation/files from Personnel employee, Patricia Arevalo. According to those records, Corbett has received approximately 128 hours of specific training relating to detecting subjects under the influence of alcohol/drugs (see attached).

On November 9, 2017, I contacted Special Prosecutions A.D.A. Ebrahim Baytieh for an update on their investigation into Corbett's potential criminal activity. Baytieh confirmed that the O.C.D.A. investigation regarding Corbett was ongoing and would not be concluded prior to Joe Felz's court case resolution.

On January 23, 2018, Sergeant Jose Arana located records in Versadex that showed all police reports Goodrich approved from 11/08/2016 to 11/09/2016 (see attached).

On January 23, 2018, Sergeant Arana located and attached video footage of witness-Barbara Pollinger capturing her at "Public comments" during a Fullerton City Council Meeting.

A list of potential Fullerton Police Department policy violations has been added to this administrative investigation (see attached).

In addition to this narrative, please refer to the attached timeline which was formed based on interviews and other included records. Also, please refer to the attached phone records and corresponding break-downs to grasp what calls were made and when they occurred.

Below are summaries of interviews conducted by both myself and Sergeant Jose Arana.

Former Officer Tim Gibert's Statement

On September 21, 2017, at approximately 1600 hours, I interviewed former Fullerton Police Officer, Tim Gibert via telephone. The statement was recorded on D.A.R. (see attached). Gibert confirmed the interview to be free and voluntary. The following is a summary of the recorded interview with Gibert.

Gibert said he had six and a half years of experience as a police officer. Gibert said he had conducted approximately 700 D.U.I. investigations and assisted in an additional 150 to 200 D.U.I. investigations. Gibert acknowledged that he was taught to enforce the law without any favor.

I asked Gibert to tell me what he recalled regarding his involvement from the collision investigation involving former City Manager, Joe Felz. Gibert told me the following:

The radio call was of a vehicle collision. While Gibert was on his way to the location, dispatch advised the vehicle was trying to leave the scene. Gibert was the first officer on-scene and as he arrived, he saw the vehicle travelling west bound. The vehicle appeared to be disabled, but was still partially moving. Gibert then initiated a vehicle stop and as a result, the vehicle came to a halt. As he was exiting his unit, the vehicle began to move again. Gibert put his unit back into drive not knowing if the vehicle was going to try to leave. They moved a very short distance and came to a complete stop. Gibert then placed the front of his police unit bumper up against the vehicle's rear bumper in case he tried to flee again. Gibert explained that he tried to pin his unit up against the vehicle so the suspect would not endanger any civilians; this also positioned Gibert to possibly conduct a P.I.T. maneuver if it were necessary.

At that point in time, the vehicle stopped. Gibert believed Corporal Jim Boline was next on-scene and walked up on his passenger side. They ordered the driver (Joe Felz) out of the vehicle. Gibert had the Felz facing away from him. As Gibert placed Felz's hands behind his back, he identified himself as Fullerton City Manager, Joe Felz. Gibert stopped his investigation or any questioning at that time and had Felz sit on the front bumper of his police unit. Gibert then requested for a Sergeant to respond to the location.

As Sergeant Jeff Corbett arrived on scene, he told Corbett Felz was "H.B.D.". Gibert told me that H.B.D. meant "Had been drinking" because he could smell the odor alcohol coming from Felz. Gibert and Corbett then walked away and had a conversation which was not captured on their body-worn-cameras (BWC). Gibert remembered telling Corbett he placed his police unit up against Felz's vehicle and explained to Corbett why he did it. Corbett told him to move his unit away from Felz's vehicle to see if there was any damage to either of one of the vehicles. I asked Gibert why he had deactivated his body-worn-camera when speaking to Corbett. Gibert said he turned off his body-worn-camera while speaking to Corbett because he understood the body-worn-camera policy was only for public contacts. As a result, he concluded that any personal conversations with other officers didn't need to be captured on his body-worn-camera. Gibert had a previous incident in which he deployed a Taser with a suspect who took a fighting stance with him. In that incident, he had a poor choice of words that were taken out of context and did not want that to happen again. Gibert indicated that he did not remember having any other conversations off body-worn-camera with Corbett.

I then asked Gibert if he recalled any conversations with other officers at the scene. Gibert remembered saying to Corporal Boline and Officer Haid this was a bad situation to be a part of. They said to each other that they could tell there was alcohol on Felz's breath but they decided to not continue their discussion.

Corbett asked Gibert for a D.U.I. investigation form. Gibert offered to handle the D.U.I. investigation, but Corbett declined. Corbett then directed Gibert to take the traffic collision report.

Gibert thinks Corbett handled the D.U.I. investigation because of Felz's high ranking position in the City of Fullerton. Gibert also thought Corbett handled the D.U.I. investigation by himself so no one could be critical of any of the other officers at the scene. Based on where Felz's vehicle was, he did ponder whether or not this was a hit and run investigation. As he was handling the traffic collision, he chose to not mark "hit and run" on the form because of the distance from Felz's vehicle to where the initial collision occurred. The only damage he located at that time was to city property.

In Gibert's experience as a police officer, he cannot remember any other incident involving a high ranking person, where a Sergeant volunteered to handle the investigation. Gibert said Corbett either took Felz behind or to the side of the Tahoe to handle the investigation. Gibert thought Corbett handled the D.U.I. investigation out of view from anyone to protect the officers on-scene. That way, the decision would be solely on Corbett to conclude if Felz was D.U.I.

Gibert did not see Corbett's D.U.I. investigation and he did not know if the other officers viewed it either. Gibert did not remember if he was carrying a P.A.S.D. device that night. Gibert did in fact remember there was a phone call made by Corbett. After the phone call, Corbett asked Gibert for the D.U.I. investigation form. Gibert assumed Corbett contacted either the Lieutenant, Captain, or Chief and they instructed Corbett to handle the D.U.I. investigation.

Gibert does not know if anyone contacted the reporting party of the traffic collision. He admitted it was a failure on their part in not trying to contact the reporting party. They did check the area, but they did not locate any obvious witnesses. Gibert did remember having additional conversations with Corbett after the D.U.I. investigation. Corbett appeared bothered because he had to deal with the Fullerton City Manager. Gibert stated that he did not think there was anything illegal or unethical done that night. Gibert knows Corbett is a D.R.E. and he conducted the best investigation that he could have done. Gibert said that he would not have arrested Felz based on the information he had that night. Therefore, Gibert believed Corbett was making the appropriate decision based on all the facts that he gathered. Gibert did not think Corbett taking Felz behind the Tahoe was unethical or illegal.

According to Gibert, the D.U.I. forms indicate a second officer should be present, but it's more of an officer safety issue. Gibert believed Corbett treated Felz the way he would have treated anybody else. Gibert did not remember if Corbett told him to take the traffic collision report or if he volunteered to take the traffic collision report because he was the first officer on-scene. Corbett did not tell Gibert to manipulate the traffic collision report and added that he would not do that for anyone. Gibert did not check the "H.B.D." box on the traffic collision report form because he felt that was more appropriate based on the investigation.

I asked Gibert if he was aware of the email sent by C.S.I. Technician Victoria Mayhew to Lieutenant Mike Chocok. Gibert said he was not familiar with the email. As a result, I read him the content of the email. Gibert commented by stating the portion of the email involving him was accurate. Once Mayhew arrived on scene, Gibert told her to just photograph the damaged tree. Gibert said he was trying to limit the exposure of how many people were involved with this case. Gibert stated that C.S.I. would not normally photograph the vehicle since this was not a hit and run investigation.

I asked Gibert if he had any other important information related to this incident. Gibert again stated that he believed Corbett handled the investigation correctly. Gibert added that based on what he saw, he also would not have arrested Felz.

Gibert had no further information and the interview concluded.

Parking Control Officer Rubio's Statement

On September 26, 2017, at approximately 1700 hours, Sergeant Jose Arana and I interviewed Parking Control Officer Luis Rubio in the Sergeant's PSB/IA office. The statement was recorded on D.A.R. (see attached). Rubio signed and dated all applicable administrative forms. The following is a summary of my interview with Rubio:

Rubio could not remember if he either dispatched himself or dispatch sent him to this radio call of a possible hit and run traffic collision.

Rubio arrived on scene at approximately 0140 hours. Rubio's intention was to assist with traffic control or set up flares if needed. Once on scene, an officer told him everything was clear and that his assistance was not needed. Rubio did not remember which officer told him to clear the scene. Rubio did not see Felz or the vehicle involved in the collision. He only took a couple of steps past his truck. Rubio also did not see any civilian witnesses.

Rubio does not have a body-worn-camera issued to him, but does have a D.A.R. Rubio did not activate his D.A.R. for the short time he was on-scene. Rubio cleared the scene at approximately 0142 hours.

Rubio had no further information and the interview was concluded.

Officer Ferrell's Statement

On September 26, 2017, at approximately 1640 hours, Sergeant Arana and I interviewed K-9 Officer Jonathan Ferrell in the Sergeant's PSB/IA office. The statement was recorded on D.A.R. (see attached). Ferrell signed and dated all applicable administrative forms. The following is a summary of my interview with Ferrell:

On the night of this incident, Ferrell heard a call broadcasted over the police radio regarding a traffic collision that occurred on the north end of Highland and Glenwood Ave. Officer Gibert and Corporal Boline had been dispatched to that call. Ferrell was in the downtown area when the call went out and remembered dispatch broadcasting that the vehicle was stuck on the sidewalk and that they could hear in the background screeching tires. Ferrell responded because he was relatively close to the location.

Upon his arrival, Gibert and Boline were already on scene. Gibert was speaking to Felz at the time and Boline was standing near the passenger side of Felz's vehicle. Ferrell did not notify dispatch he was responding to the call and also did not notify dispatch he had arrived. Ferrell was on scene for approximately one minute. Ferrell left the scene because he was dispatched

to another radio call. For the minute he was on scene, he spoke to Boline. He does not remember what he discussed with Boline but they were both in shock because the incident involved Fullerton City Manager, Joe Felz. Ferrell was too far away to actually observe Felz's intoxication level.

Ferrell believed the reporting party was a female who lived on the south side of the street. Ferrell did not see or contact the reporting party but did remember the reporting party being a female. Ferrell did not speak to anyone else on-scene that night.

After Ferrell left the scene, he heard from a co-worker that a traffic collision was taken and Felz had been taken home. Ferrell did not remember who he heard that from. Ferrell did not receive any type of direction from Corbett that night.

Officer Franke's Statement

On September 27, 2017, at approximately 1528 hours, Sergeant Arana and I interviewed Fullerton PD Traffic Officer Eric Franke in the Sergeant's PSB/IA office. Franke is a certified Drug Recognition Expert (D.R.E.) Instructor and agency coordinator. The statement was recorded on D.A.R. (see attached). Franke signed and dated all applicable administrative forms. The following is a summary of my interview with Franke.

Franke's D.R.E. experience goes back to 1998 which is when he completed L.A.P.D.'s D.R.E. program. Approximately one year later, he attended and completed L.A.P.D.'s D.R.E. Instructor school. Franke had approximately 16-17 years of D.U.I./Drug Enforcement experience prior to becoming a D.R.E. He has attended several classes since becoming a D.R.E. and has an extensive amount of courtroom testimony experience. Franke has conducted approximately 3,000 D.U.I. investigations in his law enforcement career. Franke has testified approximately 43-44 times which also includes appearance before Federal Grand Jury.

Franke was one of the instructors and agency coordinators in March of 2009, where Corbett attended the 24-hour Standardized Field Sobriety Tests (S.F.S.T.) course. Franke was also one of the instructors and course coordinator in December of 2009 where Corbett attended D.R.E. training. According to Franke, specialized training such as S.F.S.T. school is the cornerstone of proving impairment of an individual who is suspected of being under the influence of an intoxicating substance. The S.F.S.T. and D.R.E. investigative process ultimately aids the officer to provide information and testimony in the court of law as to the intoxicating substance(s) involved.

Before the interview, Franke had accessed his D.R.E. training records and told me that Corbett officially decertified as a D.R.E. on 12/1/2013. Between 12/1/2009 and 12/1/2013, Corbett attended a recertification D.R.E. course. The D.R.E. recertification course is an 8-hour class that has to be completed every two years. Corbett was decertified as a D.R.E. because he did not submit the required recertification paperwork to Sacramento. To Franke's knowledge, Corbett has not attempted to get recertified as a D.R.E. since then.

I then had Officer Franke view Corbett's body-worn-camera video footage that captured some of the tests Felz was asked to perform in the field. This was done to see if Corbett utilized or deviated from his past S.F.S.T. / D.R.E. training.

In the beginning, Corbett had Felz standing with his back towards his black and white police unit. Franke said that it appeared Corbett was trying to get Felz into the Modified Romberg stance to measure his internal clock. Franke said it was kind of hard to see because Corbett has his body-worn-camera offset towards Felz's right side. During the Modified Romberg stance, Felz's feet were not together and it appeared Felz was starting too soon, which is contrary to the way it should be performed and can be considered an indicator which reveals impairment.

When the test began, even from the disadvantaged body-worn-camera view, Franke observed some significant lateral sway of Felz's right arm, probably from below the elbow and all the way down to his wrist. It looks like Felz had a wallet in his left hand at some point. Stimulus wise, that can either aide or be a disadvantage in the subjects ability to perform the test. The proper way would to have had Felz's hands down at his side with his feet, heels, and toes together. Franke said it seemed almost as if the test was conducted just as a cursory sampling as to what degree Felz's level of intoxication was. Franke added that Corbett's assessment seemed too casual and was not satisfactory in collecting evidence for an eventual court prosecution.

Next, Corbett did not conduct the Romberg test the way he was taught in D.R.E. school. Franke indicated that Corbett would not have passed his training if he displayed the Romberg instructions/test like he saw in the body-worn-camera video footage.

Franke could not tell how close Felz was standing to the police unit. Felz could have possibly been leaning against the back of the unit, using the back bumper for support.

In regards to the Walk & Turn test, Franke's overall feeling was as if Corbett was conducting a cursory, "Lets hurry up and get this done; I want to see what you're able to do and not do" type of investigation.

Franke said this test was certainly not administered correctly. The results were not interpreted the way they should have been. From what Franke could see, there were no notes being taken by Corbett. During the Walk & Turn test, the instructions given by Corbett were also incorrect.

Corbett did not explain the caveats at the end where Felz needed to look at his feet while performing the test. Once Felz began the test, he was not supposed to stop. Felz was supposed to look at his feet and count out loud. None of these instructions were given by Corbett. There was no mention of walking the nine steps in a straight line, which should have happened. Corbett's wording such as, "Try to do this as close as you can get" is not proper language for the specific test.

Franke also made mention that Corbett was holding a clipboard which blocked the camera view of Felz. Franke saw that Corbett had a pen, but did not see anything being noted. It seemed to Franke that the clipboard was there to possibly shield the body-worn-camera view. About halfway through administered tests, Franke heard Corbett instruct Felz to try again. Franke did not know what that meant. Franke could not hear Felz counting out loud because he was not instructed to do so by Corbett. Towards the end of the Walk & Turn test, it was plainly visible that Felz grossly missed the heel to toe. After the Walk & Turn test, Corbett directed Felz to the passenger side of his police unit. When Felz slowed down his walk to sit down in a backwards motion toward the cab of the unit, Franke noticed there was gross motor impairment. Franke mentioned seeing Felz on the video stumbling, showing hesitation and an almost backwards fall into the passenger side of the compartment.

During the S.F.S.T. and D.R.E. School, Franke said that the Romberg and the Walk & Turn tests are not to be done just by themselves. It is also not taught to just conduct those two specific tests. Franke said that when evaluating a cooperative subject, it is taught to give them as much chance to provide exculpatory or incriminating evidence as to their innocence or guilt. In other words, it is taught to give a variety of options or abilities to do well. The three National Highway Traffic Safety Administration (N.H.T.S.A.) tests that are taught in the S.F.S.T. school are horizontal gaze nystagmus (H.G.N.), the Walk & Turn, and the one leg stand. The Fullerton "502" form is used to help document D.U.I. investigations if the officer is not D.R.E. trained. The Fullerton 502 form is designed to ask pre-Miranda questions, get some background information of the subject such as indications of mental or physical illness, the time of the last drink, the amount of the last drink, head injuries, where did they come from, where they are going, vehicle problems, etc. After the S.F.S.T. tests, there are other conclusion type questions, which are followed up by a discussion pertaining to chemical testing. If someone is D.R.E. trained, they use the D.R.E. forms.

Franke saw Corbett asking Felz if he had been drinking after the tests were performed. Franke said that generally those questions are going to be asked first. Felz admitted to Corbett that he had been drinking alcohol. In Franke's opinion, it was out of the ordinary to not ask Felz additional questions after he had admitted to consuming alcohol. Franke said that normally, after an officer obtains an admission of drinking, he or she might know what the impairing

substance is, but still not know important information such as the dosing and the time. Franke said it is considered to be out of the ordinary to conduct S.F.S.T. or D.R.E. examinations without a partner because of officer safety concerns as well as the safety of the individual performing the tests. Ideally, the follow-up officer could be taking notes and observations of what the subject was doing. It leaves the officer administering the test to instruct and observe without the encumbrance of taking his or her eyes off the subject. Generally, Franke instructs to always have a partner during a D.U.I. assessment.

Franke said that there is no doubt the test should have included Modified Romberg, Horizontal Gaze Nystagmus, Walk & Turn, One Leg Stand, and Finger to Nose tests. According to Franke, it would have been fair for the people of California to see if Felz was or was not intoxicated. It would have also offered the opportunity to offer exculpatory evidence that would have been fair to Felz. What Corbett did on scene, was a "Gross deviation" of the training he received in the past from Franke and the D.R.E. Program. Franke stated that it seemed as though the test was stopped to prevent any more incriminating evidence to be revealed.

Officer Franke had no other information to add and the interview was then concluded.

Corporal Boline's Statement

On October 11, 2017, at approximately 1912 hours, I interviewed Corporal Jim Boline in the Sergeant's PSB/IA office. The statement was recorded on D.A.R. (see attached). I showed Boline the FPD forms he signed prior to his first interview with Investigator Rodig from RCS Boline acknowledged the forms that he signed and I asked if he had any questions. Boline understood and had no questions.

The following is a summary of the recorded interview with Boline:

Boline said that remembered the radio call came out as a possible hit and run. Once Boline arrived, he saw that the person who was driving turned out to be Fullerton City Manager, Joe Felz. When Felz stepped out of the car, he immediately declared that he was the City Manager and to call Chief Hughes. Felz's statement angered Boline because he believed that the intoxicated Felz had no business telling him how to do his job. Boline did not want to get in trouble for doing something wrong so he waited for a supervisor to arrive to the scene for further instructions.

Boline's initial observations were that Felz had been drinking alcohol. Boline did not proceed into a full D.U.I. investigation for the reasons he previously stated. However, Boline did believe

that Felz was possibly D.U.I. Boline thought if Felz was going to get away with the D.U.I. that would be “bullshit” and shared that view with Officer Haid.

Boline again stressed that he did not conduct a full investigation, so he could not say if this radio call could have been a 100% hit and run investigation as well. Boline indicated that it could have been a hit and run because it was obvious there had been a collision and it was also obvious that Felz was trying to drive away from that collision. Boline could not say if it was a criminal hit and run because he did not look at the damage. Initially, the collision appeared to be a hit and run.

Boline did not know if anyone contacted the actual reporting party of the radio call.

Boline had no further information and the interview came to a conclusion.

Officer Tim Haid’s Statement

On October 26, 2017, at approximately 1151 hours, Sergeant Arana and I interviewed Officer Tim Haid in the Administrative Conference room. The statement was recorded on D.A.R. (see attached). I showed Haid the FPD forms he signed prior to his first interview with Investigator Rodig from R.C.S. Haid acknowledged the forms that he signed and I asked if he had any questions. Haid understood and had no questions.

The following is a summary of the recorded interview with Haid:

At the start of the interview, I had Haid view a portion of his body-worn-camera footage where he told Sergeant Corbett that the downside was that there was a witness to Joe Felz’s collision. I had Haid watch two times so he could carefully explain to me what he meant by those words. Haid responded to me by saying that he was “playing it off” and was glad there was a witness/caller so the incident could not be covered-up. Haid then said that he used his body-worn-camera and walked the whole area in order to document the crime scene in its entirety. Haid then said that he believed the situation was out of his and Corbett’s hands because Felz was a political figure. Haid said that Chief Hughes was calling the shots via the phone. Haid had no proof of that but did not trust the supervision regime when Hughes worked at Fullerton PD as Chief. Haid then began to go off topic and onto a tangent about how he felt wronged in the past by FPD supervisors, which had nothing to do with my questioning or the incident being investigated.

Haid said he would have arrested Felz for D.U.I. based on the objective symptoms that he witnessed that night. Although it should be noted that Haid witnessed none of the S.F.S.T.s.

Haid said that based on what he saw at the scene, it was clear to him that Felz committed a hit and run. I then asked Haid what he thought Corbett meant when he commented about no FSTs and no breathalyzer had been done. Haid said it was still early in the investigation and did not know for sure what Corbett exactly meant, but expected nothing was going to be done.

I had Haid again view another portion of his body-worn-camera footage for clarification where he mentions a phone. Haid said he was joking with the other officers that he was going to use his cell phone to capture the body-worn-camera footage from the application on the MDC. Haid said that he was concerned the video might “disappear” if a cover-up happened later by the FPD Command Staff and that’s why he made the joke.

Later in the video, Boline and Haid talk about how they wanted to fry Felz. I asked Haid to explain. Haid said that he and Boline were talking about how they wanted to arrest Felz for a crime and he was probably being treated favorably because of his Fullerton City Manager status.

I asked Haid if he ever approached Corbett and expressed his concerns how he feared the call was going to be handled. Haid said no because he believed his opinion did not matter. Haid said the Captains did not like him and he had just recently returned from being on administrative leave. Haid just wanted to, “Do his job and get the hell out of there.”

Haid said he did not think anybody contacted the witness when he was on scene and did not know for sure if it happened after he left the call. I asked Haid if anybody told him not to contact any witnesses and he said no.

That concluded my interview with Haid.

Lieutenant Goodrich’s Statement

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Sergeant Corbett's Statement

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Conclusions

340.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

Lieutenant Goodrich: See below FPD policy sections.

Sergeant Corbett: See below FPD policy sections.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation and provided false information under FPD case# 16-74804, in violation of PC – 118.1 False Report by a Peace Officer.

340.5.2(g) ETHICS

(g) Any other failure to abide by the standards of ethical conduct.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation which compromised the integrity of an attempted prosecution of Felz for his crimes committed in the City of Fullerton.

340.5.7 EFFICIENCY

(b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

Lieutenant Goodrich: Goodrich initially did not hear the radio traffic because he was admittedly watching TV (the election) and reviewing reports. Instead, it took a dispatcher to call him with the notification that the Fullerton City Manager, Joe Felz had been in a collision and trying to flee the scene.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation which compromised the integrity of an attempted prosecution of Felz for his crimes committed in the City of Fullerton.

340.3.2 SUPERVISOR RESPONSIBILITIES

(a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.

Lieutenant Goodrich: Goodrich initially did not hear the radio traffic because he was admittedly watching TV (the election) and reviewing reports. Instead, it took a dispatcher to call him with the notification that the Fullerton City Manager, Joe Felz had been in a collision and trying to flee the scene.

Sergeant Corbett: Corbett was the highest ranking employee at the scene and was tasked by Chief Hughes to handle the incident in an appropriate manner. Under Corbett's supervision, the one and only witness to this collision (Barbara Pollinger) was not contacted at the scene and had to be interviewed several days later by Sergeant Jeff Stuart after she complained about not being contacted during "Public comments" at a Fullerton City Council meeting.

340.5.8 PERFORMANCE

(a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation which compromised the integrity of an attempted prosecution of Felz for his crimes committed in the City of Fullerton.

(i) Any act or omission occurring on or off-duty that brings discredit to this department.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation which compromised the integrity of an attempted prosecution of Felz for his crimes committed in the City of Fullerton.

340.5.9 CONDUCT

(h) Criminal, dishonest, or disgraceful conduct, whether on or off-duty.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation and provided false information under FPD case# 16-74804, in violation of PC – 118.1 False Report by a Peace Officer.

(m) Any other on or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

Sergeant Corbett: Corbett purposely failed to conduct a proper investigation which compromised the integrity of an attempted prosecution of Felz for his crimes committed in the City of Fullerton.

469.1 USE of BODY WORN CAMERA RECORDERS

(a) All field contacts and calls for service. Recordings shall remain in the record position throughout the entire contact or until otherwise directed by a supervisor.

Sergeant Corbett: Corbett had recorded a total of 2 BWC files related to this case. Corbett failed to capture a substantial portion of the contact with Felz due to not activating his BWC when appropriate.

Exhibit J

From: "joshua@joshuaferguson.com" <joshua@joshuaferguson.com>
Date: Monday, February 4, 2019 at 11:22 AM
To: Mea Klein <MeaK@ci.fullerton.ca.us>
Cc: "Lucinda M. Williams" <LucindaW@ci.fullerton.ca.us>, Kenneth Domer <kdomer@cityoffullerton.com>, "imt@jones-mayer.com" <imt@jones-mayer.com>, Kelly Aviles <kaviles@opengovlaw.com>
Subject: 04 February 2019 PRR - AXOM Files

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc. Otherwise, please send the files to joshua@joshuaferguson.com.

Since the city is stonewalling every bit of information regarding SB1421 contra comments made expressly by City Manager Domer that as much information as possible would be made available when the law went into effect over a month ago I would like to make a simple request.

This request requires no searching or redacting, falls within the scope of SB1421 as the information is older than 180 days and was used as evidence to make a sustained finding against Officer Corbett for falsifying records:

I would like following files:

AXON Body 2 Video 2016-11-09 0134
AXON Body 2 Video 2016-11-09 0137 (multiple)
AXON Body 2 Video 2016-11-09 0138
AXON Body 2 Video 2016-11-09 0143
AXON Body 2 Video 2016-11-09 0237
AXON Body 2 Video 2016-11-09 0243

These are related to case #16-74804. They were uploaded by Officers Gibert, Haid, Boline, & Corbett.

In the report on Officer Corbett relating to his sustained complaint the following statement is made:
"I then had Officer Franke view Corbett's body-worn-camera video footage that captured some of the tests Felz was asked to perform in the field. This was done to see if Corbett utilized or deviated from his past S.F.S.T. / D.R.E. training."
Other such statements regarding Body-Worn cameras are made and as such these files fall within the guidelines of SB1421.

The city only needs to Perform steps 1-7 of "Previewing TASER CAM Video with Evidence Sync (Offline)" in the Previewing Videos options according to the Evidence Sync User Manual for the AXON body worn cameras issued to officers.

I'm giving you all of the information you should need to easily locate, download and provide these files to me and in keeping with City Manager Domer's promise of transparency and willingness to comply with SB1421 I should expect access to these files promptly.

I have attached the Taser/AXOM user manual for clarification in case the "Previewing Videos" information is confusing.

Thank you for your time and I look forward to a quick response.

Sincerely,

Joshua Ferguson

Joshua@JoshuaFerguson.com

Exhibit K

From: "Lucinda M. Williams" <LucindaW@ci.fullerton.ca.us>
Date: February 14, 2019 at 14:46:58 PST
To: "Joshua Ferguson (joshua@joshuaferguson.com)" <joshua@joshuaferguson.com>
Cc: Mea Klein <MeaK@ci.fullerton.ca.us>
Subject: Public Records Request 19-73

Mr. Ferguson,

Thank you for your Public Records Request 19-73 dated February 4, 2019 seeking SB 1421 Body Worn Camera info.

We have reviewed our records and found that the records you seek are exempt from disclosure pursuant to Government Code section 6254(c), (f), and (k); Penal Code sections 832.7 and 832.8; and Government Code section 6255.

If you have any further questions, please contact Assistant City Clerk Mea Klein at meak@cityoffullerton.com.

Thank you.

Lucinda Williams, MMC

City Clerk / Clerk Services Manager

City of Fullerton | 303 W Commonwealth Avenue | Fullerton, CA | 92832 | T: 714.738.6355 | F: 714.525.8071

Follow me at twitter.com/fullertonccclerk. Get customized City news sent right to your inbox! Sign up for eLists at www.cityoffullerton.com.

Looking for election or voter information? Go to www.ocvote.com.

Exhibit L

From: joshua@joshuaferguson.com

Subject: PRR 05 Feb 2019 re: Terminations

Date: February 5, 2019 at 12:56:39 PM PST

To: Mea Klein <MeaK@ci.fullerton.ca.us>

Cc: "Lucinda M. Williams" <LucindaW@ci.fullerton.ca.us>, Kenneth Domer <kdomer@cityoffullerton.com>

The following is a public records request pursuant to Govt. Code §6250, et seq.

In each instance, I am requesting electronic files. If the size of the requested items is prohibitive for e-mailing purposes, please provide the items on a CD or DVD disc, which I will pay for, if necessary. Otherwise, please send the files to joshua@joshuaferguson.com.

- 1) All information, including complaints, investigations, findings and actions taken regarding the terminations of city employees Bob (Robert?) St. Paul and Trung Phan.
- 2) All information, including complaints, investigations, findings and actions taken relating to the accident involving a Parks and Rec vehicle, license plate #1241521. See attached photo for reference.

Please provide any portion of this request as the items become available.

Thank you for your time,

Joshua Ferguson



Exhibit M

From: Mea Klein <MeaK@ci.fullerton.ca.us>

Subject: 19-76 Response to Records Request

Date: February 15, 2019 at 4:55:41 PM PST

To: "joshua@joshuaferguson.com" <joshua@joshuaferguson.com>

Hi Joshua,

There are no records in response to #1 of your request. Additionally, the types of records you seek are exempt from disclosure pursuant to Government Code sections 6254(c) and 6255 (personnel).

Regarding #2 of your request, the records you have listed are exempt from disclosure pursuant to Government Code section 6254(b), (c), (f) and (k); Government Code section 54963, Evidence Code Section 950 et seq., Code of Civil Procedure section 2018.010, and Government Code section 6255 (personnel, law enforcement investigative files, Brown Act, litigation, attorney-client privilege and attorney work product). If you seek other records, please let us know which ones.

Thank you,

Mea Klein

Assistant City Clerk

City of Fullerton

714-738-6571