



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF
DAVID O. LIVINGSTON
SHERIFF - CORONER

VIA EMAIL

November 16, 2018

Ms. Gina Channell
Danville Weekly
5506 Sunol Blvd. #100
Pleasanton, CA 94566
gchannell@embarcaderomediagroup.com

Re: Your Public Records Act Request

Dear Ms. Channell:

I am responding to your email sent October 25, 2018 in which you make a request pursuant to the California Public Records Act (Gov't. Code § 6250 *et seq.*). On November 2, 2018, this office advised you via email that we required a 14-day extension within which to respond under § 6253(c)(1). This letter is in response to your request. You specifically requested:

- 1) *The security camera video footage from the San Ramon Valley High School pool between 10 a.m. and 4 p.m. May 8, 2018.*
- 2) *All incident reports, investigation reports and other documents relating to the drowning death of Ben Curry at the San Ramon Valley High School on May 8, 2018.*
- 3) *The 911 tapes and all dispatch printouts related to the San Ramon Valley High School May 8, 2018.*
- 4) *Body-worn camera video from the responding Danville Police Department officer, Kyle Rhoton, from the time he was dispatched to the San Ramon Valley High School pool until the end of the school day, May 8, 2018.*
- 5) *Copies of all correspondence, including emails and memos, between representatives of the Danville Police Department ("Department") and the San Ramon Valley Unified School District, Aaron Becker, the San Ramon Valley Education Association, the Curry family and their attorneys during the period of May 8, 2018, and today's date.*

With respect to item number 1, our office is not the custodian of records for the security camera footage. You will need to contact the San Ramon Valley High School to inquire about obtaining a copy.

With respect to item numbers 2, 3, and 4, our office will not produce records (or parts of records) exempt from disclosure as law enforcement records of investigatory files (Gov't. Code § 6254(f) and *Haynie v. Superior Court* (2001) 26 Cal.4th 1061).

With respect to item number 4, our office will not produce records (or parts of records) exempt from disclosure as law enforcement records of investigatory files, as stated above. Our office has reviewed the possibly responsive records and has determined that they are exempt under Gov't Code § 6254 (f) as they relate to the investigation.

The California Supreme Court ruled in *Williams v. Superior Court* (1993) 5 Cal.4th 337, 19 Cal. Rptr. 2d 882:

“Subdivision (f) does not require the disclosure of ‘investigatory or security files compiled by...[a] state or local police agency’ or of ‘investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes...’ (§ 6254, subd. (f), italics added.) [6] **This statutory language protects materials that, while not on their face exempt from disclosure, nevertheless become exempt through inclusion in an investigatory file.** (ACLU, supra, 32 Cal.3d at p. 449, fn. 10; *Younger v. Berkeley City Council*, supra, 45 Cal.App.3d at pp. 212-213.)

While **the parties agree that otherwise nonexempt materials can become exempt through inclusion in an investigatory file**, they disagree about the duration of that exemption. The Daily Press argues that the exemption terminates when the investigation terminates. The Sheriff disagrees, asserting that the statute on its face contains no time limitation and that the exemption services interests that outlive the investigation for which the file was originally created, such as the safety of informants and undercover officers, the integrity of related investigations, and the privacy of persons whose affairs have been investigated but who have not been charged with crimes.

We conclude that the exemption for law enforcement investigatory files does not end when the investigation ends. While there may be reasons of policy that would support a time limitation on the exemption for investigatory files, such a limitation is virtually impossible to reconcile with the language and history of subdivision (f).” (emphasis added)

Additionally, these records are exempt from disclosure as provided in Gov't. Code § 6254 (k) as, “records, the disclosure of which is exempted or prohibited pursuant to

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federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. See Evid. Code §1040 (a) and (b), relating to “information acquired in confidence by a public employee in the course of his duty...”

As you are likely aware, we conducted a careful and thorough investigation into this tragic incident. We fully appreciate the family’s and the community’s sorrow at the loss of this young man. Our investigation into this sad event is, by law, exempt from disclosure under the Public Records Act.

This fulfills your Public Records Act request.

Sincerely,

DAVID O. LIVINGSTON, Sheriff



Carlye M. Slover
Sheriff’s Specialist