



Superior Court of California
County of Alameda

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

Receipt Nbr: 364133
Clerk: mplong
Date: 07/01/2009

| Type | Case Number | Description | Amount |
|--------|-------------|------------------------------|----------|
| Filing | RG09460712 | Petition for Writ of Mandate | \$350.00 |

Total Amount Due: \$350.00
Prior Payment:
Current Payment: \$350.00
Balance Due: \$.00
Overage:
Excess Fee:
Change:

Payment Method:
Cash:
Check: \$350.00

| | | |
|--|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin L. Thomason Law Office of Kevin L. Thomason 328 Catron Drive Oakland, CA 94603 TELEPHONE NO: 415-827-1776 FAX NO: 415-236-6075 ATTORNEY FOR (Name): The Calguns Foundation | | FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JUL 0 1 2009 <i>By Marcus Plong</i> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: René C. Davidson | | CASE NUMBER: <i>K909460712</i> JUDGE: DEPT: |
| CASE NAME: CALGUNS FOUNDATION, INC. v. CITY OF OAKLAND | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) | <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|--|---|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

| | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): (2) Writ of Mandate, Dec. Relief

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: *July 1, 2009* *Kevin Thomason*

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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**ENDORSED
FILED
ALAMEDA COUNTY
JUL 01 2009**

By Marcus Plong

Attorneys for Petitioner,
CALGUNS FOUNDATION, INC.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

CALGUNS FOUNDATION, INC,
Plaintiff/Petitioner,
vs.
CITY OF OAKLAND, Supervising City
Attorney for the City of Oakland, MARK
MORODOMI in his official capacity, and
DOES 1 through 10, inclusive,
Defendants/Respondents.

Case No.: **RG09460712**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND REQUEST FOR
DECLARATORY RELIEF**

[Cal. Gov't Code §§ 6258, 6259; Cal. Civ.
Proc. Code §§ 526a, 1085; Cal. Const. Art. I §
3 et. seq.]

INTRODUCTION

1. This is a suit to require the City of Oakland to comply with the California Public Records Act, Government Code 6250 *et seq.* Plaintiffs therefore seek the immediate release of records that they requested, relating to one such incident, under the specific enforcement provisions of the PRA.

JURISDICTION AND VENUE

2. This Court has jurisdiction under Government Code § 6258, Code of Civil

1 Procedure §§ 526a, 1060, and 1085, and Article VI section 10 of the California Constitution.

2 3. Venue is proper in this Court: The acts and omissions complained of herein
3 occurred in this County. Code Civ. Pro. § 393. Defendants are all situated in, reside in, or work
4 in this County. *Id.*; § 394(a). The records in question are situated in this County. Gov't Code §
5 6259.

6 **PARTIES**

7 4. Plaintiff / Petitioner Calguns Foundation, Inc. ("Calguns") is a California
8 nonprofit public benefit corporation incorporated and with its headquarters in Redwood City,
9 California. Calguns is dedicated to, *inter alia*, defending and protecting the civil rights of law-
10 abiding California gun owners. Calguns is a "member of the public" under Government Code
11 6252(b).

12 5. Calguns is informed and believes that Defendant / Respondent City of Oakland
13 ("City") is a charter city under the laws of the State of California and a local agency within the
14 meaning of Government Code § 6252(a).

15 6. Calguns is informed and believes that Respondent / Defendant Mark Morodomi
16 ("Morodomi") is the Supervising Deputy City Attorney for the City of Oakland and is the
17 official responsible for responding to and denying Petitioners' requests for the public records
18 described herein.

19 **GENERAL ALLEGATIONS**

20 7. The California Public Records Act (California Government Code Sections 6250-
21 6270, hereinafter "CPRA") was passed by the California State Legislature and signed by the
22 Governor in 1968. It mandates that local agencies must disclose public records to members of
23 the public, unless there is a specific, statutorily-defined reason not to do so.

24 8. On March 21, 2009, four Oakland police officers were allegedly shot and killed by
25 Lovell Mixon, a 26 year-old parolee and habitual criminal. Based on widely-disseminated press
26 reports, he used a semi-automatic pistol to kill two of the officers, and some type of "SKS" rifle
27 to kill the other two. **Exhibit 1.**

28 9. Only four days after this tragic event, and as a direct result of this event, local

1 lawmakers called for additional restrictions on “high capacity magazines.”¹

2 Ammunition magazines with a capacity of 10 rounds or more — the kind that
3 Oakland parolee Lovelle Mixon used to kill two of four police officers — would
4 fall under a stricter tracking system under legislation proposed Wednesday by two
5 East Bay lawmakers.

6 **Exhibit 2.**

7 10. On April 17, 2009, Calguns, acting through its attorneys, sent two CPRA requests
8 to the City. The first CPRA request was for the “make, model, description and caliber” of the
9 pistol that Lovell Mixon allegedly used on March 21, 2009. **Exhibit 3.** The second CPRA
10 request was for the “make, model, description and caliber” of the rifle that Lovell Mixon
11 allegedly used on March 21, 2009. **Exhibit 4.**

12 11. The information sought by Calguns is a “public record” under the CPRA.

13 12. Calguns sought these public records to determine whether the weapons allegedly
14 used by Lovelle Mixon did, indeed, contain “high capacity detachable magazines” as stated by
15 the authors of the above proposed law.

16 13 It is very likely that they did not.²

17 14. On May 1, 2009, the City responded to the above CPRA requests.

18 15. They stated that they would not provide the public records requested by
19 Petitioners. **Exhibit 5.**

20 16. Calguns attempted several more times to obtain the above public records, but were
21 turned down at every turn. **Exhibit 6.**

22 17. Calguns now seek the Court’s help to obtain disclosure of the above public
23 records.

24 //

26 ¹ The bill is SB776. http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0751-0800/sb_776_bill_20090415_amended_sen_v98.html

27 ² Pistol (and rifle) magazines with a capacity of more than 10 rounds have been banned in California for almost a decade. In
28 addition, SKS rifles with detachable magazines have been illegal to purchase or possess for almost 15 years while SKS rifles
 without detachable magazines remain legal and those SKS rifles can only hold 10 rounds.

1 **I. CALIFORNIA LAW REQUIRES THE RELEASE OF PUBLIC RECORDS**

2 18. Section 6253 of the CPRA provides, in part:

3 [. . .] (b) [e]xcept with respect to public records exempt from disclosure by
4 express provisions of law, each state or local agency, upon a request for a copy of
5 records that reasonably describes an identifiable record or records, shall make the
6 records promptly available to any person upon payment of fees covering direct
7 costs of duplication, or a statutory fee if applicable. Upon request, an exact copy
8 shall be provided unless impracticable to do so.

9 [Emphasis added]

10 19. The City and Morodomi (collectively referred to as “Defendants”) refuse to
11 provide the above-requested public records, and appears to rely on the following narrow
12 “investigation” exception to the CPRA:

13 6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter
14 shall be construed to require disclosure of records that are any of the following:

15 [. . .]

16 (f) Records of complaints to, or investigations conducted by, or records of
17 intelligence information or security procedures of, the office of the Attorney
18 General and the Department of Justice, the California Emergency Management
19 Agency, and any state or local police agency, or any investigatory or security files
20 compiled by any other state or local police agency, or any investigatory or security
21 files compiled by any other state or local agency for correctional, law
22 enforcement, or licensing purposes.

23 [Emphasis added].

24 **II. THE EXCEPTION CONTAINED IN 6254(F) DOES NOT APPLY IN THIS CASE**

25 20. Defendants’ reliance on the first few words of 6254(f) is misplaced, since later in
26 the very same statute it states that the *very information Petitioner is seeking* “shall” be made
27 available:

28 Notwithstanding any other provision of this subdivision, state and local law

1 enforcement agencies shall make public the following information, except to the
2 extent that disclosure of a particular item of information would endanger the safety
3 of a person involved in an investigation or would endanger the successful
4 completion of the investigation or a related investigation:

5 [. . .]

6 Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time,
7 substance, and location of all complaints or requests for assistance received by the
8 agency and the time and nature of the response thereto, including, to the extent the
9 information regarding crimes alleged or committed or any other incident
10 investigated is recorded, the time, date, and location of occurrence, the time and
11 date of the report, the name and age of the victim, the factual circumstances
12 surrounding the crime or incident, and a general description of any injuries,
13 property, or weapons involved. 6254(f)(2).

14 [Emphasis added].

15 **III. DEFENDANTS HAVE THE BURDEN OF PROVING AN EXCEPTION TO THE**
16 **CPRA**

17 21. Under Article I, § 3(b) of the California Constitution, and the CPRA, a
18 government agency that denies all or part of a request for access to public records has the burden
19 of demonstrating that the requested records are exempt under one of the specific, narrowly
20 construed exemptions in the Act.³

21 22. Defendants have not met this burden. In its first May 1, 2009 “denial letter” the
22 Defendants merely state that “the information related to the gun [sic] is a part of a law
23 enforcement investigation and therefore exempt from disclosure.” **Exhibit 5.**

24 23. The law is clear that public records are not exempt from disclosure merely because
25 they are part of a “law enforcement investigation.”

26 _____
27 ³ Gov’t Code § 6255(a): The agency shall justify withholding any record by demonstrating that the record in question is
28 exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not
disclosing the record clearly outweighs the public interest served by disclosure of the record.

1 No one argues, and the law does not provide, that a public agency may shield a
2 record from public disclosure, regardless of its nature, simply by placing it in a file
3 labeled "investigatory."

4 *Williams v. Superior Court*, 5 Cal.4th 337,

5 24. Indeed, to be exempt under Government Code Section 6254(f), the release of the
6 information Calguns is seeking (the description of firearms) must "endanger the safety of a
7 person involved in an investigation or would endanger the successful completion of the
8 investigation or a related investigation."

9 25. Defendants have not met this burden.

10 26. Indeed, when pressed on this issue, the best that the Defendants could come up
11 with was the following recital:

12 [A]s part of this investigation, law enforcement will interview witnesses and
13 suspects. The credibility of the witnesses and suspects is weighed by testing their
14 knowledge of the make and model of the weapons. This is a valuable law
15 enforcement tool. If OPD were to release such information to the public, law
16 enforcement's ability to use this investigative technique would be destroyed and
17 the successful completion of the investigation endangered.

18 **Exhibit 6.**

19 27. Defendants completely miss the mark with the above assertion.

20 28. It is not disputed that the only suspect in this crime is now deceased. Defendants
21 have not averred that there are other suspects. It appears that the Defendants are trying to
22 determine how Lovelle Mixon obtained the two weapons in question.⁴ Since he was on parole,
23 and was thus *prohibited from legally purchasing or possessing* firearms, it is most likely that he
24 either stole them, or illegally bought them from someone who stole them. If this is the case,
25 making the identity of the firearms in question public could actually serve to *enhance* the
26 investigation, since the rightful legal owner of those firearms may then be in a position to come
27

28 ⁴ Exhibit 7.

1 forward and assist in the investigation.

2 29. Conversely, it is highly unlikely that anyone involved in the illegal procurement of
3 said firearms will come forward and talk to the police.

4 30. Again, Petitioners do not seek a specific description of the firearm, which would
5 include items such as the unique serial number, any identifying marks, or scratches. Such
6 specific information would in fact be the critical type of information that would serve as a
7 factual basis for a related investigation, if one even exists. Rather, Petitioners wish to have
8 accurate information about the design of the firearm from the firearm's make and model.

9 31. Therefore, the Defendants' assertion that releasing a general description of the
10 firearms "would risk the investigation" simply does not make sense in the real world.

11 32. To the contrary, the "cat is out of the bag," since the City has already stated that
12 the rifle used was an "SKS." That fact has been widely reported in the media. **Exhibit 1.**
13 Calguns merely seeks to know what specific make and model of "SKS" was used so that they
14 can determine magazine type and capacity.

15 33. Petitioners also wish to know what pistol was used. And again, the fact that it was
16 a "semi-automatic pistol" has already been widely reported in the media. **Exhibit 1.**

17 34. Even assuming, arguendo, that the Defendants are somehow able to force a
18 confession from someone linked to the illegal sale of the firearms to Mixon, it is highly unlikely
19 that a common street criminal would even know the make and model of the firearms that were
20 involved. It is hard to imagine a street thug knowing the difference between a Smith & Wesson
21 "SW40VE" and an "SE40GVE," for example. It is even more unlikely that a street hood would
22 know what type of SKS was involved. Was it Russian, Chinese, Romanian, Yugoslavian,
23 Albanian, etc? Was it a Chinese Type 63, or Yugoslavian M59?

24 35. There is no reason to not release this information.

25 36. Even setting aside all of petitioners' arguments, and accepting all of the
26 Defendants' arguments as being valid, there is nothing to prevent the Defendants' from releasing
27 the "magazine capacities" of the firearms in question, or whether the firearms even contained
28 "detachable magazines." Defendants made absolutely no showing that releasing that narrow

1 subclass of information would hamper their “investigation.”

2 IV. FIRST CAUSE OF ACTION

3 Writ of Mandate

4 37. Calguns incorporates paragraphs 1 through 36, inclusive, as if fully set forth
5 herein.

6 38. Defendants’ denial of access to the records requested by Calguns is a violation of
7 the Article I, § 3(b) of the California Constitution and the CPRA.

8 39. Under Article I, § 3(b) of the California Constitution and Government Code §
9 6258, Petitioners are entitled to pursue their right of access to the records sought herein by
10 petitioning this Court for a writ of mandate to compel the Defendants to make those records
11 public.

12 40. Calguns is beneficially interested in the outcome of this action and have a clear,
13 present, and substantial right to the release of the records sought herein to make sure that the
14 public discourse regarding this incident is based on an accurate assessment of the weapons used
15 in this disgusting crime. Gov’t Code § 6250 *et. seq.*, enforceable through this action under Gov’t
16 Code §§ 6258 and 6259.

17 41. Indeed, if lawmakers wish to use this event as a reason to craft public law, the
18 public has an absolute right to know the pertinent details of this event.

19 42. Calguns has no other plain, speedy or adequate remedy in the normal course of
20 law. As a result of Defendants’ refusal to release the aforementioned public records, Calguns
21 sustained and will continue to be denied access to information regarding matters of fundamental
22 public interest concerning the public’s business.

23 43. By the acts set forth, Calguns has exhausted its administrative remedies in this
24 matter, and has fulfilled all preconditions to filing this Verified Complaint and Petition.

25 44. Defendants have a clear, present and ministerial duty to provide copies of the
26 requested public records. Failure to do so is an abuse of discretion correctable by issuance of a
27 writ of mandate from this Court or, in the alternative, by issuance of an order from this Court
28 granting Plaintiffs/Petitioners’ request for injunctive relief.

1 45. Defendants have abused their discretion in responding to the Calguns' Public
2 Records Act request by failing to promptly provide copies of the public records as specified in
3 Government Code § 6252.

4 46. Pursuant to Government Code § 6258, the times for responsive pleadings and for
5 hearings in actions such as this one shall be set with the object of securing a decision at the
6 earliest possible time.

7 V. SECOND CAUSE OF ACTION

8 **Declaratory Relief**

9 47. Calguns hereby incorporates paragraphs 1 through 46 inclusive, as if fully set forth
10 herein.

11 48. An actual controversy exists between the Calguns and Defendants in that Calguns
12 contends that the documents requested are public records which must be promptly released to
13 the Calguns. Defendants have repeatedly ignored the Calgun's Public Records Act requests for
14 access to these public documents. Therefore, Calguns and the public are, and will continue to be,
15 unable to obtain access to the public records sought due to Defendants' acts. Accordingly,
16 Calguns is entitled to an order pursuant to Government Code § 6258 declaring the records
17 sought are subject to disclosure pursuant to the Public Records Act.

18 49. Calguns has incurred, and will incur, attorneys' fees in pursuing in this Court the
19 relief sought.

20 50. Calguns alleges that the access to copies of the documents sought from
21 Defendants' is of substantial interest and benefit to the public as it is the basis of proposed
22 public law binding on all persons within the City. Calguns further alleges that it is, therefore,
23 entitled to recover its attorneys' fees and other litigation costs, pursuant to Government Code §
24 6259.

25 **PRAYER**

26 WHEREFORE, Petitioners pray as follows:

27 1. That the Court issue an alternative writ of mandate compelling the City of
28 Oakland and its' agents to permit public access to and copying of the records and information

1 requested by Petitioners - specifically, the make, model and general description including type
2 of magazine and magazine capacity of the weapons used by Lovelle Mixon on March 21, 2009 -
3 or to show cause before this Court at a time specified by the Court why they should not do so
4 and why a writ of mandate should not be issued.

5 2. That by alternative writ or by order, the Court direct the City to submit to the
6 Court for *in camera* review, prior to the time set for hearing this matter, copies of any and all
7 records responsive to the requests of Petitioners.

8 3. That by alternative writ or order, the Court permit Petitioners to obtain expedited
9 discovery regarding the issues presented by this petition, including but not limited to permitting
10 Petitioners to immediately propound requests for production or inspection of documents, and
11 requiring the City to respond to such discovery requests within twenty (20) days.

12 4. That on return of the alternative writ and after a hearing on the matter, this Court
13 determine that the City's conduct was and is in violation of applicable provisions of the
14 California Constitution and the CPRA and issue a peremptory writ of mandate commanding The
15 City of Oakland to permit public access to and copying of the records and information requested
16 by Petitioners - to wit, the make, model and general description including type of magazine and
17 magazine capacity of the weapons used by Lovelle Mixon on March 21, 2009.

18 5. That the Court find and hold that Petitioners are the prevailing parties in this
19 action, and that they be awarded their costs and attorneys' fees incurred in pursuing this matter.

20 6. For such other and further relief as the Court deems just and proper.

21
22 DATED: July 1, 2009



KEVIN LEE THOMASON
Attorney for Petitioner / Plaintiff

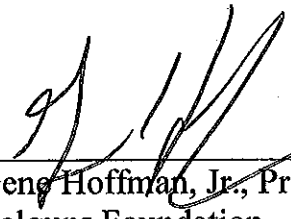
VERIFICATION

I, Gene Hoffman, Jr., am Chairman and President of the Calguns Foundation, Inc.

I have read this Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief in the matter of *Calguns Foundation v. City of Oakland, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 6/26/09



Gene Hoffman, Jr., President
Calguns Foundation

Index to Exhibits

Exhibit 1 – Printout of Google.com search results for “sks lovelle mixon.”

Exhibit 2 – News article regarding new bill re: large capacity firearm magazines.

Exhibit 3 – Public Records Act Request / Sunshine Ordinance Request to City of Oakland and transmitting email.

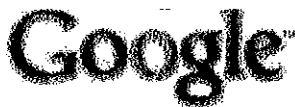
Exhibit 4 – Public Records Act Request / Sunshine Ordinance Request to City of Oakland and transmitting email.

Exhibit 5 – Letter from City of Oakland to Kevin Thomason regarding Mr. Thomason’s PRA Request.

Exhibit 6 – Additional correspondence between Kevin Thomason and the City of Oakland regarding Mr. Thomason’s PRA request.

Exhibit 7 – Additional correspondence between Kevin Thomason and the City of Oakland regarding Mr. Thomason’s PRA request.

Exhibit 1

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sks lovelle mixon

Search

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18 posts - Last post: Mar 24

12) Accordingly, the **SKS** in question is not an assault weapon. Obviously, the crime involved is a tragedy, and **Lovelle Mixon's** actions have ...[www.ar15.com/forums/topic.html?b=1&f=5&t=849657](#) - [Cached](#) - [Similar](#) - [Will there be Lovelle Mixon COPYCATS ? he used an old SKS, the ...](#) Mar 25, 2009 ... RE: Will there be **Lovelle Mixon COPYCATS ? he used an old SKS**, the Soviet predecessor to the AK-47 3/25/2009 10:38PM - in reply to Support ...[www.letsrun.com/forum/flat_read.php?thread=2945594](#) - [Cached](#) - [Similar](#) - [Lovelle Mixon Tied to Rape Case? - SFist: San Francisco](#) Mar 24, 2009 ... **Lovelle Mixon**, the Oakland resident who died last Saturday after ... Stevelst - this guy didn't run around with an AK/SKS/whatever they are ...[sfist.com/2009/03/24/lovelle_mixon_tied_to_rape_case.php](#) - [Cached](#) - [Similar](#) - [Mixon's Rifle Already Illegal - Calguns.net](#)


10 posts - 7 authors - Last post: Mar 26

Lovell Mixon's SKS sporter was outlawed in 1999 by executive order! One of the first things, attorney general Bill Lockyer did after being ...[www.calguns.net/calgunforum/showthread.php?p=2224442](#) - [Cached](#) - [Similar](#) - [2009 shooting of Oakland police officers - Wikipedia, the free ...](#) - 9:45amThe convicted felon, **Lovelle Mixon**, shot and killed four Oakland police officers, ... **Mixon** wielded two different weapons—a semiautomatic handgun and an **SKS** ...[en.wikipedia.org/wiki/2009_Oakland_police_shootings](#) - [Cached](#) - [Similar](#) - [Editorial: Renew U.S. ban on assault weapons - San Jose Mercury News](#) Mar 29, 2009 ... Police have yet to determine how **Lovelle Mixon**, a parolee with a lengthy criminal record, got his hands on the handgun and the **SKS** rifle he ...[www.mercurynews.com/opinion/cj_12016511](#) - [Cached](#) - [Similar](#) - [\(OT\) : ? Lovelle Mixon a Hero in the African-American Community ...](#) murderer **Lovelle Mixon** who killed four Oakland police officers in cold >> blood. ... **Mixon** used a semi-automatic Rifle {**SKS**} to Kill two ...[www.radiobanter.com/archive/index.php/t-142235.html](#) - [Cached](#) - [Similar](#) - [Lovelle Mixon's Sister Arrested On Drug Charge After Oakland ...](#) In the wake of the Oakland Police Shooting, the Sister of **Lovelle Mixon** was arrested ... working to determine what the family knew about **Mixon's** weapons possession. skakir stewart (1); **sks** investments (1); skyline high school (1) ...[oaklandfocus.blogspot.com/2009/03/lovelle-mixon-sister-arrested-on-drug.html](#) -[Cached](#) - [Similar](#) - [OAKLAND: LOCAL LAWMAKERS ANNOUNCE LEGISLATION TO REGULATE ASSAULT ...](#)

- 9:40am

Mar 25, 2009 ... If the more common **SKS** that's pretty amusing (if not tragic) that they would


try to ban something that **Lovelle Mixon** did not even use. ...

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[Assault Weapon kills Oakland Police SWAT members - Liberty Forest](#)  

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Did **Lovell Mixon** use the world's most popular battle-rifle, the AK-47? Was it one of California's millions of legal rifles, such as the **SKS**, ...

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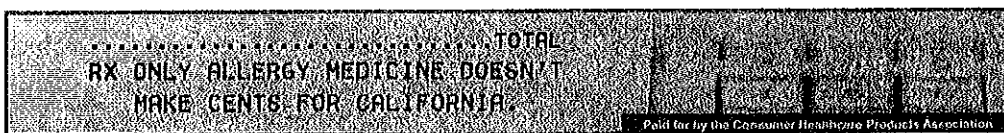
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Exhibit 2



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Bill calls for tracking of large-capacity weapon magazines

By Steven Harmon MediaNews Sacramento Bureau Posted: 03/25/2009 05:09:07 PM PDT Updated: 03/25/2009 05:49:37 PM PDT

SACRAMENTO — Ammunition magazines with a capacity of 10 rounds or more — the kind that Oakland parolee Lovelle Mixon used to kill two of four police officers — would fall under a stricter tracking system under legislation proposed Wednesday by two East Bay lawmakers.

Law enforcement officials currently have few tools to keep the dangerous ammunition devices out of the hands of criminals, said Sen. Loni Hancock, D-Berkeley, the author of the bill.

"This horrible tragedy will pinpoint for us some of the holes in our gun laws," said Hancock, a member of the Senate Public Safety Committee. "There are a number of lessons from this, and I'm prepared to learn them all. We may need to have a hearing on the status of gun control. I'm very committed to looking at this."

Assault weapons have been banned in California since 1999, and owners who possessed them before the ban are required to register their weapons. But large-capacity magazines are not required to be registered — because it was previously impossible to stamp serial numbers on them. Technology is now available to imprint serials on the magazines and enable law enforcement to track them through a registration system, Hancock said.

Mixon set off one of the deadliest police shootings in California history after he shot two officers with a handgun shortly after being pulled over Saturday in what had been described as a routine traffic stop.

Mixon fled to

his sister's apartment and shot two more officers — this time with an assault weapon — before being tracked down and killed in an exchange of gunfire.

All told, five officers were shot. One was not seriously hurt, but four were killed.

The large-capacity magazines make firearms — particularly assault weapons — that much more of a threat because of the ability of shooters to fire more than 10 rounds without reloading.

"At a time like this, it's important to find out what's not working," said Assemblyman Sandre Swanson, D-Oakland, a co-author of the legislation. "This could be the beginning of a new era of urban conflict. It's an important warning sign to prepare ourselves for future conflicts that could expose officers and our community to extreme dangers. It's very sobering. We have a clear responsibility to start taking action."

The officers' slayings have also fueled debate on issues such as flaws in the state's parole system.

U.S. Sen. Diane Feinstein, D-Calif., has also said that Congress needs to reopen the debate on the assault weapon ban, which President George W. Bush allowed to lapse.

Reach Steven Harmon at 916-441-2101 or sharmon@bayareanewsgroup.com

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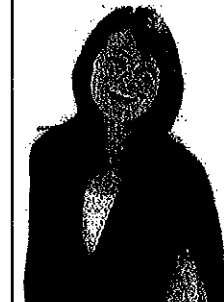


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Exhibit 3

Kevin Thomason <fnfal61@gmail.com>

Sunshine Ordinance Request - Immediate Disclosure Request3 messages

Kevin Lee Thomason <kevin@seamless.com>

Fri, Apr 17, 2009 at 8:38 PM

To: mabney@oaklandcityattorney.org, jrusso@oaklandcityattorney.org

Bcc:

Dear Ms. Abney,

Subject to SECTION 2.20.190 of the Oakland Sunshine Ordinance and Government Code Section 6250 et seq, I hereby request the following documents: "All documents that involve, refer to, relate to, or concern the make, model, description, and caliber of the rifle that Lovelle Mixon used on 3/21/09 to shoot Sergeants Ervin Romans and Daniel Sakaj."

I have also attached a "CITY OF OAKLAND-PUBLIC RECORDS REQUEST FORM" with this information.

Pursuant to the Ordinance, I will expect a response within 3 days. Please do not hesitate to call me at 415.827.1776.

Copies of documents may be scanned to PDF and emailed to me, if possible. Otherwise, I can arrange pickup.

Thank you in advance for your expected cooperation.

Best,

Kevin

--

Kevin Lee Thomason, Esq.
cell 415.827.1776
kevin@seamless.com

 Oak-PRAR.pdf
33K

Kevin Lee Thomason <kevin@seamless.com>

Wed, Apr 22, 2009 at 10:20 AM

To: mabney@oaklandcityattorney.org, jrusso@oaklandcityattorney.org

Bcc:

Dear Ms. Abney,

Pleasant speaking with you just now in reference to the below request (and the other request I sent on the same day). It is my understanding that you are communicating with the police department at this time about this request.

It is my hope that we will not have to resort to litigation in order to get the below information, but please be advised that I am ready, willing and able to bring a writ of mandamus, should that action be required.

Best,

Kevin L. Thomason, Attorney at Law

[Quoted text hidden]

Kevin Lee Thomason <kevin@seamless.com>

Tue, Apr 28, 2009 at 8:56 PM

To: mabney@oaklandcityattorney.org, jrusso@oaklandcityattorney.org

Bcc:

Dear Ms. Abney,

It has been 11 days since I requested documents from your office. I need not remind you that there are civil penalties for failure to respond adequately to a PRA.

When will I get the documents that I have requested?

Kevin

[Quoted text hidden]

CITY OF OAKLAND-PUBLIC RECORDS REQUEST FORM
OFFICE OF THE CITY ATTORNEY

| Request Received (Official Date Stamp) | Request Completed/Notification Given (Official Date Stamp) | Request Picked-Up/Mailed/Faxed (Official Date Stamp) |
|---|---|---|
| Staff Initials | Staff Initials | Staff Initials |
| How Request Was Received | Notification | Completion |
| Walk-In _____ Mail _____ Phone _____ Other _____ | Date Requestor Notified: _____ Notes: _____ _____ | Picked-Up _____ Faxed _____ Mailed _____ Other _____ |

To Be Completed by the Requester

Name of Requester: Kevin L. Thomason **Phone:** 415-827-1776 **Fax:** _____

Agency/Company: N/A

Mailing Address:

328 Catron Drive, Oakland CA 94603 **Email:** Kevin@seamless.com

Date of Request: 4/17/09

Requested Documents/Information (PLEASE BE AS SPECIFIC AS POSSIBLE)

All documents that involve, refer to, relate to, or concern the make, model description, and caliber of the rifle that Lovelle Mixon used on 3/21/09 to shoot Sergeants Ervin Romans and Daniel Sakai.

Date Sent to City Attorney: _____ **Date Completion Notice sent to City Attorney:** _____
 (If you need legal assistance, please call the City Attorney's Office at Ext. 2965)

For Office Use Only

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Number of Pages: _____ **Number of Pages:** _____ **Total Copy Charges:** \$ _____

Exhibit 4



Kevin Thomason <fnfal61@gmail.com>

Sunshine Ordinance Request - Immediate Disclosure Request #2

1 message

Kevin Lee Thomason <kevin@seamless.com>

Fri, Apr 17, 2009 at 8:44 PM

To: mabney@oaklandcityattorney.org, jrusso@oaklandcityattorney.org

Bcc:

Dear Ms. Abney,

Subject to SECTION 2.20.190 of the Oakland Sunshine Ordinance and Government Code Section 6250 et seq, I hereby request the following documents: "All documents that involve, refer to, relate to, or concern the make, model, description, and caliber of the pistol that Lovelle Mixon used on 3/21/09 to shoot Sergeant Mark Dunakin and Officer John Hege."

I have also attached a "CITY OF OAKLAND-PUBLIC RECORDS REQUEST FORM" with this information.

Pursuant to the Ordinance, I will expect a response within 3 days. Please do not hesitate to call me at 415.827.1776.

Copies of documents may be scanned to PDF and emailed to me, if possible. Otherwise, I can arrange pickup.

Thank you in advance for your expected cooperation.

Best,

Kevin

--

Kevin Lee Thomason, Esq.

cell 415.827.1776

kevin@seamless.com

--

Kevin Lee Thomason, Esq.

cell 415.827.1776

kevin@seamless.com



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CITY OF OAKLAND-PUBLIC RECORDS REQUEST FORM
OFFICE OF THE CITY ATTORNEY

| Request Received (Official Date Stamp) | Request Completed/Notification Given (Official Date Stamp) | Request Picked-Up/Mailed/Faxed (Official Date Stamp) |
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| Staff Initials | Staff Initials | Staff Initials |
| How Request Was Received | Notification | Completion |
| Walk-In _____ Mail _____ Phone _____ Other _____ | Date Requestor Notified: _____ Notes: _____ _____ | Picked-Up _____ Faxed _____ Mailed _____ Other _____ |

To Be Completed by the Requester

Name of Requester: Kevin L. Thomason **Phone:** 415-827-1776 **Fax:** _____

Agency/Company: N/A

Mailing Address:

328 Catron Drive, Oakland CA 94603 **Email:** Kevin@seamless.com

Date of Request: 4/17/09

Requested Documents/Information (PLEASE BE AS SPECIFIC AS POSSIBLE)

All documents that involve, refer to, relate to, or concern the make, model
description, and caliber of the pistol that Lovelle Mixon used on 3/21/09 to
shoot Sergeant Mark Dunakin and Officer John Hege.

Date Sent to City Attorney: _____ **Date Completion Notice sent to City Attorney:** _____
(If you need legal assistance, please call the City Attorney's Office at Ext. 2965)

For Office Use Only

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Exhibit 5

CITY OF
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ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

Sent via email to kevin@seamless.com only on: May 1, 2009

May 1, 2009

Dear Mr. Thomason:

Subject: Public Records Request –PRR-090077-Information Regarding Gun
(Mixon)/4/17/09

This letter is in response to your public records request.

We have consulted with Oakland Police Department and the Alameda County District Attorney's Office about this case. We have been informed that consistent with standard practices, the Alameda District Attorney's office has an open investigation into the events of March 21, 2009 as they relate to the shootings by suspect Lovelle Mixon and by Oakland police officers. In addition, the Oakland Police Department continues its investigation into the March 21, 2009 incident. Pursuant to Government Code Section 6254(f), the information related to the gun is a part of a law enforcement investigation and therefore exempt from disclosure. *Williams v. Superior Court*, 5 Cal.4th 337, 354, 355 (1993).

Please let me know if there is alternative information, the City can provide.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Michelle Taylor" or similar, written over a horizontal line.

for MARK MORODOMI
Supervising Deputy City Attorney

MM:ma
cc: Public Records File

Exhibit 6

Kevin Thomason <fnfal61@gmail.com>



Public Records Request/PRR-090077/Mixon

12 messages

Abney, Michelle <MABney@oaklandcityattorney.org>
To: fnfal61@gmail.com, kevin@seamless.com

Fri, May 1, 2009 at 10:05 AM

Attached please find a letter in response to your public records request. If you have any questions, please call Mark Morodomi, Supervising Deputy City Attorney at (510) 238-6101.

Michelle Taylor Abney

Open Government Coordinator

Office of the City Attorney

City Hall, No. 1 Frank Ogawa Plaza, 6th Floor


Oakland, CA 94612

510 238-2965

Fax 510 238-6500

Law in the Service of the Public

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161K

Kevin Lee Thomason <kevin@seamless.com>

To: "Abney, Michelle" <MABney@oaklandcityattorney.org>, mMorodomi@oaklandcityattorney.org

Bcc:

Tue, Jun 2, 2009 at 9:26 PM

Dear Ms. Abney,

Your office is quite incorrect that the information I seek is not disclosable.

The information that I seek *may* be withheld IF and ONLY IF it would "would endanger the successful completion of an investigation, or related investigation, or endanger a person involved in the investigation." Cal. Gov't Code §§ 6254(f)(1), (f)(2) and (f)(3).

Your office is **required** to show me exactly how disclosing the make and model of the weapons involved would "endanger the successful completion of an investigation, or related investigation, or endanger a person involved in the investigation."

Simply claiming a "6254 exception" is not acceptable, and you should know that, given your position.

Please be advised that I am fully prepared to litigate this matter. As you know, if I win, your office will be liable for substantial statutory penalties, along with my attorney's fees, which will not be insubstantial.

You are therefore well advised to reconsider your position. You can avoid litigation if you simply give me the make and model of the weapons that Lovelle Mixon used in the below-referenced event.

Setting aside the fact that the city will be liable for my fees and a substantial statutory penalty, if I have to take this matter to litigation, I will most certainly bring this matter to the attention of the press. Given the current situation with the city's police department, I am certain that you do not want this. Nor will Jeff Thomason, and his superiors. The last thing that the OPD needs right now is anything that even remotely looks like an attempt to "cover up" the facts in this tragic matter.

If I do not hear from you within five (5) working days, I will take further action.

Regards,

Kevin L. Thomason

Page 2

CITY of OAKLAND



ONE FRANK H. OGAWA PLAZA · 6TH FLOOR · OAKLAND, CALIFORNIA 94612

(510) 238-3601

Office of the City Attorney

FAX: (510) 238-6500

John A. Russo
City Attorney

TTY/TDD: (510) 238-3254

Sent via email to kevin@seamless.com only on: May 1, 2009

May 1, 2009

Dear Mr. Thomason:

Subject: Public Records Request –PRR-090077-Information Regarding Gun (Mixon)/4/17/09

This letter is in response to your public records request.

We have consulted with Oakland Police Department and the Alameda County District Attorney's Office about this case. We have been informed that consistent with standard practices, the Alameda District Attorney's office has an open investigation into the events of March 21, 2009 as they relate to the shootings by suspect Lovelle Mixon and by Oakland police officers. In addition, the Oakland Police Department continues its investigation into the March 21, 2009 incident. Pursuant to Government Code Section 6254(f), the information related to the gun is a part of a law enforcement investigation and therefore exempt from disclosure. *Williams v. Superior Court*, 5 Cal.4th 337, 354, 355 (1993).

Please let me know if there is alternative information, the City can provide.

Sincerely yours,

for MARK MORODOMI
Supervising Deputy City Attorney

Kevin Lee Thomason, Esq.
cell 415.827.1776
kevin@seamless.com

Kevin Lee Thomason <kevin@seamless.com>

Tue, Jun 2, 2009 at 9:40 PM

To: jrusso@oaklandcityattorney.org

Cc: "Abney, Michelle" <mabney@oaklandcityattorney.org>, mmorodomi@oaklandcityattorney.org

Bcc:

Dear Mr. Russo,

You should be aware of the below correspondence. I am hoping for a resolution that does not involve the City of Oakland becoming a defendant in yet another lawsuit.

Best,

Kevin L. Thomason, Attorney at Law

[Quoted text hidden]

Kevin Lee Thomason <kevin@seamless.com>

Wed, Jun 10, 2009 at 12:45 PM

To: "Abney, Michelle" <MABney@oaklandcityattorney.org>, mMorodomi@oaklandcityattorney.org

Bcc:

Mark,

I did some more research on the topic - 6254(f) REQUIRES "disclosure of the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved."

It's right in the statute.

As I outlined below - the exception would be if disclosure would "would endanger the successful completion of an investigation." Here, that is hard to show. And as I mentioned on the phone yesterday, I think a judge will agree with me.

~~Let's move forward on getting me the information I seek. I am already drafting up a complaint, but I would rather not waste judicial resources if we do not have to.~~

Best,

Kevin

[Quoted text hidden]

Kevin Lee Thomason <kevin@seamless.com>

Wed, Jun 10, 2009 at 12:52 PM

To: "Abney, Michelle" <MABney@oaklandcityattorney.org>, mMorodomi@oaklandcityattorney.org

Bcc: Gene Hoffman <hoffmang@hoffmang.com>

Mark,

Also, I reread *Williams*. You are citing it for the wrong reason. The main holdings in *Williams* are (1) FOIA standards are different than PRA

standards, and (2) some files may still remain exempt even after an investigation ends. In fact, in dicta, Williams states the following:

While important, however, the exemption is not unlimited. A public agency may not shield a document from disclosure with the bare assertion that it relates to an investigation.

Again, I'm virtually certain that a judge will agree with me on all of this.

Best,

Kevin

[Quoted text hidden]

Kevin Lee Thomason <kevin@seamless.com>

Thu, Jun 11, 2009 at 12:00 PM

To: "Abney, Michelle" <MAbney@oaklandcityattorney.org>, mMorodomi@oaklandcityattorney.org

Bcc:

Mark,

I have a petition already drawn up. But I would like to give your office one last chance to settle this without litigation. Please provide me with documents that indicate the make, model and description of the weapons that Lovelle Mixon used on March 21, 2009.

Thank you in advance.

Kevin Thomason

[Quoted text hidden]

Morodomi, Mark <MMorodomi@oaklandcityattorney.org>

Thu, Jun 11, 2009 at 2:03 PM

To: Kevin Lee Thomason <kevin@seamless.com>, "Abney, Michelle" <MAbney@oaklandcityattorney.org>

Kevin,

I will have some information for you by the end of the day.

Mark Morodomi

Office of the City Attorney

1 Ogawa Plaza, 6th Fl.

Oakland, CA 94612

510-238-6101

f: 510-238-6500

From: fnfal61@gmail.com [mailto:fnfal61@gmail.com] **On Behalf Of** Kevin Lee Thomason

Sent: Thursday, June 11, 2009 12:00 PM

To: Abney, Michelle; Morodomi, Mark

Subject: Re: Public Records Request/PRR-090077/Mixon

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

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(510) 238-3601

Office of the City Attorney

FAX: (510) 238-6500

John A. Russo
City Attorney

TTY/TDD: (510) 238-3254

Sent via email to kevin@seamless.com only on: May 1, 2009

May 1, 2009

Dear Mr. Thomason:

Subject: Public Records Request –PRR-090077-Information Regarding Gun

(Mixon)/4/17/09

This letter is in response to your public records request.

We have consulted with Oakland Police Department and the Alameda County District Attorney's Office about this case. We have been informed that consistent with standard practices, the Alameda District Attorney's office has an open investigation into the events of March 21, 2009 as they relate to the shootings by suspect Lovelle Mixon and by Oakland police officers. In addition, the Oakland Police Department continues its investigation into the March 21, 2009 incident. Pursuant to Government Code Section 6254(f), the information related to the gun is a part of a law enforcement investigation and therefore exempt from disclosure. *Williams v. Superior Court*, 5 Cal.4th 337, 354, 355 (1993).

Please let me know if there is alternative information, the City can provide.

Sincerely yours,

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Morodomi, Mark <MMorodomi@oaklandcityattorney.org>
To: Kevin Lee Thomason <kevin@seamless.com>

Thu, Jun 11, 2009 at 6:18 PM

Mr. Thomason,

Thank you for your patience. I have had to confer with the Oakland Police Department (OPD) regarding your request and any relationship with an ongoing investigation.

The general description of the weapons is as follows:

- semi-automatic pistol
- an assault-type rifle

OPD informs me that there is a criminal investigation related to the possession and transfer of the weapons. Disclosure of the make and model of the weapons would endanger the successful completion of the investigation. Government Code section 6254(f).

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation

For example, as part of this investigation, law enforcement will interview witnesses and suspects. The credibility of the witnesses and suspects is weighed by testing their knowledge of the make and model of the weapons. This is a valuable law enforcement tool. If OPD were to release such information to the public, law enforcement's ability to use this investigative technique would be destroyed and the successful completion of the investigation endangered.

I encourage you to discuss this matter again with me once the investigation is completed.

Please contact me if you have further questions.

Mark Morodomi

Office of the City Attorney
1 Ogawa Plaza, 6th Fl.
Oakland, CA 94612
510-238-6101
f: 510-238-6500

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[v1.02]

Kevin Lee Thomason <kevin@seamless.com>
To: "Morodomi, Mark" <MMorodomi@oaklandcityattorney.org>
Bcc: Gene Hoffman <hoffmang@hoffmang.com>

Thu, Jun 11, 2009 at 10:58 PM

Thank you Mark for getting back to me.

The problem here is that the suspect is dead, and there is no evidence that he acted with any help.

Best,

Kevin

[Quoted text hidden]

[Quoted text hidden]

Exhibit 7

f: 510-238-6500

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[v1.02]

Kevin Lee Thomason <kevin@seamless.com>
To: "Morodomi, Mark" <MMorodomi@oaklandcityattorney.org>
Bcc: Gene Hoffman <hoffmang@hoffmang.com>

Thu, Jun 11, 2009 at 10:58 PM

Thank you Mark for getting back to me.

The problem here is that the suspect is dead, and there is no evidence that he acted with any help.

Best,

Kevin

[Quoted text hidden]

[Quoted text hidden]

Kevin Lee Thomason <kevin@seamless.com>

Thu, Jun 11, 2009 at 11:00 PM

Morodomi, Mark <MMorodomi@oaklandcityattorney.org>
To: Kevin Lee Thomason <kevin@seamless.com>

Fri, Jun 12, 2009 at 12:02 PM

Kevin,

The question is from whom did he get the guns.

Mark Morodomi
Office of the City Attorney
1 Ogawa Plaza, 6th Fl.
Oakland, CA 94612
510-238-6101
f: 510-238-6500

[Quoted text hidden]
