

January 13, 2022

VIA EMAIL

jolander@mastagni.com

Joshua Olander
1912 I Street
Sacramento, CA 95811

Re: *Response to December 3, 2021 Letter re Request for Skelly Hearing & Discovery*
Client-Matter: VA040/035

Dear Mr. Olander:

Our office has been retained by the City of Vallejo to respond to your December 3, 2021 letter regarding Officer Jarrett Tonn (“Officer Tonn”). Please accept this letter as confirmation of your client’s request for a *Skelly* Hearing before a decision is made to implement the proposed discipline. This letter shall also respond to your request for additional documents and information.

On the basis of *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (“*Skelly*”) you request multiple categories of documents and information, which are set forth below.

As a preliminary matter, it should be noted that Officer Tonn has already been provided with a substantial portion of the documents and materials identified in your request. In addition to being provided with a detailed notice outlining the discipline being proposed and the charges against him, Officer Tonn has already been provided a complete copy of the investigation upon which the discipline is based, including audio recordings of interviews that were conducted.

Neither *Skelly* nor the Public Safety Officers Procedural Bill of Rights Act (“POBRA”) creates general rights of discovery in connection with discipline of peace officers, like Officer Tonn. In fact, in *Skelly*, at 215, the California Supreme Court held:

“due process does not require the state to provide the employee with a full trial-type evidentiary hearing prior to the initial taking of punitive action. However, at least six justices on the high court agree that due process does mandate that the employee be accorded certain procedural rights before the discipline becomes effective. As a minimum, these preremoval safeguards must include notice of the proposed action, the reasons therefor, a copy of the charges and materials upon

which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline.

Moreover, in *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1286–87, the California Court of Appeal stated:

“The main purpose of section 3303 is to govern the conduct of an interrogation of an officer who is under investigation, thereby preventing abusive tactics. The only ‘notes’ to which such officer is expressly entitled under section 3303, subdivision (g), are the ‘notes made by a stenographer,’ who was implicitly present at the officer's interrogation. Fair treatment of such officer does not require that all the material amassed in the course of the investigation, such as raw notes, written communications, records obtained, and interviews conducted, be provided to the officer following the officer's interrogation. Nothing in the Act's language or legislative history reveals a Legislative intent to provide an officer who is the subject of an administrative internal affairs investigation with broad statutory discovery rights similar to those held by criminal defendants. As the Supreme Court observed in *Pasadena*, ‘[s]ubdivision (f) [now (g)] defines only disclosure requirements incident to an *investigation*; it does not address an officer's entitlement to discovery in the event he or she is administratively *charged* with misconduct.’ (*Pasadena*, *supra*, 51 Cal.3d at p. 575, 273 Cal.Rptr. 584, 797 P.2d 608, italics in original.)”

Therefore, the Vallejo Police Department (“Department”) responds to your requests as follows:

1. A complete copy of Officer Tonn’s personnel files, including but not limited to his Department file, Divisional File, and Human Resources File.

Officer Tonn is permitted to inspect his personnel file consistent with Government Code section 3306.5, which provides: “every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.” Nevertheless, given current pandemic conditions, we will provide a courtesy pdf copy of his personnel files maintained by the Department.

2. A current copy of all policies and procedures alleged to have been violated by Officer Tonn.

The Notice of Intent to Discipline served on Mr. Tonn on December 1, 2021, included copies of the relevant policies identified in the Investigation Report and that the Department determined Mr. Tonn violated. Additionally, the Department has the Policy Manual posted

online for the public to access at

https://vallejopd.net/public_information/codes_policies/policy_manual.

3. All written reports prepared as a result of the allegations against Officer Tonn.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

4. All investigator notes.

Pursuant to Government Code section 3303(g), Officer Tonn is entitled to the tape recording of the interrogation and a transcribed copy of any notes made by a stenographer or any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. Accordingly, Officer Tonn has already been provided with the Investigation Report and accompanying audio recordings and transcripts of the administrative interview with Officer Tonn and other witnesses.

5. All written or recorded statements of any potential witness.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

6. All statements or utterances by Officer Tonn, oral or written, however, recorded or preserved, whether or not signed or acknowledged by Officer Tonn.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based. Officer Tonn's recorded administrative interview is contained within the documents provided along with the report.

7. All information that could lead to or tends to mitigate the conclusions set forth in the notice of proposed disciplinary action. Information includes any information known to members of Vallejo Police Department whether in written form or merely within the knowledge of members of Vallejo Police Department staff.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

This request is vague and overly broad. Further, the Department objects to this request to the extent that it seeks confidential records pursuant to Penal Code section 832.7.

8. The names and contact information for any witnesses who may have knowledge of the events that caused the discipline to be proposed.

The Investigation Report identifies the relevant witnesses with knowledge of the events leading to Officer Tonn's termination. The Department is not required to produce more than what it has already produced to Officer Tonn.

9. All exculpatory or mitigating evidence in the possession of Vallejo Police Department.

The Investigation Report identifies all of the relevant witnesses and evidence related to the June 2, 2020 use of force incident involving Officer Tonn. The Department is not required to produce more than what it has already produced to Officer Tonn.

Further, the Department objects to this request to the extent that it seeks confidential records pursuant to Penal Code section 832.7.

10. All information relevant to the credibility of any witness.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

This request is vague and overly broad. Further, the Department objects to this request to the extent that it seeks confidential records pursuant to Penal Code section 832.7.

11. All potential rebuttal evidence in the possession of Vallejo Police Department.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

12. All relevant evidence known or in the possession of Vallejo Police Department.

All relevant evidence known to, or in the possession of, Vallejo Police Department is contained in the Investigation Report, which serves as the basis for Chief Williams' decision to terminate Officer Tonn.

This request is vague and overly broad. Further, the Department objects to this request to the extent that it seeks confidential records pursuant to Penal Code section 832.7.

13. All recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendations of discipline.

The Department is not required to produce more than what it has already produced to Officer Tonn, i.e., a complete copy of the investigation upon which the proposed discipline is based.

14. A copy of any Department or City *Skelly* Hearing Manual governing the *Skelly* process and evaluation guidelines for Department employees.

The City of Vallejo does not maintain a separate *Skelly* Hearing Manual that governs the *Skelly* process and evaluation of Department employees. Please refer to the Vallejo PD Policy Manual at section 1011.10 concerning Post-Administrative Investigation Procedures, which can be accessed at https://vallejopd.net/public_information/codes_policies/policy_manual.

To the extent that your letter seeks public records under the California Public Records Act (Gov. Code, §6250, *et seq.*), this letter shall provide you with the City's response to and denial of that request on behalf of the authority of Police Chief Williams. Government Code section 6254 makes the following records exempt from the disclosure under the CPRA:

“(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure...

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy...

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes...

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege...

(p)(2) Records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide

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instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter.”

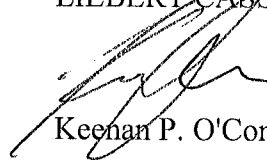
Other than the documents described above and enclosed herein, the documents you requested are exempt from disclosure pursuant to the above-mentioned provisions of Government Code section 6254 and will not be produced.

Please be advised that the Department will contact you with information regarding the date and time of the *Skelly* Hearing.

Please feel free to contact me if you have any additional questions or concerns.

Sincerely,

LIEBERT CASSIDY WHITMORE



Keenan P. O'Connor

KPO:pt