



City of Seattle

Seattle Police Department

July 11, 2016

Tim Clemans

Email: tim@fixspd.org

Re: Public Disclosure Appeal #P002621-051716

Dear Mr. Clemans:

SPD Legal Unit has completed the administrative review of your appeal of SPD Public Disclosure Unit's response to your request dated May 17, 2016, for the "fail safe forward facing ICV for 12PM -2PM of any vehicle that was at 2nd & Yesler today [May17, 2016]." The PDU response of May 31, 2016 is upheld.

Searching for and retrieving fail-safe video is a complex, labor-intensive process that requires pulling SPD vehicles out of operation for an extended period of time. Failsafe video is stored on an internal drive. Retrieving it is not simply a matter of swiftly switching out hard drives on the vehicle. Nor can SPD remotely access a vehicle's computer as you have suggested because it is not within the scope of an agency's obligations, and because your suggested method has the potential to disrupt police operations.

Remotely accessing a car's computer would require SPD to alter its internal processes and controls regarding fail-safe video. This is outside the scope of the PRA. An agency's internal workings are distinct from the substantive assistance the agency provides a requestor in responding to a request. An agency's search will be "judged by a standard of reasonableness," independent of the requestor's proposed means of conducting the search. *Neighborhood Alliance*, 172 Wn.2d 702, 720, 261 P.3d 119 (2011); *see also Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004, 1013 (2014) ("Hobbs presents an incorrect characterization of the issue for our review. He points to specific pieces of the . . . search (i.e., the search by one specific person) But we inquire into the scope of the agency's search as a whole and whether that search was reasonable, not whether the requestor has presented alternatives that he believes would have more accurately produced the records he requested."). Thus, so long as the agency's search is reasonable under the PRA, it will satisfy judicial review. If the agency's choices regarding internal administration are reasonable under the PRA, the agency will be found in compliance.

Remoting in and copying/moving a file over the limited bandwidth while the car is in use not only puts a strain on the car's computer, it has a high likelihood of disrupting what the officer is doing at that time. If the officer is recording video at that time, remoting in could prevent a video from being recorded or processed resulting in the destruction of evidence. The PRA

does not require an agency to alter its reasonable and prudent choices regarding internal management merely because those might not be the choices that a requestor would make.

The process of locating and retrieving fail-safe video requires vehicles to be taken out of service for a minimum of hours, and sometimes days depending upon the availability of personnel. Because of the complexity of the retrieval process and the limited longevity of fail-safe video, the likelihood of being able to locate and retrieve fail-safe video in response to a PRA request is remote. At the same time, pulling a vehicle out of service has a serious, detrimental impact on essential law enforcement operations. Pulling even one vehicle out of service can detrimentally affect SPD's ability to respond to calls for service, including priority-one calls—urgent, life-threatening situations.

SPD retrieves fail-safe video only for essential law enforcement operations purposes. SPD will provide fail-safe video in response to a public records request if the fail-safe video has been retrieved for operational purposes. The COBAN system is designed to retrieve fail-safe video only when there is an exceptional, operational need to do so as evidenced by the very nature of the retrieval. Attempting to retrieve fail-safe video for other than operational purposes excessively interferes with essential SPD functions.

An agency accomplishes the aim of the PRA by adopting and enforcing reasonable rules, including rules to “prevent excessive interference with other essential functions of the agency.” RCW 42.56.100. A court will recognize the agency's right to adopt reasonable rules and uphold those rules. *Benton County v. Zink*, 191 Wn. App. 269, 279, 361 P.3d 801 (2015), *review denied*, 185 Wn. 2d 1021, 369 P.3d 501 (2016).

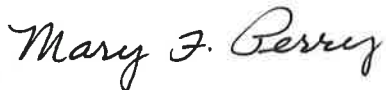
Consistent with RCW 42.56.100 and case law interpreting it, the City of Seattle has adopted Director's Rule, CPRA 01-2016, Interim Citywide Policy on Processing Public Disclosure Requests. Fullest assistance does not require the City to provide requested records if doing so excessively interferes with other essential agency functions. CPRA 01-2016, §1. SPD need not retrieve fail-safe video for other than operational purposes because doing so excessively interferes with other essential SPD functions.

SPD performs an adequate search for fail-safe video when it searches only for fail-safe video that may have been retrieved for operational purposes. An agency must conduct an “adequate search” for records responsive to a public records request. *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn. 2d 702, 261 P.3d 119, 128 (2011). The standard for determining the adequacy of a search for records under the PRA is the same as exists under the Federal Freedom of Information Act (FOIA). *Id.*, 172 Wn.2d at 719. Under FOIA, an agency need not conduct a search that is “impossible, impractical, or futile.” *Ancient Coin Collectors Guild v. U.S. Dept. of State*, 641 F.3d 504, 514 (2011); *see also*, *Safety Research & Strategies, Inc. v. U.S. Dep't of Transp.*, 903 F. Supp. 2d 1, 7 (D.D.C. 2012), and *Stewart v. U.S. Dep't of Interior*, 554 F.3d 1236, 1243–44 (10th Cir.2009). Searching the internal hard drive on a vehicle for fail-safe video is not required because doing so is “impossible, impractical, or futile.”

The Washington Supreme Court has acknowledged that the “PRA's mandate for broad disclosure is not absolute” and “vital governmental interests... sometimes outweigh the PRA's broad policy in favor of disclosing public records.” *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn. 2d 417, 432, 327 P.3d 600 (2013), as amended on denial of reh'g (Jan. 10, 2014). “Requiring disclosure where the public interest in efficient government could be harmed significantly more than the public would be served by disclosure is not reasonable.” *Dawson v. Daly*, 120 Wash. 2d 782, 798, 845 P.2d 995 (1993). Significantly more than the public interest in efficient government is at stake here — removing vehicles from patrol impairs SPD's ability to perform its core law enforcement function.

Sincerely,

Kathleen O'Toole
Chief of Police

A handwritten signature in cursive script that reads "Mary F. Perry".

Mary F. Perry
Director of Transparency and Privacy
SPD Legal Unit