

Subject: Response to Public Records Act Request dated 11-24-20



Elaine Roche [REDACTED]@fremont.gov>
to [REDACTED] CClerk, Bronwen Lacey

Fri, Dec 4, 2020, 8:31 PM

You are viewing an attached message. Joyful Heart Foundation Mail can't verify the authenticity of attached messages.


Good morning,
On behalf of Senior Deputy City Attorney Bronwen Lacey, please find attached her response to your Public Records Act request received November 24, 2020.

If you have any questions, please contact Ms. Lacey at [REDACTED]

Thank you,



Elaine Roche
Paralegal
City of Fremont

3 Attachments






Official City Attorney
Fremont, CA 94537-0806
[REDACTED] City Attorney
December 4, 2020

ATA REQUEST
[REDACTED]
Re: Public Records Act Request dated November 24, 2020
[REDACTED]
This letter is in response to your Public Records Act Request emailed to the City Clerk on November 24, 2020 requesting records of the Fremont Police Department involving sexual assault.

PRA respo..



	A	B	C	D	E	F
YEAR	TOTAL KITS	TESTED KITS	UNTESTED KITS	DESTROYED KITS		
2000	3	0	3	3		
2001	19	3	16	11		
2002	13	3	8	8		
2003	17	2	15	17		
2004	15	2	9	11		
2005	14	4	10	10		
2006	12	4	8	7		
2007	17	5	12	12		
2008	18	6	12	12		
2009	12	5	7	9		
2010	24	6	18	14		
2011	14	5	9	6		
2012	8	1	7	1		
2013	11	6	5	0		
2014	14	3	11	2		
2015	29	4	19	1		
2016	14	0	14	0		

PRA- SAR...

**602**

Fremont Police Department
Fremont PD CA Policy Manual

Sexual Assault Investigations
602.1 PURPOSE AND SCOPE
The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.
Mandatory notification requirements are addressed in the Child Abuse and Adult Abuse policies.
602.1.1 POLICY
It is the policy of the Fremont Police Department that its members, when responding to reports of sexual assault, will strive to minimize the trauma experienced by the victims, and will investigate sexual assault, initiate apprehension and conviction of perpetrators, and protect the safety of

RA- Polic..

December 4, 2020

VIA EMAIL:

Email: [REDACTED]@goodwinlaw.com

Re: Public Records Act Request dated November 24, 2020

Dear [REDACTED]:

This letter is in response to your Public Records Act Request emailed to the City Clerk on November 24, 2020 requesting records of the Fremont Police Department involving sexual assault kits.

To the extent that the requests seek documents containing information gathered as part of an individual criminal investigation case file or intelligence file, these records are exempt from disclosure under Government Code Section 6254(f). To the extent the requests seek records that are not part of an individual criminal investigation or intelligence file but would reveal the City's operational/technical strategies, confidential informants, the public interest in not disclosing the information outweighs the public interest in disclosing, since releasing such records to the public would jeopardize public safety, the safety of allied public safety agencies and the ability of the police to safely implement safety and security measures to protect the community. Furthermore, disclosure of this information to the public would allow individuals to defeat or avoid the City's efforts regarding public and officer safety, property protection, and apprehension of fleeing suspects. As a result, this information is exempt from disclosure under Section 6255 and Evidence Code Section 1040(b)(2).

To the extent that the requests seek information that falls within the attorney-client privilege, deliberative process privileges, attorney work product, and pending and active litigation exception, these records are exempt from disclosure under Government Code sections 6254(b), 6254(k), and 6255 and Evidence Code sections 1040, 952, and 954.

To the extent that the requests seek information that is part of records or information gathered by law enforcement related to the detention of or taking a minor into custody or temporary custody are confidential and exempt from disclosure under Welfare & Institutions Code §§ 827, 828.

To the extent that the request seeks information that is part of records or information that includes child abuse reports, traffic reports, elder abuse records, state summary criminal information, and local summary criminal information, these records are exempt from disclosure under Penal Code sections 11105, 13300, and 11167.5, Welfare & Institutions Code section 15633, and Vehicle Code section 10012.

To the extent that the requests seek information that includes personal medical information, these records are exempt from disclosure under HIPPA.



To the extent that the requests seek information that is not contained in identifiable records, the Public Records Act does not impose a duty on the City to create a record to respond to your request. To the extent that the requests seek drafts of documents, these records are exempt from disclosure under Government Code section 6254(a).

Notwithstanding the foregoing, the City has located documents that the City believes may be responsive to your requests or of interest to you that the City can disclose.

Request 1. Any documentation regarding the number of sexual assault evidence kits received by the FPD from January 1, 2000 through the present, broken down by year, and, if any such documentation exists from prior to January 1, 2000, any documentation showing when maintenance of such records began;

The City has a record responsive to your request that is not exempt from disclosure as stated above and enclosed with this response.

Request 2. Any documentation regarding the number of sexual assault evidence kits received by the FPD which were analyzed for DNA from January 1, 2000 through the present, broken down by year, and, if any such documentation exists from prior to January 1, 2000, any documentation showing when maintenance of such records began;

The City has a record responsive to your request that is not exempt from disclosure as stated above and enclosed with this response.

Request 3. Any documentation regarding the number of sexual assault evidence kits received by the FPD which were not analyzed for DNA from January 1, 2000 through the present, broken down by year, and, if any such documentation exists from prior to January 1, 2000, any documentation showing when maintenance of such records began;

The City has a record responsive to your request that is not exempt from disclosure as stated above and enclosed with this response.

Request 4. Any documentation providing the reason(s) the sexual assault evidence kits identified in (3) were not sent to a crime lab for DNA analysis, and, if any such documentation exists from prior to January 1, 2000, any documentation showing when maintenance of such records began;

The question is difficult to answer for each individual case because there is no documentation for reasons why. Based on the experience and knowledge of police staff, here are some examples:

-The purpose of having a SART kit sent to a lab for testing is for biological evidence. The majority of sexual assaults are committed by a known suspect therefore the biological evidence would not be needed. Many sexual assault cases are based on consent and a SART kit cannot determine that.

-Several sexual assault victims do not cooperate with the investigation. Within the California Victims of Sexual Assault Rights it is listed that victims are not required to participate in the investigation but still have a SART exam completed. Victims may request no further police action or investigation therefore a kit may not be tested.


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-Several SART exams are done as a courtesy for an outside agency meaning a victim was assaulted in another jurisdiction but they are reporting it to Fremont PD. We may have the exam done but it would be the responsibility of the investigating agency to have the kit tested and we would not have that information.

Request 5. Any documentation regarding the number of sexual assault evidence kits received by the FPD that are unprocessed and remain in any storage facilities currently under the police department's jurisdiction and control;

The City has a record responsive to your request that is not exempt from disclosure as stated above and enclosed with this response.

Request 6. Any documentation regarding the number of sexual assault evidence kits received by the FPD which have been lost or destroyed from January 1, 2000, broken down by year and, if any such documentation exists from prior to January 1, 2000, any documentation showing when maintenance of such records began;


The City has a record responsive to your request that is not exempt from disclosure as stated above and enclosed with this response.

Request 7. Any written policies or procedures regarding the FPD's practices on the handling of sexual assault evidence kits, including testing protocols and retention and destruction policies and also including any documents defining the meaning of any terms or abbreviations used by the FPD pertaining to sexual assault evidence kits.

Please refer to Fremont Police Lexipol policy 602- Sexual Assault Investigations and Penal Code section 680. A copy of the policy is enclosed with this response.


The Fremont Police Dept has participated in a Rapid DNA program for approximately 4 years which complies with Penal Code section 680. California law also requires all agencies to report all SART exams into the DOJ data base SAFE T. This data base began in 2018 and keeps track of SART kits and testing.

If there are records you feel should be disclosed notwithstanding this response, or you would like to discuss your requests and this response further, please feel free to contact me via email at:



Very truly yours,

HARVEY E. LEVINE
City Attorney 


BRONWEN LACEY
Sr. Deputy City Attorney

BL/er
enclosures

YEAR	TOTAL KITS	TESTED KITS	UNTESTED KITS	DESTROYED KITS
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2010	24	6	18	14
2011	14	5	9	6
2012	8	1	7	1
2013	11	6	5	0
2014	14	3	11	3
2015	23	4	19	1
2016	14	0	14	0
2017	29	11	18	0
2018	24	18	6	0
2019	18	12	6	0
2020	12	7	5	0

Sexual Assault Investigations

602.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Adult Abuse policies.

602.1.1 POLICY

It is the policy of the Fremont Police Department that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will investigate sexual assaults, pursue apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

602.2 INVESTIGATION CONSIDERATIONS

602.2.1 VICTIM CONFIDENTIALITY

Officers investigating or receiving a report of an alleged sex offense shall indicate on his/her report that it is CONFIDENTIAL per Penal Code 293 and refer to the victim as a "VICTIM".

- (a) Except as authorized by law, members of this department shall not publicly disclose the name or address of any victim of a sex crime who has exercised his/her right to confidentiality (Penal Code § 293 (c) and (d)).

602.2.2 OFFICER RESPONSIBILITY

Whenever there is an alleged violation of Penal Code §§ 243(e), 261, 261.5, 262, 273.5, 286, 288a or 289, the assigned officer shall accomplish the following:

- (a) Immediately provide the victim with the "Victim Resource Pamphlet" (PD - 006) containing Victim's Rights and services available to the victim including the names and locations of rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Penal Code § 264.2(a)). Refer to Appendix 602 for an example of this pamphlet.
- (b) If the victim is transported to a hospital for any medical evidentiary or physical examination, the officer shall immediately cause the local rape victim counseling center to be notified (Penal Code § 264.2(b)(1)).
 - 1. Prior to any such examination the assigned officer shall ensure that the victim has been properly informed of his/her right to have a sexual assault victim counselor and at least one other support person present (Penal Code § 264.2(b)(2)).
 - 2. A support person may be excluded from the examination by the officer or the medical provider if his/her presence would be detrimental to the purpose of the examination (Penal Code § 264.2(b)(4)).
- (c) Sexual Assault Response Team (SART):

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Sexual Assault Investigations

1. SART exams are conducted as an evidentiary medical examination in cases of Penal Code § 261 (Rape), Penal Code § 262 (Spousal Rape), Penal Code § 289 (Penetration by a Foreign Object), Penal Code § 286 (Sodomy), and other appropriate cases. A SART exam should be conducted if the officer or victim has actual knowledge or suspects that a sexual assault has occurred. THE VICTIM MUST CONSENT TO THE EXAM. Victims who choose not to assist with an investigation, do not desire that the matter be investigated or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately.
2. Acute cases are those that occurred within 72 hours of the last reported assault. Non-acute cases are those that occurred more than 72 hours after the last reported assault.
3. For all acute sexual assaults involving victims 14 years and older, the investigating officer should use Washington Hospital in Fremont. Highland Hospital in Oakland should be used as an alternative if Washington Hospital is unable to conduct the exam. Children's Hospital in Oakland shall be used for children 13 years or younger.
4. Non-acute adult sexual assault victims should be referred to Washington Hospital or Highland Hospital Emergency Departments only when other articulable conditions exist that indicate a sexual assault examination would be appropriate. Examples of such conditions might consist of a medical emergency and the probability of evidence/injuries still present on the victim's body.
5. Non-acute cases of children 13 and under can be referred to the Center for Child Protection at Children's Hospital.
6. The officer/detective will advise the victim that this exam is an evidentiary exam and is paid for by the investigating agency. If the patient does not consent to use the exam for evidence collection, the cost of the examination is the responsibility of the patient. Medical expenses for treatment of injuries resulting from a sexual assault are the responsibility of the patient.
7. The officer should arrange for transport of the victim to the appropriate hospital. Officers should attempt to notify the appropriate hospital approximately 30 minutes prior to arrival.
8. The officer/detective will obtain a short statement from the attending physician (if possible), noting opinions and findings.
9. After the exam, medical personnel will complete the SART exam kit and report. When the SART exam kit has been completed, the officer/ detective shall make arrangements for it to be picked up from the hospital.
10. The collection and storage of the SART exam kit must be documented in a police report. Blood and/ or urine should be separated from the kit and refrigerated. The rest of the kit needs to be frozen. A FPD Crime Scene Investigator (CSI) should be contacted for assistance in proper storage of the SART exam kit.

(d) Interview of Sexual Assault Victims:

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Sexual Assault Investigations

1. The primary considerations in sexual assault investigations, which begin with the initial call to Communications Unit, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect. An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.
 2. Victims shall not be asked or required to take a polygraph examination (34 USC § 10451; Penal Code § 637.4).
 3. Children and developmentally disabled adults should be interviewed at CALICO (Child Abuse Listening Interviewing Coordination Center). Under emergency circumstances, CALICO's after hours pager system may be utilized (1-888-570-0623).
 4. All victim interviews should be recorded unless by doing so it would conflict with Lexipol policy 447.
- (e) Reporting/Final Disposition:
1. **ARREST/EXCEPTIONAL CLEARANCE:** This disposition should be used when the case is referred to the District Attorney's Office for criminal charges or the victim has requested the case be closed.
 2. **UNFOUNDED:** This disposition should be used when the Investigator has reason to believe the case is without merit based on the determination that the facts have significant irregularities with the reported information and the incident could not have happened as it was reported. Cases that are unfounded should list the initially reported victim as "VICTIM". All other persons should be listed as "PERSONS".
 3. **SUSPENDED:** This disposition should be used when there are no further investigative leads. Suspended cases should list the initially reported victim as "VICTIM" and any suspect(s) as "SUSPECT".
 4. **UNSUBSTANTIATED** is NOT a disposition. If a sexual assault is alleged, the case should either be referred to the District Attorney's Office or suspended.
 5. **OUTSIDE ASSIST:** If it is determined that the incident occurred in another jurisdiction, the investigating officer shall immediately, or as soon as practically possible, notify that agency by telephone and initiate an Outside Assist Report.
 6. **VICTIM RECANTATION:** If a victim of sexual assault recants their initial statement an investigation should continue to determine if there is corroboration and reason for the recantation. If it is proven to be untrue then the case should be UNFOUNDED. If the statement is unsubstantiated then the case should be SUSPENDED. If corroborating evidence exists to support the victim's statement the assigned Investigator shall consult with the victim to determine if

Sexual Assault Investigations

the case should be presented to the District Attorney's Office or be closed per their request.

602.3 TESTING OF SEXUAL ASSAULT EVIDENCE

- (a) Any member of this department assigned to investigate a sexual assault offense (Penal Code §§ 261, 261.5, 262, 286, 288a or 289) should take every reasonable step to ensure that DNA testing of such evidence is performed in a timely manner and within the time periods prescribed by Penal Code § 803(g) and 680).
- (b) In order to maximize the effectiveness of such testing and identifying the perpetrator of any sexual assault, the assigned officer or detective shall ensure that an information profile for the sexual assault kit evidence has been created in the California Department of Justice (DOJ) SAFE-T database within 120 days of collection and should further ensure that the results of any such test have been timely entered into and checked against both the Department of Justice Cal-DNA database and the Combined DNA Index System (CODIS).
- (c) If, for any reason, DNA evidence in a sexual assault case in which the identity of the perpetrator is in issue and is not going to be analyzed within two years of the crime, the assigned officer shall notify the victim of such fact in writing within no less than 60 days prior to the expiration of the two-year period (Penal Code § 680(d)).
- (d) If the assigned officer determines that a kit submitted to a private laboratory for analysis has not been tested within 120 days after submission, the officer shall update the SAFE-T database to reflect the reason for the delay in testing. The assigned officer shall continue to update the status every 120 days thereafter until the evidence has been analyzed or the statute of limitations has run. (Penal Code § 680(d)). If a kit is submitted to a public DNA laboratory, it is the responsibility of the laboratory to update the SAFE-T database with the status of the analysis. (Penal Code § 680.3).
- (e)

602.4 VICTIM NOTIFICATION OF DNA STATUS

- (a) Upon receipt of a written request from a sexual assault victim or the victim's authorized designee, the assigned officer may inform the victim of the status of the DNA testing of any evidence from the victim's case.
 - 1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
 - 2. Absent a written request, no member of this department is required to, but may, communicate with the victim or victim's designee regarding the status of any DNA testing.
- (b) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims shall further have the following rights:

Sexual Assault Investigations

1. To be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit or other crime scene evidence from their case.
 2. To be informed whether or not there is a match between the DNA profile of the assailant developed from the evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Database, providing that disclosure would not impede or compromise an ongoing investigation.
 3. To be informed whether or not the DNA profile of the assailant developed from the evidence has been entered into the Department of Justice Data Bank of case evidence.
- (c) Provided that the sexual assault victim or victim's designee has kept the assigned officer informed with regard to current address, telephone number and e-mail address (if available), any victim or victim's designee shall, upon request, be advised of any known significant changes regarding the victim's case.
1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
 2. No officer shall be required to or expected to release any information which might impede or compromise any ongoing investigation.

602.5 DESTRUCTION OF EVIDENCE

Any destruction of evidence related to a sexual assault shall occur only after victim notification is made as required pursuant to Penal Code § 680 and only in compliance with the Property and Evidence Policy.

602.6 TRAINING

Subject to available resources, periodic training should be provided to:

- (a) Members who are first responders. Training should include:
 1. Initial response to sexual assaults.
 2. Legal issues.
 3. Victim advocacy.
 4. Victim's response to trauma.
 5. Proper use and handling of the California standardized SAFE kit (Penal Code § 13823.14).
- (b) Qualified investigators, who should receive advanced training on additional topics. Advanced training should include:
 1. Interviewing sexual assault victims.
 2. SART.

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Sexual Assault Investigations

3. Medical and legal aspects of sexual assault investigations.
4. Serial crimes investigations.
5. Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
6. Techniques for communicating with victims to minimize trauma.