

1 JOSEPH W. FLETCHER (SBN 96813)
CITY ATTORNEY
2 TERESA L. JUDD (SBN 233005)
DEPUTY CITY ATTORNEY
3 CITY OF SANTA ANA
20 CIVIC CENTER PLAZA M-29
4 P.O. BOX 1988
SANTA ANA, CALIFORNIA 92702
5 TELEPHONE: (714) 647-5201

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER


JUN 07 2010

ALAN CARLSON, Clerk of the Court

BY: LISA MA DEPUTY
ok

6 Attorneys for CUSTODIAN OF RECORDS OF THE
CITY OF SANTA ANA POLICE DEPARTMENT
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10
11 PEOPLE OF THE STATE OF CALIFORNIA,)
12 Plaintiff,)
13 vs.)
14  CALHOON,)
15 Defendant.)

Case No.: SA151929PE

**OBJECTION TO ATTEND COURT OR
PROVIDE DOCUMENTS**

Date: June 9, 2010
Time: 1:30 p.m.
Dept.: C54

16
17
18 THE CUSTODIAN OF RECORDS FOR THE CITY OF SANTA ANA hereby objects to
19 the Criminal Subpoena served in the above matter on the following grounds:

20 1. The Custodian of Records hereby objects to records sought pursuant to a subpoena
21 served on the City of Santa Ana on June 3, 2010, as the subpoena demands the City produce
22 documents listed in the "Attached List," which is entitled, "Addendum to Subpoena Duces
23 Tecum, Discovery Motion, and/or Public Records Act Request." (A copy of the subpoena is
24 attached hereto as Exhibit A). As such, this subpoena is improper as Public Records Act requests
25 and informal *Penal Code* 1054 discovery requests are not properly made pursuant to a subpoena
26 duces tecum.

27 Further, in regard to Defendant's request for records pursuant to *Penal Code* section 1054,
28 this subpoena is improper as it is served on the City of Santa Ana Custodian of Records and

1 demands the City produce documents and/or information specifically related to the prosecution of
2 this matter, including but not limited to Item Nos. 13-14(a)-(f). *Penal Code* § 1054 *et seq* sets
3 forth the procedure for discovery in criminal cases. The defendant and the prosecution must
4 begin discovery efforts with an informal request to the opposing party. Investigative agencies
5 that work on the case are considered part of the prosecution team and a defendant must use the
6 discovery procedures set forth in *Penal Code* § 1054(a) to obtain discovery from such agencies.
7 People v. Superior Court (Barrett) (2000) 80 Cal.App.4th 1305, 1313. Documents connected or
8 related to the investigation are subject to discovery under *Penal Code* § 1054.1(a) through (f). *Id.*
9 at p. 1317. Here, many of the items sought are directly related to the underlying investigation and
10 should be sought via the prosecution. Since the items are part of the investigation they are not
11 properly sought as third party records under a subpoena.

12 In addition, law enforcement investigative records requested pursuant to a Public Records Act
13 Request are not subject to disclosure as they are exempt from disclosure pursuant to *Government*
14 *Code* sections 6254(f) and 6255.

15 Lastly, the time for production of documents is different depending on whether the records
16 are sought under a criminal subpoena duces tecum (5 days for Custodian of Records to respond),
17 a Penal Code 1054 Informal Discovery Request (15 days for Prosecutor to respond), and a Public
18 Records Act request (10 days for governmental agency to respond).

19 2. The Custodian of Records hereby objects to records sought under Item No. 4.5, which
20 relates to any "contracts between the City of Riverside and any company or other person involved
21 in the maintenance and operation of the City's AES." This request is improper as the City of the
22 Santa Ana is not the custodian of records for the City of Riverside and therefore has no records to
23 produce.

24 3. The Custodian of Records hereby objects to records sought under Item No. 3.1 for
25 warning notices issued to third parties. The requested information is irrelevant, overbroad, overly
26 burdensome, and confidential, as discussed below.

27 Firstly, *Vehicle Code* section 21455.5(e)(1)-(2) provides:

28 ///

R

1 "Notwithstanding Section 6253 of the Government Code, or any other
2 provision of law, photographic records made by an automated enforcement
3 system shall be confidential, and shall be made available only to
4 governmental agencies and law enforcement agencies and only for the
5 purposes of this article." *Gov't Code* § 21455.5 (e)(1). "Confidential
6 information obtained from the Department of Motor Vehicles for the
7 administration or enforcement of this article shall be held confidential, and
8 may not be used for any other purpose." *Gov't Code* § 21455.5(e)(2).

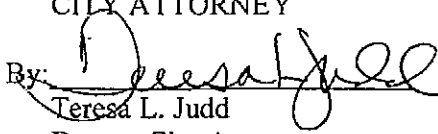
9 Secondly, disclosure of the requested criminal information to a third party would
10 constitute an unwarranted invasion of privacy for any uninvolved third parties who were issued
11 citations and/or warning notices. (*Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, (holding
12 the usefulness of the requested third party arrestee information to the defendant was of "minimal,
13 speculative, and remote value" and disclosure would violate the third parties' legitimate
14 constitutional privacy rights in their identity, which outweighed the remote and "highly
15 speculative value" to the defendant who was clearly on a fishing expedition. The custodian has
16 "the right, in fact the duty, to resist attempts at unauthorized disclosure" of these records.)

17 Lastly, the requested information and records are confidential and protected from
18 disclosure under the Public Records Act pursuant to California *Government Code* Section
19 6254(f).

20 4. Notwithstanding said objections, records sought pursuant to the subpoena duces tecum
21 relating to the City of Santa Ana's automated enforcement program that are properly sought
22 from, and in the custody and control of, the Custodian of Records for these records will be
23 provided to Department C54 of the Orange County Superior Court, Central Division.

24
25 JOSEPH W. FLETCHER
CITY ATTORNEY

26 Dated: June 7, 2010

27 By: 
Teresa L. Judd
Deputy City Attorney
Attorney for the CITY OF SANTA ANA
CUSTODIAN OF RECORDS

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): R. Allen Baylis SBN194496 9042 Garfield Ave., Suite 306 Huntington Beach, CA 92646 TELEPHONE NO.: 714-962-0915 FAX NO. (Optional): 714-962-0930 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): [REDACTED] Calhoon	FOR COURT USE ONLY <div style="text-align: right; font-size: small;"> 2010 JUN -3 PM 1:14 CITY OF SANTA ANA CLERK RY </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92707 BRANCH NAME:	
CASE NAME: People v. Calhoon	
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum	CASE NUMBER: SA151929PE

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1. To: (name or business) Custodian of Records for the City of Santa Ana
2. You must follow the court order(s) checked below:
 - a. Attend the hearing.
 - b. Attend the hearing *and* bring all items checked in c. below.
 - c. Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
 - (1) See Attached list
 - (2) _____
 - (3) _____
 - d. If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."
 - e. If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
 - f. If this box is checked and you deliver all items listed above to the court within 5 days of service of this order, you do not have to attend court if you follow the instructions in item 5.

3. Court Hearing Date: Date: <u>June 9, 2010</u> Time: <u>1:30</u> Dept.: <u>C-54</u> Rm.: _____	The court hearing will be at (name and address of court): <u>Orange County Superior Court, 700 Civic Center Drive</u> <u>West, Santa Ana, CA 90707</u>
Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.	

4. The person who has required you to attend court or provide documents is:

Name: R. Allen Baylis Phone No.: 714-962-0915

Address: 9042 Garfield Ave., Suite 306
Number, Street, Apt. No.
Huntington Beach, CA 92646

City _____ State _____ Zip _____

Date: June 2, 2010 Signature
Name and Title

FOR COURT USE ONLY

CASE NAME: People v. Calhoon	CASE NUMBER: SA151929PE
---------------------------------	----------------------------

- 5 a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
 - (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in item 3 or The court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. Do not include a copy of the documents.

— The server fills out the section below. —

Proof of Service of CR-125/JV-525

- 1. I personally served a copy of this subpoena on:

Date: _____ Time: _____ a.m. p.m.

Name of the person served: _____

At this address: _____

After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____

Mailed from (city): _____
- 2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempts because:
 - a. The person is not known at this address.
 - b. The person moved and the forwarding address is not known.
 - c. There is no such address.
 - d. The address is in a different county.
 - e. I was not able to serve by the hearing date.
 - f. Other (explain): _____
- 3. Server's name: R. Allen Baylis Phone no. 714-962-0915
- 4. The server (check one)
 - a. is a registered process server.
 - b. is not a registered process server.
 - c. is a sheriff, marshal, or constable.
 - d. works for a registered process server.
 - e. is exempt from registration under Business and Professional Code section 22350(b).
- 5. Server's address: 9042 Garfield Ave., Suite 306, Huntington Beach, CA 92646

If server is a registered process server:

County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: June 3, 2010

▶ R. Allen Baylis

TYPE OR PRINT NAME OF SERVER

▶ _____

SIGNATURE OF SERVER

R

ADDENDUM TO SUBPOENA DUCES TECUM, DISCOVERY MOTION AND/OR PUBLIC
RECORDS ACT REQUEST

INTRODUCTION:

A citation was issued to defendant [REDACTED] Calhoon, bearing citation number SA151929PE. The intersection of the alleged violation is Bristol and Edinger, [hereinafter "specified intersection"] in Santa Ana, California, for an alleged violation of Vehicle Code § 21453(a) pursuant to an automated enforcement photo red light camera system [hereinafter "AES"].

PREAMBLE: To establish compliance with the enabling AES statutory requirements in Vehicle Code § 210, §§ 21455.5 - 21455.7 and § 40518, *inter alia*, as well as Evidence Code requirements and Penal Code § 1054 requirements, the defendant makes the following demand, motion and request for the following documents for the above- reference, specified intersection only:

PROVIDE THESE ITEMS:

1. Pursuant to Vehicle Code § 21455.5(a)(1), all documentary evidence of the "warning signs" at the above-specified intersection on the date of the alleged violation herein.

1.1. As to the specified intersection, all inspection and maintenance records of said "warning signs", all documentary evidence pursuant to Vehicle Code § 21455.5(c)(2)(D).

2. Pursuant to Vehicle Code § 21455.5(a)(2), §21455.5(c)(2)(E) and § 21455.7, all documentary evidence that ensured that the minimum yellow light change interval has met the §21455.7 criteria, including but not limited to §21455.7(b) related to the "designated approach speeds".¹

2.1. Pursuant to Vehicle Code §21455.5(c)(2)(E), all documentary evidence and materials demonstrating that one governmental agency and/or law enforcement agency is "overseeing the establishment or change of signal phases and the timing thereof."

3. Pursuant to Vehicle Code §21455.5(b) "warning notice" and "public announcement" statutory requirements, the following:

¹ Defendant is requesting such documentation regarding the "designated approach speed" and also seeks such documentation for the "prevailing speed" [critical speed aka 85th percentile], as well as the "posted speed" limit.

ADDENDUM TO SUBPOENA DUCES TECUM, DISCOVERY MOTION AND/OR PUBLIC
RECORDS ACT REQUEST

3.1. Prior to issuing citations at the above-specified intersection, documentation that shows [a] the date that the AES's implementation was started at the specified intersection, [b] the date range of the "warning notices" at the specified intersection and [c] the redacted versions of the issued "warning notices" at the specified intersection [redacting/blackening out the name and address of the warned driver to ensure their confidentiality to demonstrate the 30-day "warning notice" period compliance prior to the actual issuance of prosecuted citations.

3.2. Prior to issuing citations at the above-specified intersection, documentation that shows [a] the date that the AES's implementation was started, [b] the date range of the "public announcement(s)" and [c] copies of the actual "public announcements" made prior to actual issuance of prosecuted citations.

4. Pursuant to Vehicle Code § 21455.5(c), all documentary evidence and material that establishes that only a governmental agency in cooperation with a law enforcement agency is operating the AES.

4.1. Pursuant to Vehicle Code § 21455.5(c) and (c)(1), all documentary evidence and material that establishes the governmental agency's and/or the law enforcement agency's "uniform guidelines for screening and issuing violations".

4.2. Pursuant to Vehicle Code § 21455.5(c)(1), all documentary evidence and/or material that establishes the governmental agency's and/or law enforcement agency's guidelines "for processing and storage of confidential information".

4.3. Pursuant to Vehicle Code § 21455.5(c)(1), all documentary evidence and/or material that establishes the governmental agency's and/or law enforcement agency's guidelines establishing procedures to ensure compliance with the requirements for [1] "uniform guidelines for screening and issuing violations" and [2] "for processing and storage of confidential information".

4.4. Pursuant to Vehicle Code § 21455.5(c)(2)(F), all documentary evidence and material that demonstrates that the law enforcement agency has developed and maintained "controls necessary to assure that only those citations that have been reviewed and approved by law enforcement are delivered to

ADDENDUM TO SUBPOENA DUCES TECUM, DISCOVERY MOTION AND/OR PUBLIC RECORDS ACT REQUEST

violators" and, specifically, as to the citation issued to defendant herein.

4.5 All contracts between the City of Riverside and any company or other person involved in the maintenance and operation of the City's AES, including the AES vendor and contracts with individuals who review incident/violation data, photographs and video, and/or approve incidents/violations for issuance of citations.

5. Pursuant to Vehicle Code § 21455.5(c)(2)(A) all documentary evidence and material "establishing guidelines for selection of location", including but not limited to the above-specified intersection.

6. Pursuant to Vehicle Code § 21455.5(c)(2)(B) and §21455.5(c)(2)(C) all documentary evidence and material that ensure and certify that the above-specified intersection herein was [1] regularly inspected and [2] properly installed and [3] calibrated, and [4] was operating properly.

6.1. This demand, motion and request also specifically relate to the citation issued to the defendant herein.

7. Pursuant to Vehicle Code § 21455.5(g), a complete copy of the contract and exhibits, amended or otherwise, between the "governmental agency and the manufacturer or supplier of the automated enforcement equipment" in effect on the date of the issuance of the citation to the defendant herein.

7.1. In addition to the above-referenced contract supra, ALL payments to said AES manufacturer or supplier of said AES by the governmental agency and/or law enforcement agency from the effective date of the contract to the date of 30-days prior to the trial of this instant matter.

7.2. In addition to the above-referenced contract supra, ALL documents indicating the revenue received by the City from the payment of fines and/or penalty assessments attributable to the city's automated enforcement systems and/or program, from the effective date of the contract to the date of 30-days prior to the trial of this instant matter.

8. To determine the lawfulness of the POSTED speed limit, the "Engineering and Traffic Survey" [speed survey] for roadway approaching the above-specified intersection, demonstrating the determination of critical speed [i.e., 85th percentile] and other

R

ADDENDUM TO SUBPOENA DUCES TECUM, DISCOVERY MOTION AND/OR PUBLIC RECORDS ACT REQUEST

factors relevant to the POSTED speed limit on said street in the area of said intersection.

8.1. The supporting documentation and original data analyzed by the traffic engineer in the determination of the POSTED speed limit including the [a] "prevailing speed", [b] Accident/collision records considered and [c] roadside conditions not readily apparent to a driver, all of which are required by the California Department of Transportation to determine the POSTED speed limit, all pursuant to Vehicle Code §627 and §21455.7, *inter alia*.

9. Based upon a defense of "Outrageous Governmental Misconduct" and a defense of a "Violation of Public Policy", relevant accident or collision records for motor vehicles [automobiles, trucks, buses and/or motorcycle] within 100 feet of and in the above - specified intersection.

9.1. The year before the installation of the automated photo-red light system at that intersection; and,

9.2. Each successive year thereafter through the dated of the issued citation.

It is the defense contention that there has been a significant increase of danger and accidents to the motoring public and pedestrians on the one hand, whereby the only justification for the municipality and its private company equipment provider is generating revenue.

10. All documents demonstrating the installation of the Automated Enforcement System equipment such as loop installation and placement of cameras, computers and all of there connections at the location of the above-specified intersection.

11. The following documents, relevant to the citation issued herein, described as Field Service Technician Reports/Logs; Data Logs (Calibration); Radar or loop Calibration Certificates associated in the camera/computer system at the above-specified intersection; and, the Evidence Tracking Log for the above-specified intersection.

12. All documents demonstrating the training received by all law enforcement officers and/or city officials provided by the City's AES contractor. Such documents shall include training materials, work books, photographs, slides, presentations, videos and the like used in the training of the personnel

R

ADDENDUM TO SUBPOENA DUCES TECUM, DISCOVERY MOTION AND/OR PUBLIC
RECORDS ACT REQUEST

involved in the operation and/or management of the City's automated red light enforcement system or program.

12.1 All documents relating to the requirements which a City law enforcement officer must meet in order to become "certified" to operate the City's automated red light enforcement system, including any documents demonstrating how such requirements were developed and implemented.

13. A copy of the court evidence documents provided to the City by the AES vendor for introduction into evidence at trial.

14. Pursuant to Penal Code § 1054.1, the following items:

The municipality's prosecuting attorney and/or its law enforcement agency shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(C.C.P. SECTION 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, Santa Ana, California 92702.

On June 7, 2010, I served the foregoing document described as:

OBJECTION TO ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS

in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

R. Allen Baylis, Esq.
9042 Garfield Ave. Suite #306
Huntington Beach, CA 92646
Facsimile: (714) 962-0930

Attorney for Defendant
[REDACTED] CALHOON

I caused to be delivered by courier, such envelope by hand to the office of the addressee(s).

I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

The document was transmitted by facsimile transmission and was reported as complete and without error.

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

Executed on June 7, 2010, at Santa Ana, California.



Marcella Villaseñor

R