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**DEPARTMENT OF JUSTICE**



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March 28, 2012

Joseph Ciampi  
P.O. Box 1681  
Palo Alto, CA 94302

Dear Mr. Ciampi:

On March 15, 2008, you were tased during an altercation with Palo Alto Police Officers. You first contacted our office in August 2008 asking us to review the matter for potential criminal charges against the officers. At that time we declined to do so because the Santa Clara County District Attorney's Office had filed charges against you and you were represented by counsel. We advised you through counsel that you should bring your allegations to the attention of the Santa Clara County District Attorney.

Eventually, charges against you were dismissed when the court ruled in your favor on a motion to suppress evidence. However, the Santa Clara County District Attorney's Office declined to file charges against the officers. In June 2009, I agreed to review the matter to determine if the District Attorney's Office had abused its discretion in declining to file charges.

Although a considerable period of time has passed since I agreed to review this matter, there have been reasons for the delay. First, at about the same time as we initiated our review, you filed a civil lawsuit in United States District Court in San Jose against the police officers, the City of Palo Alto, and others based on the events arising out of the March 2008 confrontation between you and the police. That case was assigned to United States District Judge Lucy Koh. I have followed the progress of your case. Pleadings and materials submitted in that case have been highly relevant to my review. I am aware that the court approved your settlement with the City of Palo Alto late last year. Second, I am aware that following the election of Jeff Rosen as the District Attorney of Santa Clara County, that office conducted further review of your case in 2011. It would have been inappropriate for our office to act while the matter was still under review by the district attorney's office. Third, the sheer volume of materials you have sent us has taken considerable time to review.

You have directed dozens of emails to me or to the Attorney General's Office, many with multiple and voluminous attachments, in which you have endeavored to show that you were illegally assaulted by the officers. Most of your emails and attachments have asserted that the tape recordings and other records of the police officers were tampered with and altered, and you

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have submitted your own detailed analyses of these matters. I have thoroughly considered the many items you have sent.

In your civil lawsuit, you made the same allegations of evidence tampering that you have made to our office and supported those allegations with the same documents you have submitted to us. In particular, I considered the pleadings surrounding the summary judgment motion filed by the City of Palo Alto and Judge Koh's resolution of that motion. At pages 10 and 11 of her May 11, 2011, order partially granting and partially denying the city's motion, Judge Koh specifically addressed your contentions regarding the tampering of evidence:

[P]laintiff has submitted over 1,500 pages of printed and electronic documents in which he purports to analyze the Taser and Mobile Audio Visual recordings of the incident in order to demonstrate that Defendants have tampered with the evidence. . . . ¶ . . . For the most part, the inferences and opinions Plaintiff draws are based upon minute differences, sometimes imperceptible to this Court, between the various recordings. Based on its review of the documents submitted, the Court finds the Plaintiff's analysis is speculative and unlikely to assist a jury in determining the factual issues before it.

Following the settlement you achieved in your lawsuit with the City of Palo Alto, you have sent us multiple emails renewing your request that the officers be criminally prosecuted. You have also sought prosecution of the Palo Alto City Attorney and other counsel who represented the city for alleged lies and evidence tampering concerning the case. I am aware that you have also requested that District Attorney Rosen's office prosecute the attorneys for the City of Palo Alto in addition to the police officers.

After a thorough review of all these materials, I have determined that the Attorney General's Office will not take action in this matter. The law provides that district attorneys have responsibility for investigating and prosecuting crimes in their respective jurisdictions. (Government Code section 26500.) The Attorney General ordinarily defers to the judgment of the local District Attorney and intervenes only in highly unusual circumstances, such as when the decision by the District Attorney demonstrates an abuse of discretion.

In making crime-charging decisions, prosecutors must believe that the admissible evidence is of such convincing force that it would warrant a conviction of the crime charged by an objective fact-finder after hearing all of the evidence and considering the most reasonably foreseeable defenses. In this case, the Santa Clara County District Attorney's Office has declined to file charges under the tenure both of former District Attorney Delores Carr and current District Attorney Rosen. I have spoken with attorneys from that office who were involved in the process of reviewing your case and am convinced that they evaluated the case fully and fairly. I can find no abuse of discretion on the part of that office, past or present. Furthermore, I find Judge Koh's decision is highly persuasive regarding the issue of evidence tampering. Although I know you sincerely and deeply believe the evidence has been tampered



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with and that the city's attorneys have made knowing misrepresentations about this issue, I agree with Judge Koh's conclusion that your analysis is speculative and unlikely to persuade a jury. This is all the more true under the exacting standard of proof beyond a reasonable doubt that must be used in criminal cases.

I appreciate that this matter is extraordinarily important to you and that you will likely strongly disagree with my conclusion. However, I have reached it only after a careful and thorough consideration of all the circumstances of this case. To reiterate, I can find no basis for concluding that the Santa Clara County District Attorney's Office has abused its charging discretion. I have discussed this case with my superior, Chief Assistant Attorney General Dane Gillette, and he fully agrees with my decision, which is final. Thank you for bringing this matter to our attention.

Sincerely,



GERALD A. ENGLER

Senior Assistant Attorney General

For KAMALA D. HARRIS  
Attorney General

Cc: Dane R. Gillette, Chief Assistant Attorney General