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MEMORANDUM OF LAW

DATE: May 14, 2004

TO: Councilmember Jim Madaffer

FROM: City Attorney

SUBJECT: “High-Risk” Sex Offender Disclosure via City of San Diego’s Megan’s Law Web Site

This memorandum is in response to your recent request of our Office to review the Legislative Counsel of California’s opinion, dated March 8, 2004, to the Honorable Jim Battin concerning “*High-Risk*” *Sex Offenders: Web Site Disclosure*¹ [Opinion] in light of our February 11, 2004, Memorandum of Law [MOL] No. 04-01-05 concerning the City’s Megan’s Law web site. After a detailed review of the Opinion, we concur in the analysis and conclusion that publication of information regarding a particular “high-risk” sex offender over the Internet is permissible only when the law enforcement agency first reasonably concludes that publication in this matter is necessary to ensure the public safety of a community within its jurisdiction. This Memorandum of Law supersedes MOL No. 04-01-05 to the extent it is inconsistent with the previous MOL.

The Opinion tries to reconcile California Penal Code² section 290.45 (b) [“a designated law enforcement entity may advise the public of the presence of high-risk sex offenders *in its community*”] and section 290.45 (b) (3) [“any designated law enforcement entity . . . may cause to be made public, *by whatever means* the agency deems necessary to ensure the public safety, based upon information available to the agency *concerning a specific person*”]. [Emphasis added.] Thus, where public safety is at risk against a specific “high-risk” sex offender, Internet publication is a reasonable means to notify the community, notwithstanding the global nature of the Internet. Nevertheless, we would caution against listing all “high-risk” sex offenders on the City’s web site solely because they meet the statutory “high-risk” criteria. The law enforcement agency should first reasonably conclude that a particular “high-risk” sex

¹ Please see Attachment 1.

² All further section references are to the Penal Code, unless otherwise indicated.

offender currently poses a threat to a community of such a nature that Internet publication is necessary. Absent the requisite showing, Internet publication should not be used until such time as the California Legislature has adopted a comprehensive Internet disclosure law.

CASEY GWINN, City Attorney

By _____
Paul G. Edmonson
Deputy City Attorney

PGE:smf
Attachment
ML-2004-9