MEMORANDUM OF LAW

DATE: December 12, 1985

TO: William B. Kolender, Chief of Police

FROM: City Attorney

SUBJECT: Release of Information on Discipline Taken in Citizen Complaint Cases.

You recently asked, via Lieutenant Taylor, whether there was a legal basis for the police department policy on releasing information to a complaining citizen on a completed investi-
gation. The policy, as promulgated in Department Instruction 1.23, is as follows:

M. In all complaints, the complainant shall be notified of the results of the investigation, either in person or by telephone, by the supervisor conducting the investigation.

1. When disciplinary action is taken as

the result of a citizen complaint, the complainant will be told that "appropriate" disciplinary action will be taken and it will be noted in the follow-up report that the complainant was so advised. The specific disciplinary action will not be released.

We have researched this question and concluded that this policy as stated is correct, and should not be changed to permit release of disciplinary information.

The initial question involves categorization of disciplinary action, specifically at a point prior to being formally inserted in the officer's personnel file. Penal Code section 832.8 reads, in pertinent part, "(a)s used in section 832.7, 'personnel records' means any file maintained under that individual's name by his or her employing agency and containing records relating to: . . . (d) . . . discipline . . . ". Penal Code section 832.7 provides for confidentiality of peace officer personnel records:

Peace officer personnel records and records maintained pursuant to Section 832.5, or infor-

> mation obtained from such records, are
> confidential and shall not be disclosed in any
> criminal or civil proceeding except by discovery
> pursuant to Section 1043 of the Evidence Code.
> This section shall not apply to investigations
> of proceedings concerning the conduct of police
> officers or a police agency conducted by a grand
> jury or a district attorney's office.

The statutory prohibition would clearly apply to any complainant where the incident complained of was the subject of pending criminal or civil litigation. A clear inference is that the information, being confidential, is not releasable even in the absence of pending litigation. While no case law on point could be found, an Attorney General opinion concludes that no public release is permitted. In answering a question as to District Attorney access to police officer personnel records absent a court order, the Attorney General concluded that:

> While section 832.7 does not expressly
> authorize a district attorney to obtain access
> to the personnel records of police officers
> without a court order, we believe he may do so
> under a common sense and reasonable interpre-
> tation of the statute's language. Clearly, the

> Legislature had something in mind when it referred to investigations of a district attorney, and we do not know of any other statute requiring a district attorney to obtain a court order in these circumstances. A district attorney, however, would not be authorized under section 832.7 to release the information to the public; the exception language in the statute is limited to the district attorney's office for the purposes stated.
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> 66 Ops. Cal. Att'y Gen. 128, 130 (1983) (emphasis added).

Additionally, once a determination is made that a particular document is a "personnel record", then a strong traditional reluctance in law to give public access to such records becomes relevant. Government Code section 6254(c) specifically exempts from disclosure requirements "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." This statutory mandate was echoed in Black Panther Party v. Kehoe, 42 Cal.App.3d 645 (1974) where the court said: "A(n) . . . important interest is the privacy of individuals whose personal affairs are recorded in government

files. Societal concern for privacy focuses on minimum exposure of personal information collected for governmental purposes." (Id. at 651)

A final point is the possible argument that summary information to a citizen (e.g. "Officer Doe was suspended for 3 days") does not constitute release of "personnel files". That argument is answered by reference to one of our own cases. In City of San Diego v. Superior Court, 136 Cal.App.3d 236 (1981), the plaintiff filed a discovery motion under Evidence Code section 1043 and 1045. However, she was unsuccessful in obtaining all information sought concerning reprimands in two San Diego Police officer personnel files. Subsequently, the plaintiff attempted to question the officers during depositions as to whether they had received reprimands, and the officers asserted their privilege. On review, the court said that a litigant may not obtain indirectly what is directly privileged and immune from discovery, and noted that statutes protect both ". . . personnel records and information from such records . . ." (Id. at 239) (emphasis in original).

Based on the above, we conclude that the police department may not release information on disciplinary action taken in the case of an individual officer, and the current policy is correct.

JOHN W. WITT, City Attorney

By

Grant Richard Telfer

Deputy City Attorney

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