

MEMORANDUM OF LAW

DATE: September 24, 1986

TO: George J. Penn, Assistant to the City Manager

FROM: City Attorney

SUBJECT: Police/Community Response Team

In a memorandum dated August 14, 1986 you indicated that a subcommittee of the Citizens Advisory Board on Police/Community Relations has suggested the formation of a Police/Community Response Team. This response team, composed of volunteers, would provide assistance to the Police Department in crisis situations. You stated that the subcommittee has not yet defined what specific situations or incidents denote a crisis nor the exact composition of the proposed crisis team. Before refining this recommendation further, you requested to know what potential liability exists for both the City and the volunteers who participate in this type of program. You also desire to know what information or knowledge these volunteers gain in the performance of their duties could be made confidential if they are later subpoenaed as witnesses.

In response to your first question, we have attached City Attorney Opinion No. 86-5, dated August 26, 1986, "Volunteer Services - Protocol Section" which was prepared by Chief Deputy City Attorney Jack Katz and a Memorandum dated May 16, 1983 written by Robert S. Teaze (retired Assistant City Attorney) concerning the scope of liability for individuals acting as volunteers for The City of San Diego. In summary, if these volunteers work for The City of San Diego, the City will be responsible for actions performed within the scope of their duties and, potentially, for injuries inflicted upon third persons. The City may also be liable for any injuries received by these volunteers in the line of duty. However, the City may pass a resolution by the Council providing that such volunteers are covered by workers compensation benefits.

Your next question is more difficult to answer based on the available facts. In general, an individual may not be required to disclose confidential information if they can claim the

protection of any of the specific privileges authorized by section 900 et seq. of the California Evidence Code. There are specific privileges which may apply to a specific member of the crisis team, but they depend upon the status of the individual member of the crisis team and the circumstances under which the information is obtained. For example, specific privileges

protect communications between physicians and patients (California Evidence Code Sec. 990), psychotherapists and patients (California Evidence Code Sec. 1010), and clergymen and penitence (California Evidence Code Sec. 1030).

A much broader privilege is found in California Evidence Code Sec. 1040. This is the privilege for official information. Official information for the purposes of claiming this privilege means information acquired in confidence by a public employee or agent in the course of his or her duty and not open, or officially disclosed to the public prior to the time the claim of privilege is made. This privilege, however, must be claimed by a person authorized by the public entity to do so. The privilege is granted to enable the government to protect its secrets and therefore the privilege is not held by the individual who acquires the information but by the public agency.

We gather from the nature of your request that you are concerned primarily about information concerning a crime which may be relayed to a member of the crisis team. We must advise you that unless one of the specific privileges of the California Evidence Code applies, a member of the crisis team could be subpoenaed and required to testify by either party in a subsequent criminal or civil action. It is difficult for us to give you any further guidance in this matter absent more specific information concerning the crisis team and the circumstances under which they may obtain such information.

If any further questions arise concerning the formation of the crisis team, please feel free to contact this office.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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Attachments

ML-86-110