

MEMORANDUM OF LAW

DATE: October 10, 1986

TO: Steve West, Deputy Director for the Economic
Development Division
FROM: City Attorney
SUBJECT: Public Release of Program Audits

In your memo of September 12, 1986 you asked if this office could provide you with information on whether the draft audit of the San Diego Neighborhood Improvement Council (NIC) is considered public information. This audit was prepared by the City's auditing contractor for the purposes of determining if NIC is in compliance with our contract and with Federal Regulations. It contains statements about NIC's activities and their financial status. For purposes of this memorandum, we are assuming that the document is a draft audit report submitted by the City's auditing firm for internal comments and not a final audit.

The California Public Records Act is found at Section 6250 et seq. of the Government Code. Preliminary drafts are covered by Section 6254(a) which exempts them from discovery under certain circumstances. Section 6254(a) provides that the Public Records Act does not require the disclosure of:

Preliminary drafts, notes, or interagency or intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

In applying this two part test, first the document is a preliminary draft audit. Upon preparation of a final audit the draft would not be retained. Second, you indicate the preliminary draft audit contains possibly damaging misconceptions. These concerns could outweigh the public interest in disclosure, therefore disclosure would not

be required under Section 6254(a). Because of the limiting language in the Public Records Act, we can only speak to this particular draft. Each document will have to be evaluated at the time a request for disclosure is made.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

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