

MEMORANDUM OF LAW

DATE: September 25, 1987

TO: Ruth Ann Hageman, Citizens Assistance and  
Information Director  
FROM: City Attorney  
SUBJECT: Inquiries About Police Records

You asked, via memorandum, for clarification on citizen access to police records. You included a scenario in which a police officer responded to a disturbance call involving a citizen, his ex-wife and their minor child. The officer checked the welfare of the minor, accepted a citizen's arrest for battery of the citizen by the ex-wife, issued a misdemeanor citation to the citizen and wrote a report. Subsequently the officer appeared as a witness in the battery case. The citizen later made a misconduct complaint against the officer, which was investigated by the Police Department. The following is intended to outline the general provisions of law pertaining to these records.

Public Records

The California Public Records Act (Government Code .. 6250-6267) provides that public records are open to inspection at all times during office hours. Public records include: ". . . any writing containing information pertaining to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Government Code . 6252(d). Section 6254 provides for exemption of particular records from public disclosure. Those subsections pertinent to your inquiry include:

- (b) Records pertaining to pending litigation to which the public agency is a party. . . .
- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

. . . .  
. . . .

- (f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, . . . any . . . local police agency, or any such investigatory or security

files compiled by any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, vandalism, vehicle theft, or a crime . . . unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation; provided, however, that nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would

endanger the successful completion of the investigation or a related investigation:

- (1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of

birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date and location of occurrence, the time and date of the report, the name, age and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.

....

....

....

....

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not

limited to, provisions of the Evidence Code relating to privilege.

Applying the above provisions to the scenario you provided, the following would result:

1. Any person would be entitled to factual information as to the disturbance incident to which the police officer responded, Section 6254(f)(2).

2. Any person may be entitled to information concerning the arrest of the citizen. Section 6254(f)(1) makes this information public for, ". . . every individual arrested by the agency . . ." however, the citizen in the scenario was arrested by his ex-wife, not by the police officer. Research has failed to find any case law on release of information on arrests by private persons. It is clear, however, that only the information be provided, not the actual arrest report. 65 Op. Att'y Gen. 563 (1982).

3. The ex-wife or her representative and the citizen or his insurance carrier would be entitled to a complete copy of the police officer's report and any subsequent investigative report of the disturbance incident, minus any analysis or conclusions.

4. Any information in the reports relating to suspected child abuse is confidential and may not be disclosed to unauthorized persons. Penal Code section 11167.5. See also, 65 Op. Att'y Gen. 335, 340-343 (1982).

5. Information contained in the police officer's personnel file is exempt from disclosure. Government Code section 6254(c), (k). See also, Penal Code section 832.7.

#### Information Practices Act

Section 1798.34 of the Civil Code requires each government agency to permit an individual or his representative to inspect and receive a copy of all personal information in any record maintained on the individual. In the scenario provided, this section would enable the citizen to obtain a copy of the report of his arrest.

#### Criminal History Information

Various sections of law provide for the maintaining of criminal history information by law enforcement agencies. Penal Code sections 11075, 11115, 13010 and 13150. This information is confidential and may only be released to authorized agencies and

persons. Penal Code sections 11076, 11105, 11140-11144 and 13301-13305. The subject of the records may examine and obtain the records on himself/herself. Penal Code sections 11120-11126.

#### Criminal Discovery

"Absent some governmental requirement that information be kept confidential for purposes of effective law enforcement, the state has no interest in denying the accused access to all evidence that can throw light on issues in the case. . . ." *People v. Riser*, 47 Cal.2d 566, 586 (1956). A defendant in a criminal case is entitled to all relevant information in the hands of the prosecutor and under certain circumstances, may be entitled to information held by law enforcement agencies, see, e.g., *People v. Memro*, 38 Cal.App.3d 658 (1985); and other third parties, see, *Millaud v. Superior Court*, 182 Cal.App.3d 462

(1986). Thus, in the scenario provided, the citizen could obtain, from the prosecutor, through discovery, all of the information furnished to the prosecutor by the police in the battery case.

#### Civil Discovery

Code of Civil Procedure section 1985 provides for issuance of subpoenas and subpoenas duces tecum. Through this procedure, a litigant in a civil proceeding can compel production of police records which are material to the case and which are not otherwise privileged. In the scenario provided, should there be custody litigation between the citizen and the ex-wife, either party could compel production of all police records pertaining to the incident.

#### Citizen Complaint Records

Penal Code section 832.5 requires law enforcement agencies to establish a procedure to investigate citizen's complaints against the personnel of the agency and to retain the complaints and any investigative reports or findings for at least five (5) years. Penal Code section 832.7 provides, in pertinent part, that "peace officer personnel records and records maintained pursuant to section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to sections 1043 and 1046 of the Evidence Code." Sections 1043 and 1046 provide for an in camera review of records in question only after a good cause showing by the moving party. The procedure is referred to as a Pitchess motion, after the lead case in the area. *Pitchess v. Superior Court*, 11 Cal.3d 531 (1974).

Of note is the fact that section 832.7 is not discretionary; the Police Department may not disclose citizen complaint information except through the Pitchess motion. It should also be noted that a citizen cannot be the subject of a citizen complaint. The subject of any 832.5 investigation is the police officer or officers about whom the complaint is made.

In the scenario provided, the citizen would be denied access to any investigatory reports or other information arising from his complaint, other than the one or two word statement of disposition (sustained, not sustained, exonerated or unfounded) which is provided to each complainant. (Police Department Instruction 1.23, section VII.m.)

In summary, the access by citizens to police records depends on the type of record, the relationship of the citizen to the record, and the nature of the forum in which the record is sought. In most cases, police records are open for inspection by all persons. Exemptions to public access include records

involving ongoing investigations, personal matters or other material to which a privilege or expectation of privacy attaches. The exempted records are available to those persons who hold the privilege or expectation and to parties in litigation to which the records are material. Citizen complaint information is strictly confidential and may be disclosed only through a Pitchess motion and hearing.

We hope this clarifies the subject matter. If any particular inquiries are received which are not clearly answered by the above discussion, please feel free to contact one of the Police Legal Advisors at Ext. 6220.

JOHN W. WITT, City Attorney

By

Grant Richard Telfer

Deputy City Attorney

GRT:ifs:520(x043.2)

ML-87-101

cc: Marilyn Palermo

Cmdr. K. Enerson