

MEMORANDUM OF LAW

DATE: April 2, 1987

TO: Councilmember Judy McCarty  
FROM: City Attorney  
SUBJECT: Addresses of Mini-Dorms

You have informed us that from time to time you receive addresses of mini-dorms from citizens concerned about potential or actual violations at the property. You further indicate that you may refer these addresses out for investigation or other enforcement action. Since you have promised the citizen informant confidentiality, you ask whether these addresses standing alone are public records.

While the California Records Act (Government Code section 6250 et seq.) is to be construed liberally in order to preserve the people's right to know about the conduct of governmental operation, the Act itself contains a section to balance personal privacy against public disclosure.

. 6255. Justification for withholding of records

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

California Government Code section 6255

While certainly this section casts the burden of confidentiality on the proponent (*Black Panther Party v. Kehoe*, 42 Cal.App.3d 645, 657 (1974)), this section embodies the common law rule preceding the Act that agencies could preserve confidentiality by making the requisite showing (see, e.g. *Runyon*

*v. Board of Prison Terms and Paroles*, 26 Cal.App.2d 183 (1938)) which included a showing that confidentiality was needed to preserve informational input from citizens.

We think the same case can be made for confidentiality here. Citizens have been told and expect that their information (names and addresses of theirs and the problem area) will be kept confidential to insulate them from harassment. Indeed many zoning infractions are traced and corrected via this method. Without such citizen assistance, such an enforcement tool would

be unavailable.

In passing on the public nature of citizen information contained in pilots' personnel files held by the Board of Pilot Commissioners, the Attorney General found:

In our present era of widespread desire for noninvolvement, it becomes even more important to be able to assure a member of the general public that information given by him in private to a member of the agency will not necessarily be made a public record. The "necessity for preserving confidentiality" referred to in section 1040 of the Evidence Code, therefore includes the public interest in encouraging communication of complaints and cooperation with investigations by public agencies. Thus, those portions of a pilot's application and personnel files which consist of letters of recommendation or complaints lodged against the pilot are to be preserved as confidential not for the protection of the pilot's right of privacy, but for the protection of the State's interest in receiving full and candid reports of this sort from members of the public.

53 Ops. Cal. Atty. Gen. 136, 149 (1970)

While the Attorney General used both Government Code section 6255 and Evidence Code section 1040 in arriving at this conclusion, the balancing test was the same and the balance was struck in favor of confidentiality.

Therefore, we believe the mere addresses of mini-dorms reported by citizens wishing to remain anonymous do not have to be disclosed under the balancing tests outlined above.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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