

MEMORANDUM OF LAW

DATE: June 22, 1987

TO: City Auditor  
FROM: City Attorney  
SUBJECT: Request from Internal Revenue Service for  
Taxpayer Levy Information

You have recently asked this office to review a request from the Internal Revenue Service (IRS) for taxpayer levy information on individuals who may owe federal income tax and determine if the release of this information is permissible. According to the material accompanying your memorandum, the IRS is currently compiling a list of organizations that will assist them in locating delinquent taxpayers by providing the following information:

1. Employee's current or last known address/telephone number
2. Employee's social security number
3. Employer's address/telephone number
4. Wages paid and pay date
5. Employment/membership application
6. Credit union affiliation with employee's company

If the information is to be made available, the IRS has also asked if it may be provided over the telephone or if requests by mail will be required.

There is no question that the IRS is an agency authorized by law to receive payroll information to include an employee's wages, name, address and social security number. 26 USC . 6001 et seq., 26 CFR 1.6052-1. The remaining issue is whether or not, under the present facts, the release of any of the additional information would constitute an unwarranted invasion of personal privacy of a City employee. Except for one caveat, we do not believe that the requested information falls within that category for the following reasons.

First, release of this information by The City of San Diego to the IRS for the purpose of locating individuals who owe

federal income taxes is not a public disclosure of such information. Secondly, much of the information requested is not personnel information, the disclosure of which constitutes an unwarranted invasion of personal privacy under these circumstances. In upholding a lower court order to publicly release similar information contained in a firefighter's personnel file, the court in *Braun v. City of Taft*, 154 Cal.App.3d 332, 345, 201 Cal.Rptr. 654 (1984) indicated:

The data listed on the salary card was not in any way embarrassing. One's telephone number and address, although personal are seldom secret. There is nothing in the record to show that such information was not available through a city directory or telephone book. Few persons would find interest in Polston's social security and credit union numbers, or birth date. A salary classification is public information. (. 6254.8.)

The court was within its discretion in finding that the disclosure of the face sheet of the salary card would not constitute an unwarranted invasion of personal privacy.

We therefore believe that the release of the requested information to the IRS under the present facts is permissible. However, prior to releasing an individuals' employment application form, the application form should be scrutinized to ensure that it does not contain any additional personal information the disclosure of which would constitute an unwarranted invasion of personal privacy. Such information should be redacted from the form before releasing it to the IRS.

In addition, we must state that each request for personnel information must be evaluated on its own facts. There are circumstances when, for valid reasons, an employee of The City of San Diego is entitled to keep such information such as a home address or home telephone number confidential. We also believe that, while a public employee's salary is subject to disclosure pursuant to Gov't Code . 6254.8, the amount and type of an employee's payroll deductions are a matter of personal privacy.

In response to your question concerning the acceptance of requests for information over the telephone, you may certainly

require any request by the IRS for information to be in writing. In fact, because of the sensitive nature of these requests, we would advise you to do so.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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