

MEMORANDUM OF LAW

DATE: August 18, 1988

TO: Jack McGrory, Assistant City Manager and R.
W. Burgreen, Assistant Chief of Police
FROM: City Attorney
SUBJECT: Release of Internal Affairs Conclusions and
Statistics

This is in response to a written request for advice concerning release of information and statistics regarding citizen complaints to the public and complainant in light of a recent court case and Attorney General's Opinion.

Specifically, you asked if the Police Department should discontinue its long standing practice of periodically releasing statistical information regarding citizen complaints, including the total number of complaints, a numerical breakdown by type of complaint and the number of complaints in each category that are sustained, not sustained, unfounded or exonerated. The Attorney General, addressing this specific issue in Attorney General's Opinion No. 88-306, opined that such practice would violate the confidentiality provisions of Penal Code section 832.7 stating as follows:

While there are strong policy arguments made in favor of release of this statistical information, we believe that the Legislature . . . has demonstrated that it has made the policy decision against local publication. Accordingly, we conclude that a public agency may not on its own motion compile and release to the public statistical information concerning the types of citizens' complaints filed pursuant to section 832.5 of the Penal Code and the disposition of such complaints. Emphasis in original.

88 Daily Journal D.A.R. 9247, 9248 (1988) Op. Att'y Gen. 88-306, filed July 13, 1988.

As chief law enforcement officer of the state, the Attorney General has the duty to see that the laws of the State are uniformly and adequately enforced. Cal. Const. art. V, . 13. This office has consistently advised the Police Department to follow Attorney General's opinions in discharging its enforcement responsibilities. (See, e.g., Memorandum of Law dated July 22, 1988, Request for Legal Opinion: Casino Parties, Municipal Code

Sections 33.4101 - 33.4110.) This case is no different. Rather than risk a legal challenge to the Police Department's practice, it would seem that the City's efforts and resources would be better spent in lobbying for an amendment to the Penal Code authorizing public agencies to release statistical information regarding citizen complaints and their disposition.

You also asked if the Police Department should discontinue its practice of informing the complaining party of the result of an investigation conducted in response to that citizen's complaint. The Court of Appeal, First Appellate District, recently held that the San Francisco Police Commission's Office of Citizen Complaints (OCC) may not forward the findings and decision of the investigative hearing officer or the recommendation of the director regarding discipline of the involved officer to the complainant. However, the OCC may notify "a complainant that an OCC investigation is complete and that further action will or will not be taken." *San Francisco Police Officers' Association v. Superior Court of the City & County of San Francisco*, 202 Cal.App.3d 183, 192 (1988).

Although San Diego's procedure for investigating citizens' complaints pursuant to Penal Code section 832.5 is substantially different than San Francisco's since in San Diego the investigation is done by San Diego Police Department personnel rather than an outside agency such as the OCC, the confidentiality provisions of Penal Code section 832.5 apply to both procedures. As there are no other cases on point and this ruling is consistent with a prior related case out of San Diego, *City of San Diego v. Superior Court*, 136 Cal.App.3d 236 (1981), we advise following the ruling cited above pending further review. This office will notify you immediately of any changes in the status of this case and would be glad to answer any further questions you may have relating to these issues.

JOHN W. WITT, City Attorney

By

Nina B. Deane

Deputy City Attorney

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