

yymmdd

DATE: November 21, 1989

TO: Gary Tillinghast, Fire Prevention Supervisor

FROM: City Attorney

SUBJECT: Fire Department Documents as Evidence in Court

This responds to your memorandum of November 3, 1989 requesting our views on the need to retain the originals of FIRES and FEMS inspection forms in microfiche. You advise that you presently keep such forms in a microfiche to be able to establish the signatures of both the inspector and inspectee. You do not indicate whether or not you have ever been called upon to use these original documents to actually prove the signatures, however. You now wish to avoid microfiching these forms, instead retaining all information (less the signatures) in a computer database with the ability to generate a computer document when necessary for use in court.

We see no legal objection to not maintaining the original forms in microfiche, since normally signatures on forms are not relevant unless there is some allegation that a signature was falsified or the identity of the person making the signature is at issue. Any distinctive symbol can be used as a means to authenticate a document by the maker of that document. The reports may merely serve as administrative vehicles for enforcement action, but generally have no independent value unless their existence or contents are actually at issue. They generally document that notice was given or that a condition was or was not corrected, and memorialize details and facts surrounding the inspection. However, these can be documented by any other means which is reasonably contemporaneous with the event.

With this perspective, your request may be more appropriately viewed as the permissibility of utilizing a computer generated document, either as an official record (Evidence Code section 1530, et seq.) or as the past recollection recorded of the inspector (Evidence Code sections 771 and 1237) without the need for retaining the original document. Under Evidence Code section

1500.5, printed representations of computer information are admissible to prove the existence and content of the computer information or program and, when applicable, the information contained within that program if the information is itself the subject of inquiry.

The accuracy of the information contained therein, however, is always subject to inquiry or proof, and the existence of a microfiche backup does not necessarily assist in carrying that

burden. The testimony of a subscribing witness may be used to establish the existence of a record, program or contents, although such testimony is not necessary to authenticate any writing generated from that program. See Evidence Code sections 1411 and 1413.

To sum up, the preservation of original signatures on an inspection document is not critical in a criminal or civil case except where the issue is the falsification of a signature or the identity of the person making the signature. Any Fire Department inspector who generates information into a database may also utilize a computer symbol which itself can then be operative as the signature of the author. (Naturally, no characteristic signature of the inspectee can be created, although identifying data concerning the inspectee could be inserted into the database to establish that notice was given to that particular person if this is likely to be germane.)

One further observation: Information generated into the FEMS database system and the printout will become part of the official records of the City and, where applicable, be admissible in court if the procedures for the creation, maintenance and use of the database are part of a written procedures manual or departmental instruction.

If you should have any further questions on this subject, please do not hesitate to contact the undersigned.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mb:511(x043.2)

ML-89-109