

MEMORANDUM OF LAW

DATE: March 24, 1989

TO: Kent Lewis, Assistant Personnel Director via
Rich Snapper, Personnel Director
FROM: City Attorney
SUBJECT: Release of Personal Information

In a memorandum dated March 14, 1989, you informed this office that a newspaper reporter had asked you for copies of the "suspension notices or other applicable paperwork" of several employees who have appeals pending before the Civil Service Commission. You asked for an opinion on the following questions:

1. At what point do discipline notices become disclosable to the public?
2. If the notices are disclosable before the hearing, is all other applicable paperwork concerning the case also disclosable at that time?

At the onset, it is helpful to describe the various types of documents received by the Civil Service Commission as exhibits in discipline appeal hearings. Generally speaking, the documents fit into one of three broad categories. The first category is the notice of appeal and it is normally the first document that the Civil Service Commission receives in a discipline appeal hearing. This document is simply a request for a public hearing before the Commission pursuant to the provisions of San Diego City Charter section 129 and Civil Service Rule XI section 5(a). The next category of documents consists of the notice of discipline and the notice of adverse action. These documents contain the reasons for the discipline in accordance with the provisions of Civil Service Rule XI section 4. The last category of documents consists of those documents to be introduced as evidence during the public hearing. This category of documents includes written statements of witnesses, investigative reports and similar relevant documents. On occasion, by stipulation of the parties, the Commission may receive the last two categories of documents prior to the actual public hearing date.

It is undisputed that all documents relied upon by the Civil Service Commission at a public hearing are subject to the provisions of the California Public Records Act, Government Code section 6250 et seq., the Ralph M. Brown Act, Government Code section 54950 et seq. and San Diego City Charter section 215. All of these provisions stand for the general proposition that absent a specific statutory exemption all writings, books,

records and accounts of the City of San Diego are open to inspection by any citizen under certain specific conditions. Although the Ralph M. Brown Act authorizes local agency boards and commissions to hold discipline appeal hearings in closed session (absent a demand for public hearing by the affected employee), the Civil Service Commission of the City of San Diego must hold its appeal hearing in public pursuant to the express language of City Charter section 129.

We begin our analysis with the proposition that disciplinary documents concerning a public employee's performance of duty, while clearly public records, are exempt from public disclosure under the provisions of Section 6254(c) of the Public Records Act because they are personnel files, the disclosure of which would constitute unwarranted invasion of personal privacy. It has been held that documents of this nature are exempt from public disclosure not only for reasons of privacy but also for other public policy considerations. *City of Los Angeles v. Superior Court*, 33 Cal.App.3d 778 (1973). Furthermore, Government Code section 54957.5 grants special protection to these documents by specifically exempting them from the general rule that they must be made available to the public if they are distributed to the Commission prior to or during a public hearing. This provision also exempts them from disclosure even when they are discussed by members of the Commission during the public hearing. Documents described in this section, if not otherwise exempt by law, must be made available to the general public within a reasonable period of time after distribution to the legislative body.

Our analysis, however, cannot stop here. Often times, a witness at a public Civil Service Commission hearing will testify in great detail about the contents of a specific document. Under such circumstances a public disclosure of the information contained in the document occurs and at that point it is difficult to maintain that the document is still exempt pursuant to Government Code sections 6254(c) and 54957.5, because the public disclosure of the contents of the document certainly defeats any claim of invasion of privacy caused by its subsequent availability to the public.

We therefore conclude that the notice of appeal filed with the Civil Service Commission pursuant to San Diego City Charter section 129 is a public record subject to disclosure unless it contains specifically exempt information. The remaining documents submitted to the Commission either prior to or during a discipline appeal hearing are not subject to public disclosure if they are exempt by Government Code section 6254(c) or any other specific provision of law. However, once the contents of an

exempt document are disclosed at a public hearing, the document is no longer exempt. Documents submitted to the Commission at a public hearing that are not specifically exempt from disclosure pursuant to a specific provision of law must be made available to the public in accordance with the procedures set forth in Government Code section 54957.5.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

JMK:mrh:314.4(x043.2)

ML-89-31