

MEMORANDUM OF LAW

DATE: January 18, 1990

TO: Dr. George J. Penn, Assistant to the City
Manager

FROM: City Attorney

SUBJECT: Citizen's Review Board on Police Practices -
1989 Report

The Citizen's Review Board on Police Practices is required by San Diego City Charter section 43(d) to submit semiannual reports to the City Manager and City Council concerning the evaluation of the San Diego Police Department's investigation of citizens' complaints.

The draft report submitted to this office for review contains a statistical analysis of the citizens' complaints reviewed by the Board between July 1, 1989 and December 31, 1989. The draft report also contains a statistical summary of disciplinary action taken against San Diego police officers resulting from sustained citizens' complaints. In the attached Memorandum of Law dated August 18, 1988, this office advised Jack McGrory, Assistant City Manager and Robert W. Burgreen then Assistant Chief of Police that under the law at that time the release of Internal Affairs' conclusions and statistics would violate the confidentiality provisions of California Penal Code section 832.7. That provision was subsequently amended by Assembly Bill 2222, effective January 1, 1990, to read as follows:

Section 832.7. Confidentiality of peace
officer records

(a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not

apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency which employs peace

officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(c) Nothing in this section shall prohibit a department or agency from notifying the complaining party of the disposition of his or her complaint.

The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(d) Nothing in this section shall affect the discovery or disclosure of information contained in a peace officer's personnel file pursuant to Section 1043 of the Evidence Code.

It is certainly appropriate for the Citizen's Review Board on Police Practices to promulgate in its semiannual report statistical information which complies with California Penal Code section 832.7(b) relating to the disposition of citizens' complaints made against San Diego police officers as long as the information is in a form which does not identify the individual involved.

It is not clear, however, if the exception found in California Penal Code section 832(b) authorizes the release of anonymous statistical data relating to police officers' discipline resulting from sustained citizens' complaints. Clearly, the Legislature in amending California Penal Code section 832.7 removed the restrictions on the dissemination of data regarding the number, type and disposition of citizens' complaints against police officers promulgated in San Francisco

Police Officers' Assn. v. Superior Court, 202 Cal. App. 3d 183 (1988) and in 71 Op. Att'y Gen. 247 (1988). The question before us is whether or not the amendment to California Penal Code section 832.7 authorizes the release of anonymous statistical data concerning discipline resulting from sustained citizens' complaints. Helpful to our analysis is the rule of statutory construction found in San Diego Union v. City Council, 146 Cal. App. 3d 947 (1983). As the court stated at pages 953 and 954:

Of primary importance, "the court should ascertain the intent of the Legislature so as

to effectuate the purpose of the law." The provision under scrutiny must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which, upon application, will result in wise policy rather than mischief or absurdity. "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." As to the latter, opinions of the Attorney General are not binding on the courts, although they have been accorded "great weight" in matters of this nature, where controlling authority construing the provision is absent. Finally, express exceptions to the general statutory rule are to be strictly and narrowly construed and will not be extended beyond the import of their terms (citations omitted).

It appears from a reading of the statute as a whole that the primary purpose of the recent amendment was to ease the previous restrictions on public dissemination of statistical data arising out of the citizens' complaints against peace officers and at the same time protect the privacy interest of the individual peace officer. It can certainly be argued that a narrow and strict interpretation of the statute limits the exemption to statistics concerning only whether or not a complaint is sustained, not sustained, exonerated, or unfounded. On the other hand, it can be argued that a more reasonable and common sense approach, consistent with the obvious purpose of Assembly Bill 2222 is that the term "disposition of complaints" should be interpreted to include the nature of any discipline arising out of sustained complaints.

We believe that the better view is that the release of anonymous statistical data concerning discipline arising out of sustained citizens' complaints against peace officers is authorized by California Penal Code section 832.7(b) and the inclusion of such anonymous statistical data in the Citizen's Review Board on Police Practices semiannual report is appropriate. However, we must advise you that this issue has not been resolved by the courts and it is conceivable that a

reviewing court could reach the opposite conclusion.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

JMK:mrh:920.12(x043.2)

Attachment

ML-90-10