

MEMORANDUM OF LAW

DATE: July 5, 1990

TO: John Lockwood, City Manager
FROM: City Attorney
SUBJECT: Citizens' Review Board on Police Practices

QUESTION PRESENTED

Is it possible for the Citizens' Review Board on Police Practices ("Board") to receive and review investigative reports from the San Diego Police Department concerning police shootings resulting in death or bodily injury where no citizen's complaint has been filed without the necessity of amending the San Diego City Charter ("Charter")?

CONCLUSION

The Chief of Police has the authority pursuant to Charter section 57 to authorize the Board to receive and review such investigative reports when such action is otherwise authorized by law and the Chief of Police believes it necessary and proper for the effective operation and control of the San Diego Police Department.

BACKGROUND

The Board was established on November 8, 1988, as a result of the passage of Proposition G. Proposition G read as follows:

PROPOSITION G. AMENDS THE CHARTER OF THE CITY OF SAN DIEGO BY AMENDING SECTION 43. SECTION 43 ADVISORY BOARDS AND COMMITTEES
No changes in subsection (a), (b) and (c).

(d) CITIZENS' REVIEW BOARD ON POLICE PRACTICES.

Notwithstanding any other provision of this Charter, the City Manager shall have the exclusive authority to create and establish a citizens' review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The City Manager shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of

California concerning citizens' complaints against peace officers. Nothing in such rules and regulations shall interfere with the board's authority to independently refer a completed citizen complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency. The board shall submit semiannual reports to the City Manager and City Council concerning its evaluation of the San Diego Police Department's investigation of citizens' complaints; provided, however, that such reports shall not disclose any information required to be kept confidential by law.

In accordance with the express provisions of Charter section 43(d), the City Manager promulgated the Policies and Procedures of the Board on July 27, 1989. Section 4.2(D) provides that: "The findings of police shooting incidents involving death or injury resulting in a complaint will be forwarded to the Citizen Review Board for their review after the Police Department and District Attorney have completed their investigation."

On June 26, 1990, the Board, by unanimous vote, requested that the City Manager amend the Policies and Procedures to require that investigative reports of all police shooting incidents resulting in death or injury be reviewed by the Board including those incidents where no citizen complaint had been filed. You have asked us how this may be done without the necessity of amending Charter section 43(d).

ANALYSIS

The Board's request assumes that the City Manager currently has the authority under the Charter to order the Chief of Police to provide the Board with investigative reports that do not pertain to citizen complaints. However, as we indicate below, the City Manager has only limited authority over access to the police department's investigative reports.

The issue of access to police department investigative reports was previously addressed in City Attorney Opinion Nos. 76-13; 76-14; and 87-5, and a Memorandum of Law dated April 17, 1987. Those documents set forth in detail the various provisions of the Charter which describe the relationship between the City Manager and the Chief of Police. In addition, those documents describe the numerous statutes in both the California Penal Code and California Government Code that regulate the disclosure of

police investigative reports.

City Attorney Opinion No. 76-14 (prepared by Robert S. Teaze, Assistant City Attorney, and issued on May 5, 1976) stated that under Charter section 57, the files of the police department are under the control of the Chief of Police. Any determination as to what access anyone may have to these files is for the Chief of Police to make, consistent with the requirements of section 6254 of the Government Code, sections 1040 and 1041 of the Evidence Code and sections 11140 through 11144 of the Penal Code.

City Attorney Opinion No. 87-5 described the historical background of the Charter and explained the distinct and unique structure of the municipal government of the City of San Diego, including the special relationship between the City Manager and the Chief of Police. Proposition G altered that relationship by giving the City Manager a method of reviewing confidential reports of citizens' complaints against police officers through an advisory board. Prior to the adoption of Proposition G, the City Manager had no such authority under the Charter.

The Board's scope of authority is set forth in Charter section 43(d) and may not be expanded simply by a change in the Policies and Procedures of the Board. An increase in the Board's authority requires a Charter amendment. However, our analysis does not end here. As indicated in City Attorney Opinion No. 87-5, the Chief of Police has the authority under Charter section 57 to seek the assistance and insight of the City Manager on matters concerning the operation and administration of the San Diego Police Department. Furthermore, nothing in the Charter prohibits the Chief of Police from voluntarily working with a

Board appointed by the City Manager pursuant to Charter section 43(d). The Chief of Police may request the City Manager to make the Board available to advise him on police shootings not resulting in a citizen's complaint. In seeking the advice of the Board on these matters, the Chief may, at his discretion, deliver to the Board relevant investigative reports of the department pertaining to police shootings except when specifically prohibited by state or federal law.

If the Chief of Police desires to adopt a policy wherein he may authorize the Board to review all police shooting cases resulting in death or injury, it would be prudent for the Chief of Police to enact written guidelines implementing the policy. The reason for enacting guidelines is to ensure compliance with applicable state and federal laws concerning the disclosure of police investigative reports and to make sure that such disclosure will not interfere with any current investigation.

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