

MEMORANDUM OF LAW

DATE: September 26, 1991

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Proposed Ordinance Making It Illegal for Businesses to Make Use of Public Information About Crimes to Sell Products

Reference is made to Councilmember Filner's memorandum to you dated July 18, 1991, asking for a review and assessment of an ordinance making it illegal for businesses to make use of public information about crimes in order to sell products.

Councilmember Filner's memorandum raises a legitimate issue concerning a citizen's right of privacy after the citizen reports a crime. The California Supreme Court took into consideration a citizen's right of privacy but held that once information is subject to disclosure under the California Public Records Act (Cal. Gov't Code Section 6250 et seq.), the courts can exercise no restraint on the use to which it may be put. *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 451 (1982). The Supreme Court discussed the issue as follows:

Our interpretation of subdivision (f) also derives the fact that the Act imposes no limits upon who may seek information or what he may do with it. In the present case the ACLU seeks information to test the operation of the LEIU index and IOCI printouts and to determine if those police intelligence systems are being misused. In other cases, however, information may be sought for less noble purposes. Persons connected with organized crime may seek to discover what the police know, or do not know, about organized criminal activities (citations omitted); persons seeking to damage the reputation of another may try to discover if he is listed as an organized crime figure or as an associate of such a figure; other persons may simply try to put the state to the burden and expense of segregating exempt and nonexempt information and making the latter available to the public. In short, once information is held subject to disclosure under the Act, the courts can exercise no restraint on the use to which it may be put. (Citations omitted.)

In matters of general or statewide concern, the legislature has paramount authority preempting local ordinances. (In re Hubbard, 62 C.2d 119 (1964).)

The disclosure of public records is clearly a matter of statewide concern as reflected in California Government Code section 6250 which provides as follows: "In enacting this chapter, the Legislature, mindful

of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

In conclusion, any local ordinance tending to restrict the disclosure or use of public records would be preempted by state law.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:mk:520.1(x043.2)

cc Bob Burgreen, Chief of Police,

SDPD

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