MEMORANDUM OF LAW

DATE: March 10, 1992

TO: Councilmember Abbe Wolfsheimer
FROM: City Attorney
SUBJECT: Request for Copies of Office Files
Regarding Del Mar Terrace

You recently requested guidance in responding to a request from Richard Burns, who asked for "a complete copy of your file" pertaining to the Del Mar Terrace Improvement Assessment District. To properly advise you, we examined three (3) legal size folders dealing with this subject, which generally contained letters from interested citizens expressing support or opposition to the formation of the district. We are also mindful that Mr. Burns is a putative petitioner in a potential action opposing the district. However, our advice on disclosure must flow from the nature of the documents and not the position of the petitioner. Our advice follows.

Both the California Public Records Act (California Government Code section 6250 et seq.) and its judicial construction admonish that it is to be construed liberally "to ensure maximum disclosure of the conduct of governmental operations." New York Times v. Superior Court, 218 Cal.App.3d 1579, 1585 (1990). Letters written to a legislator urging action on a legislative issue are generally regarded as public records under the expansive definition of "public records" in Section 6252(d):

> (d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of or maintained by the Governor's office means any writing pre-pared on or after January 6, 1975.

California Government Code section 6252(d).

But categorization does not equate with disclosure. In enacting the Public Records Act, the Legislature balanced the public's right to scrutinize government against the inalienable right to personal privacy. California Constitution, article I, section 1. Along with the twenty-three express exemptions of Section 6254, Section 6255 establishes an unspecified exemption where the public interest served by not disclosing clearly out-weighs the interest served by disclosure and places the burden of establishing same on the agency.

In light of this burden, our advice is generally to honor the broad disclosure intent of the Public Records Act unless a demonstrable basis for withholding exists. Moreover, mindful of this burden, the courts have held that "possible endangerment" does not outweigh the public interest in public records. Hence names and addresses of water users who exceeded their water allocations in Goleta were required to be disclosed even in the face of claims of personal privacy and possible endangerment.

> Nor has the District established that the narrow privacy rights invaded are so fundamental that they outweigh the public's "fundamental and necessary right" to be informed concerning the workings of its government. (Section 6250; CBS, Inc. v. Block, supra, 42 Cal.3d at p. 651.) Even given the strong concerns about water conservation, the record contains no evidence that revelation of names and addresses of those who have exceeded their water allocation during a billing period will subject those individuals to infamy, oppro-brium, or physical assault.

New York Times v. Superior Court, 218 Cal.App.3d at 1586.

Given the precedent of disclosing names and addresses of water customers, the letters of constituents would appear to be similarly public since they reveal contentions, facts and arguments pro and con as well as addresses.

However, this precedent is clouded by the recent case of Times Mirror Co. v. Superior Court, 53 Cal.3d 1325 (1991), in which the California Supreme Court balanced the two (2) public interests expressed in Section 6255 against the disclosure of the Governor's appointment calendar and schedules. The court denied disclosure on the dual grounds that such disclosure would be an unwarranted chill on the "deliberative process" (an extension of the preliminary draft and notes exemption of Section 6254(a)), and pose a threat to the Governor's security interest. While the latter ground is not applicable to the instant case, the former is. Therefore, you may properly screen and segregate for nondisclosure all records and letters that refer to or summarize a meeting with you or colleagues or that contain a request for confidentiality. To require the disclosure of letters evidencing such meetings or requesting confidentiality would be a similar intrusion on the deliberative process.

> The parallel here is evident. Disclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance or direction of the Governor's judgment and mental processes; such

> information would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment. The intrusion into the deliberative process is patent.
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> . . . .
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> If the law required disclosure of a private meeting between the Governor and a politically unpopular or controversial group, that meeting might never occur. Compelled disclosure could thus devalue or eliminate altogether a particular viewpoint from the Governor's consideration. Even routine meetings between the Governor and other lawmakers, lobbyists or citizens' groups might be inhibited if the meetings were regularly revealed to the public and the participants routinely subjected to probing questions and scrutiny by the press.
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> In sum, while the raw material in the Governor's appointment calendars and schedules is factual, its essence is deliberative. Accordingly, we are persuaded that the public interest in withholding disclosure of the Governor's appointment calendars and schedules is considerable.

Times Mirror Co. v. Superior Court, 53 Cal.3d at 1343-1344.

CONCLUSION

To protect the "deliberative process" as interpreted by the California Supreme Court, you need not disclose any records or letters evidencing meetings with you, constituents or colleagues. Those letters that simply express views pro or con are properly disclosable even though they contain names and addresses. To assist you, we attach a sample response letter to Mr. Burns reflecting this. Although unasked, we point out that Administrative Regulation 95.20 provides for a 15 cents per page copying charge as well as a charge for staff time in excess of one-half hour compiling the requested documents.

JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney

TB:mb:048(x043.2)
Attachment:1
(Sample Letter)

cc John K. Riess,
Deputy City Attorney
ML-92-23