

MEMORANDUM OF LAW

DATE: January 16, 1992
TO: Clyde Elmore, Senior Land Surveyor, Engineering and
Development Department
FROM: City Attorney
SUBJECT: Definition of Public Record Includes Aerial Photographs

In your memorandum of December 12, 1991 you expressed reservations about the release of copies of photographic negatives of aerial surveys held by your offices. A copy of your memorandum is attached.

Your inquiry is twofold, first, are the negatives public records, and if so, are you required to provide copies of them to requestors even if the negatives were provided by a private vendor?

First, public records are defined in California Government Code section 6252(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 prepared on or after January 6, 1975.

Writings are defined in California Government Code section 6252(e):

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof,

and

all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

Given the very broad definition of the terms public records and writings, it is clear that the aerial photographs used by your department are public records.

The second part of the inquiry is whether the public records are records that are disclosable. The legislature has stated that yes "access to information concerning the conduct of the peoples business is a fundamental and necessary right of every person in this state." California Government Code section 6250. Support for any refusal to disclose information under the Public Records Act must be found among the specific exemptions to the general policy that are found in the act. *Cook v. Craig*, 55 Cal. App. 3d 773 (1976).

I have reviewed the various exemptions found in the Act and I am unable to find any which fit your situation. The negatives are the property of the City, they were used in the performance of the City's business, and they are not privileged or protected from disclosure by the provider. Absent some other legal prohibition upon their release provided by the vendor, there is no authority to withhold access.

Based upon the foregoing, your office should provide copies of the negatives for standard surveys to any person requesting them for a fee equal to the direct cost of duplication. In unusual cases not covered by the preceding discussion please contact this office.

Please give me a call if you have any questions regarding this Memorandum of Law.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

JKR:skh:pev:811(x043.2)

Attachment

ML-92-6