

MEMORANDUM OF LAW

DATE: August 24, 1992

TO: Councilmember Bob Filner

FROM: City Attorney

SUBJECT: Mr. Colin Flaherty's Request for Production of
Records

By memorandum of August 13, 1992, you sought our guidance in responding to Mr. Colin Flaherty's request for 1) "complete copy of your office and/or personal calendars" and 2) "complete copy of your phone logs, and message pads" for the period 1987 to present. Additionally you request information on the retention of records in your office. While the requests are similar, we address each separately since different statutes control each.

1. Request for Calendars as Public Records

In the past, we have counseled several councilmembers that calendars maintained by public employees on behalf of the councilmembers are in fact a public record and must be produced on demand with personal entries redacted to preserve privacy. Typical of that advice is our Memorandum of Law of May 10, 1989 attached for your review.

Such a determination of calendars as a public record was recently complicated by the California Supreme Court in *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991). The court reviewed a request by the Los Angeles Times for the appointment schedules, notebooks and calendars maintained by former Governor Deukmejian. After a lengthy review of the history of the Public Records Act, the court concluded that the schedules and calendars did not have to be produced.

This denial, however, was clearly based on the court balancing, as provided in California Government Code section 6255, the public interest in disclosure versus nondisclosure.

Accordingly, on the present record, we conclude that the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Section 6255).

Lest there be any misunderstanding, however, we caution that our holding does not render

inviolate the Governor's calendars and schedules or other records of the Governor's office. There may be cases where the public interest in certain specific information contained in one or more of the Governor's calendars is more compelling, the specific request more focused, and the extent of the requested disclosure more limited; then, the court might properly conclude that the public interest in non-disclosure does not clearly outweigh the public interest in disclosure, whatever the incidental impact on the deliberative process. Plainly, that is not the case here.

Times Mirror Co. v. Superior Court, 53 Cal.3d at 1345-1346 emphasis in original.

The court was persuaded that the need to protect the deliberative process and the governor's personal security interest outweighed the public interest in disclosure. While this same balancing test is applicable to calendars of municipal officials, the burden is statutorily placed on the public agency to "justify withholding any record." Section 6255. Thus absent any specific evidence that the production of your office calendar would pose a security threat or compromise the deliberative process, we believe publicly maintained calendars are subject to the Public Records Act and must be produced with the redaction of private appointments.

As to the request for "phone logs" and "message pads," your staff has confirmed that such documents are not retained after the call is returned and hence do not become public records as defined in Section 6252(d) of the Government Code. Not being public records, such matters are not required to be maintained or produced.

2. Retention of Public Records

Section 34090 et seq. of the California Government Code provides for the preservation of city records in accordance with a designated retention schedule. This schedule has been promulgated under authority of San Diego Municipal Code section 22.2601 et seq., and the disposition schedule promulgated for District 8 is attached. Item 5 deals with appointment calendars and is self-explanatory. Should you have any questions on this or desire to amend the disposition schedule for District 8, Gary Page, Deputy Director of Records Management, is available

for assistance.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:015(x043.2)

Attachments:2

cc Vincent Hall,

Council Representative

Gary R. Page,

Deputy Director

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