

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: August 30, 1988

TO: C. L. Krosch, Commander, Police Department
Inspectional Services, and Jerry Johnson,
Risk Management
FROM: City Attorney

SUBJECT: Release of Internal Affairs Investigation
Reports to Litigation Personnel and Risk
Management Claims Representatives

This is in response to your recent inquiry regarding whether or not the Police Department may forward Internal Affairs Investigation reports, including the conclusions of the investigator, to Litigation attorneys and investigators, and Risk Management Claims Representatives for use in evaluating, negotiating and litigating claims and cases. Penal Code section 832.7 makes such records confidential, disclosable only upon motion in civil and criminal cases and to the district attorney or grand jury in certain circumstances.

In criminal cases, the Police Legal Advisor represents the Police Department and officers' interests. He or she maintains an attorney-client relationship with the Department whereas the prosecutor represents the People of the State of California. The prosecutor, just as the defense attorney, therefore has no right to view the records without a court order. Furthermore, even after the appropriate motion, the conclusions of the investigating officer shall not be disclosed to either the prosecuting agency or the defense attorney. Evidence Code section 1045 (b) (2).

In civil cases, the City and most named police officers are represented by an attorney from the Litigation Division of the City Attorney's Office. It is through this attorney-client relationship that the City's attorney gains access to all Police Department records, including complete Internal Affairs reports. See, Evidence Code section 952 and Charter section 40, paragraph four. The opposing party in a civil case must make a discovery motion for the records and make a showing to the court of good cause for disclosure and that the records are relevant to the case at issue. Only then may the opposing party have access to the reports. And, unlike in criminal cases, conclusions are not exempted from disclosure.

The confidentiality of these reports is thus not breached by disclosure to the City's attorney. The only remaining issue is whether Risk Management Claims Representatives also have access to the reports pursuant to the attorney-client relationship. The Director of Risk Management has the duty to receive and process all claims filed against the City. San Diego Municipal Code

section 22.501. In this capacity, he and his employees work under the direction of the Litigation Division of the City Attorney's Office in anticipation of and preparation for litigation. Because of this agency relationship between Litigation and Risk Management Claims Division personnel, there is no breach of confidentiality upon disclosure of the Internal Affairs reports to the Claims Representatives, just as there would not be for disclosure to the investigators assigned to the Litigation Division. In light of the potential relevancy of the conclusions to the issues litigated in a civil case, the conclusions should be included in the reports. No reports should be released or disclosed to anyone outside of Risk Management or the City Attorney's Office during the claims processing stage prior to case filing since a discovery motion cannot be heard prior to case filing.

Please call me if you have any further questions regarding these issues.

JOHN W. WITT, City Attorney

By

Nina B. Deane

Deputy City Attorney

NBD:lfs:520.1

cc G. Gordon

MS-88-14