

Office of

The City Attorney  
City of San Diego  
MEMORANDUM  
236-6220

DATE: August 27, 1993

TO: Linda Baldwin, Equal Employment Investigative  
Manager, Personnel Department

FROM: City Attorney

SUBJECT: Equal Employment Opportunity Investigative Notes

A recent issue of the Fair Employment Practices Summary of Latest Developments indicated that reports written concerning Equal Employment Opportunity ("EEO") investigations may be protected from release to the opposing counsel in the event of litigation.

You have asked how this may be accomplished.

Lisa Furnald, a legal intern for this office, has prepared a memorandum addressing the confidentiality of the investigators notes. We concur in her conclusions.

As noted in her memorandum, any protections provided for reports must be found in general evidentiary privileges. California Evidence Code section 954 provides in pertinent part:

Section 954. Lawyer-client privilege

Subject to Section 912 and except as otherwise provide in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the lawyer at the time of the

confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

As the client, you are the holder of the privilege. Thus, any communications between this office and you pertaining to pending litigation would be protected by the privilege. Notes prepared during the course of an EEO investigation are not prepared in preparation for litigation. Rather, they are prepared during the course of an investigation, the primary purpose of which is, to resolve the complaint without litigation. Such notes are, therefore, discoverable by the complainant and the individual against whom the complaint was made as noted in Ms. Furnald's memorandum.

If you have further questions, please contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:300

Attachment

ms-93-4