



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Ash Kalra  
Councilmember Nora Campos  
Councilmember Kansan Chu

**SUBJECT:** SEE BELOW

**DATE:** October 16, 2009

Approved

*Ash Kalra*

Date 10/16/09

*Nora Campos* *Kansan Chu*

**SUBJECT: SUNSHINE REFORM TASK FORCE RECOMMENDATIONS  
ON LAW ENFORCEMENT RECORDS, POLICE  
DEPARTMENT STATISTICAL REPORTS AND FIRE  
DEPARTMENT STATISTICAL REPORTS**

**RECOMMENDATION**

Approve the Sunshine Reform Task Force (SRTF) recommendations on Law Enforcement Records, Police Department Statistical Reports and Fire Department Statistical Reports with the following amendments:

1. Amend the frequency of reporting police stops and use of force arrests, prepared and reported, by the San José Police Department, from quarterly to semi-annually. Have this reporting policy immediately referred to staff for a workload assessment to determine when and how resources can be secured to implement the new procedure.
2. Refer the recommended expansion of the release of San José Fire Department data to the Public Safety, Finance and Strategic Support Committee, after the Department has completed implementation of the Record Management System, for a workload and resources assessment to include an analysis of the burden of both quarterly and semi-annual reporting.

**BACKGROUND**

The issue surrounding law enforcement records was first discussed by the SRTF in February of 2007. Since that time the Task Force has spent a considerable amount of time engaging with stakeholders and reaching out to the community in order to establish a fair policy recommendation which allows for reasonable access to records and data without having a

negative impact on public safety. We thank the SRTF for the tremendous degree of dedication and thoughtfulness they have demonstrated in service to their city.

We are lucky in the city of San José to be represented by an outstanding police department with dedicated and ethical men and women who work hard to protect our community. Additionally, the SJPD is no stranger to open and transparent practices given the proactive manner in which policies have been put in place to collect and report data on vehicle stops. We also rely on cooperation between the department and the Independent Police Auditor to ensure that all is being done to properly respond to complaints from the public and create policies to effectively enforce the laws in a respectful and ethical manner. That being said, there is a value in creating an environment which opens the doors of communication between our city and the community, as is reflected by the creation of the SRTF. Part of that move to create greater sunshine should include a look at policies which open access to law enforcement records rather than talking about sunshine while creating a reality focused on the status quo or even moving backwards.

In looking at safe, forward thinking ways to increase sunshine, the recommendations put forth by the SRTF regarding the release of law enforcement records and public safety data are, for the most part, reasonable and can be practically accomplished. The exemptions which require redaction of Law Enforcement reports, as laid out in 6.1.1.020 of the SRTF report, are broad in their protection of public safety, maintaining and protecting the integrity of police investigations and tactics, and the prevention of an unwarranted invasion of privacy. With the addition of the exemptions protecting juveniles, victims of sexual assault and domestic violence, and accident reports, what remains is a policy which is quite broad in the type of information subject to redaction or exemption, rendering the remaining reports and information accessible quite narrow. However, the policy does take a positive step in increasing the level to which our city is open and transparent when it comes to our police department.

For those who are worried about opening up the doors to those who may use the information to further victimize those who are vulnerable in the community, we deeply share your concerns and would never support a policy which would endanger the community. The exemptions along with the redactions put forth in the SRTF policy recommendations are certainly broad enough to protect victims of domestic violence, sexual assault, and juveniles. In fact, the exemptions and redaction requirements offer protection broad enough to protect all alleged victims and even witnesses from the fear of their information or even identity being released for use by the media or by those who would wish to cause harm. To ensure clarity on the exemptions to the SRTF policy set forth in their recommendations, below (within the bolded brackets) is the exact verbiage from Section 6.1 of the report covering public information disclosure:

## **[6.1 Public Information That Must Be Disclosed**

### **6.1.1 Law Enforcement Information**

#### **6.1.1.010 Reports Prepared By Law Enforcement**

All reports prepared by Law Enforcement, including “Police Report,” “Domestic Violence Supplemental,” “Property Report,” “Force Response Report,” “Traffic Collision Report” and “Juvenile Contact Report” (collectively referred to as “Police Reports”) are public records subject to disclosure, unless a general or specific exemption listed herein applies.

### **6.1.1.020 General Exemptions**

A. Information may be redacted from any Police Report if necessary to:

1. Protect the safety of any person;
2. Ensure the successful completion of the investigation or a related investigation;
3. Prevent the disclosure of legitimate law enforcement techniques that require confidentiality in order to be effective; or,
4. Prevent an unwarranted invasion of personal privacy.

B. Information in a Police Report may not be redacted under the privacy exemption of 6.1.1.020(A)(4) if:

1. That information was given to the police by the person who is making the request; or
2. The information pertains to the actions of a police officer in the official conduct of his or her duties; or
3. The information is required to be made public pursuant to Government Code Section 6254(f) or any other provision of State or federal law.

C. Redactions pursuant to this section must

1. Be limited to that information necessary to further the purpose of the exemption;
2. Use numerical or alphabetic designations as substitutes for names omitted, to the extent practical; and
3. Be justified in writing by reference to the pertinent exemption(s).

### **6.1.1.030 Specific Exemptions**

A. Unless otherwise authorized by state or federal law, the following Police Reports are exempt in their entirety from disclosure:

1. A "Juvenile Contact Report."
2. A "Domestic Violence Supplemental" unless and until such report is filed with the Superior Court, in which case it should be obtained through the Court.
3. Police Reports where a person is charged with Section 220, 261, 261.5, 262, 264, 264.1, 273.5, 286, 288, 288.5, 288a or 289 of the Penal Code or an attempt to violate any of these code sections, unless disclosure would further the investigation or protect public safety.

4. Accident Reports and supplements as defined by Vehicle Code Sections 20012 and 20014.

B. Unless a report prepared by Law Enforcement is requested by a person entitled to the information under state or federal law, the following information must be redacted from any Police Report:

1. The name of any victim of any crime defined by Sections 422.6, 422.7 (hate crimes), 422.75, or 646.9 (stalking) of the Penal Code, as well as by Penal Code sections listed in 6.1.1.030(A)(3).

2. The name of any witness, juvenile or adult, unless the witness consents.

3. For any person other than an arrestee, residence address, residence telephone number or electronic email address, driver's license number, California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

4. For an arrestee, residence address, residence telephone number or electronic email address, driver's license number, California Identification Card number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

5. The name of a juvenile arrestee or suspect, unless and until the juvenile is charged and prosecuted as an adult, provided that the first name and initial letter of the last name must be substituted in the Police Report.

6. The name of any person who has been accused of a crime if that person has not been arrested or charged in connection with that crime, unless the information furthers the investigation or protects public safety.

7. Any other information that is prohibited from disclosure by state or federal law.

C. Beginning 60 days after the date of an initial Police Report, the Police Report must not be disclosed in response to a request based on a specific member of the public, specific address or other information that could be used to identify a specific member of the public or specific address. In the event the Police Report is disclosed, the appropriate information should be redacted according to the general and specific exemptions described-above.]

So, in looking at the exemptions included in the recommended policy, one will find a clear exemption regarding any police report involving victims of sexual assault. Additionally, there is a specific exemption regarding domestic violence supplemental reports. The supplemental report in domestic violence cases is where one would find all identifiers to a particular victim or witness. Also, all juvenile contact reports have a complete exemption in this proposed policy. In order to allow for redaction, the information simply has to fall within one of the broad categories set forth in 6.1.1.020 A. This includes **any** information necessary to protect

the safety of any person (emphasis added). Additionally, any information which is necessary to ensure the successful completion of an investigation or to protect law enforcement techniques is subject to further redaction. And, of course, any information necessary to protect the unwarranted invasion of personal privacy, which in itself is a very broad exemption, would require further redaction.

And concerns from law enforcement which would use fear of reports falling into the hands of gangsters, drug dealers and stalkers ignores the fact that criminal defendants already have access to police reports in cases in which they are accused. The redactions and exemptions required under state law are not as expansive as those suggested in this policy. The protections demonstrated through the various exemptions described above certainly serve the purpose of protecting victims and witnesses in our community and will not deter any victim or witness from courageously coming forward to assist the police in investigations.

As for the issue of expanding the reporting for data required by law enforcement, the issue of resources is certainly one we cannot ignore. In particular, by requiring quarterly reports and expanding the collection of data to include pedestrian stops, there is no doubt there will be an increased cost that the city will have to absorb. Therefore, we suggest reducing the recommended quarterly reporting to a semi-annual requirement, thereby reducing the burden on the reporting of data.

However, we cannot support the wholesale removal of pedestrian stops from the equation since that is a key data point necessary for a complete look at overall arrests. In fact, much of the recent debate over police data revolved around drunk in public and resisting arrest type charges which often evolve out of a pedestrian contact. Therefore, the information we elicit out of an evaluation of pedestrian stops can be incredibly helpful as we evaluate future policy recommendations in how we police the downtown as well as the entire city.

Yet, we are not naïve to the current budget challenges faced by our city in a time of competing needs and dwindling resources. So, while we certainly want to push forward with making changes that create greater sunshine, an evaluation of the resources it will take to implement the changes is warranted. This is why we suggest referring this new reporting policy to staff for a workload assessment. When we find a reasonable way to garner the resources to pay for the policy without having a deleterious impact on public safety or other related city services, then we can go ahead with implementation.

Although we appreciate the recommendation put forth by the Rules and Open Government Committee regarding the production of statistical reports, we cannot support the suspension of the release of such reports until after the Consortium for Police Leadership in Equity (CPLE) has completed their analysis and provided their recommendations. Though we feel CPLE is providing a valuable service to the City of San José by conducting research on our police practices, we should not create policy on the release of reports or dictate a timeline based on CPLE's schedule or recommendations. As the director of the CPLE research team working with our city, Dr. Goff, has said on several occasions, the CPLE project should not keep us from continuing to work with our police department and community in improving the analysis of our policies and communication with the general public. By suspending the release of statistical reports, we are certainly being proactive in limiting the communication we have to our community and taking a step backwards in our move for sunshine by waiting for an outside organization to complete their analysis on their time schedule with their objectives in mind. We can cooperate and support the work of the CPLE without making such a bold move to inhibit

access to information that the Council and public has been accustomed to receiving in order to evaluate policy and keep the doors of communication with our community open.

Given the expansive nature and frequency of the reports the SRTF recommendations are asking of the San José Fire Department, we agree with the ROGC recommendations to refer that specific request to the Public Safety, Finance and Strategic Support Committee, adding an additional request to have a resource and workload assessment done. This should be done after the Department has completed implementing their RMS system. This makes more sense both in preserving critical resources as well as evaluating the request once there is a practical system in place to comply with the various data points suggested for collection and distribution.

