

# Memorandum

**TO:** SUNSHINE REFORM TASK  
FORCE

**FROM:** Robert L. Davis  
Chief of Police

**SUBJECT:** SJPD INPUT FOR SUNSHINE  
REFORM TASK FORCE

**DATE:** February 15, 2007

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Approved

Date

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## INFORMATION

### BACKGROUND

As the Sunshine Reform Task Force (SRTF) works to consider a number of proposed Sunshine reforms designed to promote an open and accessible government, it is important that Task Force members understand the current codes and case law which governs the authority the San Jose Police Department (SJPD) uses to determine the authorized disclosure of information. The SJPD is providing this information as an overview of the key issues related to the numerous classes of records maintained by the Department, as well as the laws that designate the authorized, exempt, and prohibited disclosure of information pursuant to the provisions of the California Public Records Act (CPRA) and other state and federal law.

Additionally, it is intended that this information serve as an aid to the SRTF to ensure that any Sunshine reform proposals presented, as they relate to police records, take into account existing federal and state confidentiality laws and the protection of the constitutional right to privacy.

### ANALYSIS

#### Current Policy

The SJPD is a public agency, and as such, falls under the California Public Records Act. When the Department receives a request for information that does not qualify as exempt, the Department must respond to the request as outlined in City Policy Manual section 6.1.1 that states, "The public's right to access information concerning the conduct of people's business is a fundamental and necessary right. A record shall not be withheld from disclosure unless it is exempt under applicable laws, or the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

The Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when their records are made available to the public. Any response to a request under the Public Records Act is time sensitive, as it must take place within ten days from the date the request is received. The response to any request under the Public Records Act must adhere to

existing City Policy Manual section 6.1.1. City Policy Manual section 6.1.1 states, "Each department shall designate a person or persons, who will be responsible for responding to requests for records and coordinating the response with other City Departments, when appropriate." The San Jose Police Department's Public Records Act coordinator is the Unit Commander of the Research and Development Unit, under the Office of the Chief of Police.

### Records

The records maintained by the SJPD can be categorized in eight major groups:

- Department Policies and Procedures, Orders, Training Bulletins, and Manuals
- Business/Financial Records
- Personnel Records
- Internal Affairs Unit Records
- Crime Statistics
- Records for Requests for Service, Investigations and Arrest Logs
- Computer-Aided Dispatch Events (CAD)/Communication Tapes
- Accident Reports

### Department Policies and Procedures, Orders, Training Bulletins, and Manuals

These records are routinely released under the CPRA. Items that are exempt from disclosure within this category pertain to information directly related to police tactics and security measures, the disclosure of which would endanger the lives of officers or members of the public or which would endanger the successful completion of investigations.

### Business/Financial Records

Business/financial records include documents related to budgets; grant applications; grant management; issuance of permits; contracts; travel documents; expenditures; purchase receipts; Memorandums of Understanding/Agreement (MOU/MOA); and the Fair Political Practices Commission, California Form 700. These records are released by the Department or the City department identified as the custodian of the requested record.

Public Records Act requests that fall under the "Business/Financial Records" category often involve multiple City departments. In those circumstances, it has been City practice to coordinate multiple department responses through the City Manager's Office. Requests of this nature are received by the Department and directed to the City Manager's Office with an explanation as to the method of response.

### Personnel Records

Personnel records are defined under state law (California Penal Code Section §832.8) as any file maintained under the employee's name, including records that contain personal data such as:

medical history, election of employee benefits, commendations, training, employee advancement, appraisals, and/or any formal discipline received by an employee, and complaints or investigations of complaints concerning the conduct of peace officers. Public disclosure of peace officer personnel records is prohibited under California Penal Code Section §832.7, which declares peace officer personnel to be confidential. Civilian police personnel records whose disclosure would constitute an unwarranted invasion of personal privacy are exempt from public disclosure under California Government Code §6254(c).

### Internal Affairs Unit Records

The Internal Affairs Unit has the task of receiving and investigating citizen and Department-initiated complaints against peace officers and making recommendations to the Chief of Police regarding potential disciplinary action against officers. Individual citizen or Department-initiated complaints against peace officers are exempt from public release under the CPRA, since such records are declared to be confidential under California Penal Code Section §832.7. However, state law does allow for the public disclosure of data regarding the number, type, or disposition of complaints made against officers if the information is in a form that does not identify the individuals involved. Locally, pursuant to City Charter and the Municipal Code, statistical information pertaining to Internal Affairs' investigations is reported publicly to the Mayor and City Council by the Office of the Independent Police Auditor through bi-annual and annual reports.

### Crime Statistics

Crime statistics maintained by the Department subject to disclosure under the California Public Records Act include:

- Uniform Crime Report (UCR) official crime statistics
- Calls-for-Service Data
- Arrest Logs

Statistical records provided on a voluntary basis by SJPD include:

- Annual Use of Force Report
- Annual Vehicle Demographic Report

The Department routinely provides to any member of the public who requests it and pays a standard fee a computer-generated listing of all calls for service by a specific street address. Additionally, statistics are made available to the public at no cost in a user-friendly format online at the San Jose Police Department's public website, [www.sjpd.org](http://www.sjpd.org). When members of the public log on to [www.sjpd.org](http://www.sjpd.org), they can view four available categories of data. Categories include: official crime statistics reported to the Federal Bureau of Investigations (FBI), City of San Jose demographics, vehicle stop data, and calls for service data (most recent 7-day and 12-months time frames) in the "My Neighborhood Crime Data" section on the web page.

Applicable section(s) governing the release of these records is governed by: California Government Code §6254.

#### Records for Requests for Service and Investigations

Records of requests for service and investigations by the SJPD, whether criminal or civil in nature, are exempt from public disclosure by the Department under the CPRA. Moreover, specific categories of these records (see Addendum A) are also subject to state confidentiality laws that prohibit public disclosure and/or restrict disclosure to specified authorized persons or entities and only for specified authorized purposes.

The exemption for not publicly disclosing the complaint/investigations themselves, but releasing the information specified above, is based upon the need to balance the public's right to know about how its government operates against the need for law enforcement to accomplish its fundamental mission, which is protecting public safety and solving crimes. At the same time, law enforcement must also protect the constitutional and statutory privacy interests of persons who are involved in a police investigation, whether they are the complaining or responding parties, victims, witnesses, or accused suspects.

Effective law enforcement techniques require the active cooperation and assistance of the community in reporting and solving crimes. In order to maintain the level of successful community cooperation and assistance the Department currently enjoys, it is imperative that the Department protects those persons who report crimes and cooperate with police from unwanted intimidation, retaliation and unwarranted public embarrassment. In large part, it is this trust and cooperation between the community and the Department that has allowed San Jose to remain the Safety Big City in America for the past six years.

When a police officer is dispatched in response to a complaint or request for assistance from a member of the public, or when an officer self-initiates an investigation, the officer may document the contact on a standardized police form, describing what the officer was told, heard or witnessed. The officer may also take verbatim statements from the complaining or responding parties, victims, witnesses and/or suspects. These statements are taken regardless of the truthfulness or accuracy of the information or the reliability of the person offering the statements. It is not uncommon for people to be wrongly accused of committing criminal acts and/or engaging in an immoral or scandalous activity. The unguarded disclosure of this information could subject the person to embarrassment, social censure or economic and/or personal hardship. When further investigated, these accusations may, and frequently do, turn out to be untrue or at least they cannot be substantiated in a court of law where an individual has a constitutional right to be presumed innocent until proven guilty beyond a reasonable doubt.

Although the Department generally does not disclose the records of requests for service and investigations, it does provide, as required by the CPRA, specified items of current information about ongoing police activities with respect to arrests, complaints and requests for service and police responses thereto, unless disclosure of a specified item of information would endanger the

safety of a victim, witness or suspect involved in an investigation through retaliation, or would endanger the successful completion of the investigation or related investigation.

With respect to arrests, the information required to be disclosed to the public includes the full name and occupation of the person arrested; the arrestee's physical description, including date of birth, color of eyes and hair, sex, height and weight; time and date of arrest, location of arrest; the factual circumstances surrounding the arrest, the amount of bail set, time and manner of release, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds. This information is available in an arrest log maintained by the Department and is released to the public barring any restrictions.

The Department also discloses the time, substance and location of complaints or requests for assistance received by the Department. Some of this information is prohibited from disclosure by multiple statutory restrictions designed to protect personal information on victims and witnesses to specified crimes.

Based on current case law, the exemption under the CPRA pertaining to the release of police records of complaints or investigations conducted by SJPD continues even though a case may be considered closed. Moreover, SJPD records provided to the District Attorney's Office that become part of an investigative file are still exempt from disclosure.

When considering the disclosure of documents, the Department is bound by statutory prohibitions and restrictions on public disclosure contained within a number California Codes, which include, but are not limited to,:

- California Health and Safety Code
- California Penal Code
- California Labor Code
- California Vehicle Code
- California Family Code
- California Welfare and Institutions Code
- Government Code
- Victim's Bill of Rights
- California Insurance Code
- Streets and Highway Code
- Evidence Code
- Education Code

Information contained in "Addendum A" is provided as an example to show the complexity of the review process when considering what information is prohibited from disclosure.

As the Task Force considers new proposals to increase public access to information, enhance neighborhood participation, and ensure government accountability, they must also maintain that same balance as required of law enforcement to ensure public safety and protect the right to privacy of individuals involved in the criminal justice system.

#### Computer Aided Dispatch Events (CAD)/Communications Tapes

Police Communication tapes are exempt from public disclosure under the same Public Records Act exemptions for records of complaints to and investigations conducted by the Department.

SUNSHINE TASK FORCE

**Re: SJPD Input for Sunshine Reform Task Force**

February 15, 2007

Page 6

The Department does routinely provide to the public statistical data on calls for service and patrol response times. Some of these requests require specialized computer programming, which involves fees as defined in the City's Fee Schedule. General requests for statistical data on calls for services are made available to the public without charge on the Department's public website, [www.sjpd.org](http://www.sjpd.org).

City Comparisons

In preparing this reference document for the Sunshine Reform Task Force, the Department conducted a comparison with other similar city police departments to assist the Task Force as they assess various policies and recommendations under consideration. The cities of Oakland and San Francisco were selected for this comparison due to their similar size and volume of activity.

City of Oakland

Oakland's Sunshine Ordinance is written virtually verbatim to §6254(f) of the California Public Records Act, with no additional items to be released per the Ordinance. Most routine requests for police reports are directed through the Bureau of Services Records Division. More complex requests may be directed to the Department's Public Information Officer or the City Attorney's Office. Policies and procedures for this process are currently being revised to direct non-routine type requests through the Bureau of Services Administration staff for logging & distribution to the appropriate office(s). Requests for information relating to open investigations are handled on a case-by-case basis. If a citizen makes a request for a police report over the phone, they are directed to make the request in writing or in person, and must provide enough information for police staff to locate the appropriate report. Requests received through the mail must include the name and address of the requestor so that the Department's response can be returned by mail. Verbal requests are accepted in-person only at the Records Division front counter of the Police Department, which is open to the public Monday through Friday, 8:00 a.m. to 4:00 p.m., and Saturday, Sunday and holidays, 8:00 a.m. to 2:00 p.m. A form, which requires the requestor's name and address, must be completed for all verbal requests that require additional review or research. If a written request is denied, a form letter is sent to the requestor, explaining the reason for the denial (i.e., open investigation, statute, etc.). If a walk-in request for a record is denied, a verbal explanation is provided, without written follow-up. If the request is approved, the report or information is mailed or immediately made available.

City of San Francisco

San Francisco's Sunshine Ordinance complies with §6254(f) of the California Public Records Act, with no additional items to be released per the Ordinance. San Francisco requires that all CPRA requests must be mailed, along with a self-addressed stamped legal-sized envelope enclosed with the request for return. Requests are accepted only in writing. SFPD does not accept verbal, walk-in, email, or phone requests for records. Requests for information relating to open investigations are referred to the assigned investigator; however, they are generally denied.

General CPRA requests are sent to the appropriate City custodian of records. For example, a request for a financial record would be forwarded to the City Finance Department. A request for a police CAD transcript would be forwarded to the Emergency Communications Division. Requestors must complete an on-line form that requires the requestor's name, address, reason for the request, and a signed statement declaring that "I declare this statement to be true and correct" as to why the information is being requested. The form also notes that "Vehicle accident reports are only prepared for hit & run, drunk driving and personal injury cases. All requests for copies of police reports will be handled in the order they are received and will be delivered to the requester by return mail ONLY." (SFPD 491-12/03)

### SJPD Public Record Act Request Policy

The SJPD complies with Public Records Act requests pursuant to §6254(f) of the California Public Records Act. Most routine requests for police reports are directed through the Operations Support Services Division (OSSD) Records Unit. More complex requests are directed to the Office of the Chief - Research and Development Unit. Requests for information relating to open investigations are generally denied. The SJPD follows the stated criteria in the CPRA for accepting and disseminating requests for information. The Department will accept walk-in, phone and written (email/letter/fax) requests. The Police Main Lobby Report Counter is open to the public Monday, Wednesday and Thursday, from: 12:00 p.m. to 4:00 p.m., and Tuesday and Friday, from 8:00 a.m. to 12:00 p.m. The Report Counter is closed Saturday, Sunday, and holidays. However, persons wishing to make a PRA request during non-operational hours have the option to complete a form, which is available at the Police Report Counter. The SJPD has recently updated the front lobby signage explaining the CPRA request process to include instructions and forms in Vietnamese and Spanish. Additionally, during the hours of non-operation, persons requesting information can contact a Records Unit staff member by phone, who can answer their questions or take receipt of their request. If a written request is denied, a form letter is sent to the requestor, explaining the reason for the denial (i.e., open investigation, statute, etc.). If a walk-in request for a record is denied, a verbal explanation is provided. If the request is approved, the report or information is processed and made available within the time constraints of the CPRA.

The Department has always been and will continue to be responsive to CPRA requests within legal timelines and capabilities of staff. Every effort is made to comply with response deadlines as required under the CPRA. The Department diligently contacts CPRA requestors and makes them aware of the complex issues related to the release of police records when appropriate.

The San Jose Police Department has been a leader in establishing trust and confidence with its residents. Indeed, Department efforts over the last few years have only served to strengthen such relationships. As always, the Department has been and will continue to be forthright in its efforts to comply with the numerous Public Record Act requests received, despite the increasing complexities of some of the requests received and the resulting hardships to the day-to-day operations of a reduced administrative staff.

SUNSHINE TASK FORCE

**Re: SJPD Input for Sunshine Reform Task Force**

February 15, 2007

Page 8

Presently, this process is not automated. Until additional staff and technology tools are made available, reports will continue to be collected, collated and redacted or summarized by hand. The Department is currently reviewing a number of automated solutions that will give its limited staff the tools they need to respond to requests from the public more efficiently and effectively. The Department will continue to support the efforts of the City and the Sunshine Reform Task Force efforts to achieve a more open and accessible government. We will continue to strive to meet the community's expectations by providing excellent service in a positive and timely manner and in the full view of the public as allowed by law.



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ROBERT L. DAVIS  
Chief of Police

RLD:GLK:CE

## ADDENDUM A - EXEMPTIONS

### State of California Government Code

**§6275.** It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section §6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Arrest not result in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

SUNSHINE TASK FORCE

**Re: SJPD Input for Sunshine Reform Task Force**

February 15, 2007

Page 10

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse information reported to Department of Justice, confidentiality of, Sections 11107.5 and 11169, Penal Code.

Child abuse report and those making report, confidentiality of, Sections 11167, 11167.5, and 11174.3, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Closed sessions, multijurisdictional drug enforcement agencies, Section 54957.8, Government Code.

Controlled Substance Law violations, confidential information, Section 818.7, Government Code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Criminal offender record information, access to, Sections 11076, 11077, 11081, 13201, and 13202, Penal Code.

Criminal records information, disclosure by vendor, Section 11149.4, Penal Code.

Criminal statistics, confidentiality of information, Section 13013, Penal Code.

Driver arrest for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Employee personnel file, confidential preemployment information, Section 1198.5, Labor Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Improper government activities reporting, confidentiality of identify of person providing information, Section 8547.5, Government Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

SUNSHINE TASK FORCE

**Re: SJPD Input for Sunshine Reform Task Force**

February 15, 2007

Page 11

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, Government Code.

Local summary criminal history information, confidentiality of, Sections 13300 and 1305, Penal Code.

Mental institution patient, notification to peace officers of escape, Section 7325.5, Welfare and Institutions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, Government Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code. Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Group Insurance, Public Employees, Section 53202.25, Government Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3, Government Code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134, Government Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Victims of crimes compensation program, confidentiality of records, subdivision (d), Section 13968, Government Code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Reward by governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex offenders, registration form, Section 290, Penal Code.

Sex offenders, specimen and other information, unauthorized disclosure, Section 290.2, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault victim counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

Youth Authority, records, policies, and procedures, Section 1764, Welfare and Institutions Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education code.

Student in public college or university, record of disciplinary action for sexual assault or physical abuse, access by alleged victim, Section 67134, Education Code.

Developmentally disabled or mentally disordered person as victim of crime, information in report filed with law enforcement agency, Section 5004.5, Welfare and Institutions Code.

SUNSHINE TASK FORCE

**Re: SJPD Input for Sunshine Reform Task Force**

February 15, 2007

Page 14

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.