

## **SUNSHINE REFORM TASK FORCE MEETING MINUTES**

**Thursday, November 1, 2007  
6:00pm – 9:00pm**

**City Hall, Wing Rooms 118-119**

**Present:** Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorsek, United Neighborhoods of SCC; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Dan Pulcrano, Silicon Valley Leadership Group; Bert Robinson, San José Mercury News; Edward Davis, Orrick Law Firm (Legal Counsel); Brenda Otey, At Large-Representative; Dave Zenker, Falls Creek Neighborhood Association; Virginia Holtz, Willow Glen Neighborhood Assoc.; Mary Ann Ruiz, Parks and Recreation Commission; Bobbie Fischler, League of Women Voters; Nanci Williams, San José/Silicon Valley Chamber of Commerce (present until 7:15 pm).

**Absent:** Karl Hoffower, Citizens Commission on Human Rights; Trixie Johnson, Former Councilmember; Judy Nadler, Markkula Center for Applied Ethics; Bob Brownstein, South Bay Labor Council.

**Staff:** Dottie Disher, Office of the City Clerk; Lisa Herrick, Senior Deputy City Attorney; Tom Manheim, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency.

### **I. Approval of the October 18, 2007 Meeting Minutes**

**Upon a motion by Ed Rast, seconded by Ken Podgorsek, the Task Force approved the October 18, 2007 meeting minutes with two abstentions, Nanci Williams, San José/Silicon Valley Chamber of Commerce and Bobbie Fischler, League of Women Voters.**

### **II. Comments from the Chair**

Chair Rast thanked the Task Force members and staff for their commitment to the work of the SRTF and acknowledged that the Subcommittees had made solid progress toward the Phase II recommendations.

### **III. Review of the Meeting Material**

Staff provided an overview of the documents for the meeting. Staff noted that the correspondence received from the public on police records is available in addition to the regular agenda packet.

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#### IV. Public Records Subcommittee Recommendations

**Upon a motion by Dan Pulcrano, seconded by Bobbie Fischler, the SRTF agreed to waive the SRTF's notice requirements for staff reports to receive a document prepared by the San Jose Police Department regarding police reports that are contained in investigatory records dated October 17, 2007 (Dave Zenker opposed).**

The Task Force further agreed to hear public testimony prior to the Task Force's discussion on the Subcommittee's recommendations.

##### *Public Comment*

*Betsy Wolf Grave, San Jose Resident, spoke in favor of the SRTF taking a closer look at the information that the City releases about the use of tasers.*

*Dennis Alan Lempert, City of Santa Clara resident, spoke against releasing information about individuals that are accused of crime but have not been charged.*

*Jo Anne McCracken, Office of the District Attorney, indicated the Subcommittee's recommendations has run afoul of state law and would like the opportunity to make a presentation to the SRTF and requested that the Task Force defer any vote until the SRTF has the opportunity to hear such a presentation.*

**Upon a motion by Virginia Holtz, seconded by Bert Robinson, the SRTF agreed to move forward with the SRTF's discussion on the Subcommittee's recommendations and request that the District Attorney's Office put in writing any conflicts with State law or policy recommendations to the Public Records Subcommittee and the Task Force's legal counsel Ed Davis. If additional discussion is warranted, the topic will be agendized for the December meeting.**

##### **A. Draft Language for Police Records – Police Reports, 10/18/07**

Bert Robinson reviewed the Subcommittee's draft recommendations for reports prepared by law enforcement with a focus on the revisions made as a result of the input received from the last meeting.

**Upon a motion by Bert Robinson, seconded by Joan Rivas-Cosby, the Task Force approved the Subcommittee's recommendations for Police Records regarding reports prepared by law enforcement with the amendment that the word "name" in *Section 5.1.1.030 b, e, f, g, h, Information That Must Be Redacted From Reports Prepared By Law Enforcement* would be replaced with the phrase "identifying information."**

The Subcommittee will discuss how to define "identifying information" and return to the Task Force with a recommendation.

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#### *Public Comment*

*Jo Anne McCracken, Office of the District Attorney, spoke against using the term name or identification information citing examples of personal privacy rights.*

*Richard Alexander spoke on concerns related to personal privacy rights.*

#### **B. Document: Draft Language for Police Records-Investigatory Records, 10/18/07**

Bert Robinson reviewed the Subcommittee's draft recommendations for investigatory records focusing on the revisions made as a result of the input received from the last meeting. No decisions were made. The general consensus of the Task Force was that the recommendations were too broad and that the potential harm of the recommendations outweighed the public benefit. The Subcommittee will evaluate whether the recommendations can be modified to narrowly define a class of individuals that may have a personal interest in a particular case in which investigatory information can be made available (with input from SJPD), and return to the SRTF with its final recommendations.

#### *Public Comment:*

*Mark Schlosberg, ACLA of Northern California, spoke in favor of the suggestions that were submitted to the Subcommittee in the letter dated 10/30/07.*

*Jo Anne McCracken, Office of the District Attorney, spoke against the Subcommittee's recommendations and about Investigatory Records, citing privacy issues and public safety concerns, and advised the Task Force to carefully review the report prepared by the San Jose Police Department regarding investigatory records.*

*Captain Gary Kirby, SJPD, spoke against releasing investigatory files. Captain Kirby explained the information that is in an investigatory file is so revealing that releasing any information would constantly create new victims along the way. The police department does not release investigatory files because of this and does not support the Subcommittee's recommendations.*

*Betsy Wolf Graves spoke against releasing investigatory records and questioned what it means when investigatory records are closed, and what help that can be given to a relative of a deceased relative.*

Bert Robinson noted the Subcommittee's recommendations for police reports have the broadest public benefit. The value of releasing investigatory records is more narrow and may have more value in more personal, isolated incidents. For example, access to investigatory files may be useful to those unjustly accused of a

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crime or those who have a relative who has been murdered and no one has been brought to justice.

Ed Davis, SRTF Legal Counsel, questioned whether the SJPD has additional concerns related to releasing investigatory records beyond public safety, jeopardizing investigations, jeopardizing law enforcement techniques, and personal privacy concerns. Mr. Davis also questioned the resource needs to implement the Subcommittees recommendations e.g., would SJPD need to take officers off the street to evaluate public records requests? Staff noted that the review of investigatory records would need to be completed by the detective involved with the case. Captain Gary Kirby, SJPD, responded that he could provide an analysis of the resource implications of the Subcommittee's recommendations.

#### *Public Comment*

*Jo Anne McCracken, Office of the District Attorney, noted a few corrections to statements that have been made. Investigatory records are not admitted into evidence in a wholesale way in trial; individual items like a photograph may be admitted but they are typically contested. In situations where someone is falsely arrested in the context of a civil suit as a part of a discovery request, items in the file may be released after a judge has reviewed the file. In the situation where a loved one was murdered and the case was never solved, if the investigatory files are made available it may compromise the ability to solve the case at a later time. With regards to the areas that are not carved out in the recommendations, there are no exceptions for law enforcement intelligence, unrelated investigations, or the safety of individual not involved in an investigation e.g., neighbors.*

#### **C. Document: Draft Language for Process for Disclosure, 10/18/07**

No discussion. The item will be deferred to the December 6, 2007 SRTF meeting for discussion.

#### **V. Upcoming Agenda & Work Plan**

- A. The Task Force agreed to extend the meeting schedule through March 2008.
- B. November 15, 2007 meeting agenda:
  - 1. Consider revised SRTF meeting schedule and discuss length of meetings.
  - 2. Report on attendance.
  - 3. Review the process for considering public testimony.
  - 4. Report on the Rules and Open Government Committee's recommendations on the remaining Phase I provisions.

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5. Discussion on the Administration and Accountability Subcommittee, Ethics and Conduct Subcommittee, and the Technology Subcommittee recommendations.

**VI. Open Forum**

**Upon a motion by Ed Rast, seconded by Joan Rivas-Cosby, the Task Force adjourned the meeting at 9:00 p.m.**