

**To Public Records Subcommittee Members
From Bert Robinson, Chairman
Re: Employee Misconduct
Date: Jan. 17, 2008**

Here is some proposed language regarding employee discipline that I have written with the assistance of James Chadwick, attorney for the Mercury News.

I have tried to hew closely to two sources: the city employee discipline policy, in terms of the process, and the relevant case law now on the books, in terms of disclosure requirements. Unlike some other issues the subcommittee has tackled, where we sought clearly to expand public access, my intent here was not to go beyond existing law. It was instead to clarify how the requirements of existing law might interact with San Jose's existing policies and organizational structures. In hopes of minimizing controversy, I opted in many places for language drawn directly from the court decisions, even though that language was not always a model of clarity. Of course, some judgment calls were necessary, and in those cases I did lean on the side of disclosure.

This is a difficult issue, and I am concerned that it could take more time than the task force reasonably has to invest. For that reason, I would suggest that we discuss this in the meeting of Jan. 28, with the intent to make whatever decisions we can at that meeting, and then move on.

B. Records of misconduct by elected officials or employees of the City of San Jose shall be subject to public disclosure as follows:

1. Records of any actual or alleged misconduct by a city official, as defined in section 12.12.120, and any subsequent investigation and discipline, if any form of discipline is imposed, or if the allegation of misconduct is not so unreliable that it could not be anything but false.
2. Records of any letter of reprimand or formal discipline of an employee who is not a city official involving fraud in securing appointment, malfeasance, dishonesty, conviction of a felony or conviction of a misdemeanor involving moral turpitude, unlawful political activity, misuse of city property or city funds, any violation of departmental conflict of interest codes, and any unlawful discrimination against another on the basis of status. The records shall be disclosable at the time a notice of discipline is issued or discipline is otherwise imposed.

3. Records of any other actual or alleged misconduct by an employee who is not a city official, to the greatest extent permitted under the California Public Records Act, as construed by the courts.
4. Records disclosed shall include all records regarding the allegation or complaint, any investigation of the allegation or complaint, and any discipline imposed, including, but not limited to, the Notice of Discipline and the Investigation Documentation Memo. The City may redact identifying information regarding a member of the public or a City employee who (a) provides information in the course of an investigation of the conduct of any City body, agency, department, official or employee and (b) is not a subject of the investigation.
5. The city will maintain a chronological log, updated on a regular basis, summarizing actions taken by the Employee Relations Department regarding employee discipline. The log will be a public record. The city may redact identifying information from the log.