SRTF: 9/20/07
ITEM: IV. 1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Sunshine Reform Task Force

FROM: Robert L. Davis
Chief of Police

SUBJECT: **SJPD INPUT TO SUBCOMMITTEE RECOMMENDATIONS**

DATE: September 10, 2007

Approved _____ Date 9/10/07

RECOMMENDATION

Accept the San Jose Police Department's (Department) preliminary response to the Sunshine Reform Task Force (SRTF) regarding the SRTF Public Records Subcommittee's (Subcommittee) recommendations dated September 6, 2007.

OUTCOME

The purpose of this memo is to provide preliminary information, from the Department's perspective, on the Subcommittee's proposal regarding the disclosure of police records. Given that the Subcommittee's final recommendations were received on September 6, 2007 (Attachment A), and this report was due for distribution by September 10, this memo outlines only the Department's initial comments in response to proposed recommendations regarding the release of public records.

BACKGROUND

This memo is not intended to address all of the Department's concerns, as it only represents the preliminary operational ones identified by the Department and does not include those of a legal nature. As a result, depending on the timing of this item advancing to the Rules & Open Government Committee or the full City Council, the Department will work with the City Attorney's Office and approach the Santa Clara County District Attorney's Office (DA) to formulate a report that contains comprehensive information on the operational and legal issues associated with the recommendations. It is important to note that concerns about the recommendations have been raised by the Department, City Attorney's Office, and District Attorney's Office, and that a joint comprehensive response on operational and legal concerns would be most productive as final action on the proposed ordinance approaches.

The Department appreciates the Public Records Subcommittee's efforts in seeking to establish a sound policy on the release of police records. The Department has reviewed the Subcommittee's recommendations and, by this memo, notes a few initial concerns. The Department will provide additional comments as it continues to track and study the final recommendations that emerge from the SRTF.

Public Policy Framework

In February 2007, the SRTF held a panel discussion which included the Department, District Attorney's Office, Independent Police Auditor, American Civil Liberties Union, National Association for the Advancement of Colored People, among others. The Subcommittee also heard from Department staff and a representative from the DA's Office as it developed its recommendations. However, the Department would like to engage in a comprehensive discussion with the City Council on underlying assumptions and public policy goals for broader disclosure of police records. The Department, in its role as a steward of the public interest from a law enforcement perspective, would like the opportunity to discuss public policy goals and/or the higher-level framework for developing the ordinance, with direct input provided by the Department. Through this discussion, the Department may be able to identify areas where alternative approaches for achieving the same public policy goals can be achieved and the Department's key concerns can be addressed.

Key public policy and/or issues for additional discussion include:

- *Can the City of San Jose preempt the California Public Records Act (CPRA)?*
- *How does the SRTF balance the need for broader public disclosure against protections afforded through the CPRA, specifically for witnesses, investigative integrity, etc.?*
- *What unintended consequences arise from each of the proposed ordinance provisions that have not been identified?*
- *What impacts do the proposed ordinance provisions have with respect to the life cycle of a crime, from the moment that the crime takes place to prosecution of the crime?*
- *What goal(s) is the SRTF trying to achieve with respect to broader disclosure of police records?*
- *What's the process to collect input from the community on proposed recommendations?*
- *What would be the impact of the proposed ordinance to the Department's working relationship with other law enforcement agencies, who currently share their confidential information (local, state and federal) with the Department?*

ANALYSIS

Before releasing any information requested under the CPRA, the Department must always consider whether "the disclosure would endanger the safety of a witness or other person involved in the investigation, or… would endanger the successful completion of the investigation or a

related investigation."[1] It is critical for the Department to protect investigative techniques, the identity and physical well being of victims, witnesses and confidential informants, as well as the future prosecution of cases. Complex police work and the type of community interaction that must take place to gain information from victims, witnesses, and informants demands a great deal of discretion be afforded to law enforcement when determining what type of information should be released.

As the SRTF considers proposals to increase public access to information, enhance neighborhood participation, and ensure government accountability, it should also consider the public safety impacts its recommendations may have on members of this community.

There are four topics on which the Department provides a preliminary response and respectfully requests SRTF consideration: Safety of Crime Victims and Witnesses; Ability of the Police to Solve Crimes; Wrongly Accused Persons or Persons not Charged; and, Operational Impacts/Constraints.

1. Safety of Crime Victims and Witnesses

The Department does not believe that the recommendations provide adequate safeguards to protect the safety of crime victims and witnesses. For example, serial burglars could anonymously get copies of police reports to learn about investigative techniques that could make them more successful. Another example, pedophiles could also misuse public databases as a means to connect with other pedophiles, thus increasing their dangerousness to children. Under the Subcommittee's recommendations, pedophiles would have access to closed cases involving child molestation. While victims' names would be protected, dangerous predators could learn police investigative techniques, enhancing the molester's ability to victimize other children without detection.

Moreover, 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, the Department must be able to protect those who report crimes and cooperate with police from unwanted intimidation, retaliation and unwarranted public embarrassment.

If we are not able to protect the confidentiality of community members, community cooperation with the police will decrease, compromising law enforcement's effectiveness. Unfortunately, the Subcommittee's recommendation does not provide adequate protection for the confidentiality of community members who cooperate with police investigations. The Department's high value on working cooperatively, and confidentially, with community members has helped the City to have the distinction of being named the Safest Big City in America for six years and have a higher than average rate of solving certain crimes. Because of this success, the Department's business practices are being adopted by other law enforcement agencies throughout the nation. The

[1] Government Code Section 6254, Subdivision (f)

Subcommittee's recommendations omit protections for adult witnesses, which jeopardizes the delicate balance between the community and law enforcement.

The Department is also concerned that the proposed language only excludes Juvenile Contact Reports and Domestic Violence Supplemental Reports from disclosure. There are no provisions for protection of reports pertaining to:

- Sexual assaults
- Juvenile sexual assaults
- Kidnappings
- Extortions
- Homicides
- Hate crimes
- Gang investigations
- Cases involving confidential informants
- Other high-profile crimes

It is because of the Department's experience working with the victims and witnesses in such crimes that we have grave concerns that these recommendations will deter some individuals from reporting or working with the Department to solve these crimes. We believe that victims and witnesses cooperate with the Department now because personal information about them is protected under the CPRA. Through the Strong Neighborhoods Initiative process, a broader discussion with the community-at-large should be scheduled; community members should tell us how they feel about their personal information becoming public should they be a victim or witness in a crime.

The District Attorney shares the above concerns. In the District Attorney's Office position statement dated February 24, 2007 (Attachment B), distributed to the SRTF, the District Attorney's Office stated that more crime victims and witnesses will risk retaliation, or victims will decide not to report crimes to police and the privacy of victims and witnesses will be violated. Specifically, the District Attorney contends that crime victims are entitled to privacy. Many victims feel ashamed or want the fact of their victimization to remain as private as possible. The legislature and courts have acknowledged this important public interest. Overly broad public access to police reports undermines this legitimate concern.

DEPARTMENT PROPOSAL: *If the SRTF wants to address the concern of protecting the confidentiality of witnesses, it may want to consider in Section 5.1.1.030 (E) deleting the word "juvenile," so that the section reads: "The names of witnesses."*

2. Ability of the Police to Solve Crimes

The District Attorney's Office also observed in its February 24th statement:

> SJPD will be hindered in its ability to solve crime: One key to law enforcement's success is that suspects do not have access to information in police reports. Suspects do not know, for example, whether a witness can identify them, whether fingerprints or DNA evidence has been left behind or whether their crime has been captured on videotape. This superior knowledge is crucial in police interviews of suspects and of witnesses. Crimes may be solved simply because a witness or suspect knew a key

> fact that had not been released to the public. Gang detectives maintain significant intelligence data on gang activities. Police reports contain information about police intelligence and security techniques that will be used in future investigations. Some crimes are solved only after a rash of similar offenses occurs. Many homicides and sexual assault cases remain unsolved for years, until a break in the investigation develops. If any of this information were available to the public, investigations could be compromised.

Additionally, it is the position of the District Attorney's Office that:

> Limiting public access to police records until after the District Attorney rejects charges or the statute of limitations has expired does not adequately protect investigations. Many cases are solved and charges filed after the District Attorney initially declined charges. Crimes barred by the statue of limitations can provide important evidence to help solve a similar crime committed by the same individual. For example, a child molestation charge may be barred by the statue of limitations, but would be important evidence in a more recent assault by the same suspect on a different child. If the suspect had access to the first police investigation, the second case could be compromised.

DEPARTMENT PROPOSAL: *If the SRTF wants to address the concern of protecting investigations that may not be active for future prosecution, it may want to consider in Section 5.1.1.020 (C) deleting the words "where the prospect of prosecution is likely."*

3. Wrongly Accused Persons and Persons Not Charged

It is not uncommon for people to be accused wrongly of committing criminal acts. 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 turn out to be false; however, the Subcommittee's proposal contains no protections for the privacy of those who are falsely accused. The District Attorney's Office agrees with this concern. Individuals arrested for a crime for which they are not ultimately charged retain significant protection from public access to the allegations against them.

Additionally, wrongly accused persons are not the only individuals who receive protection under this category. People who are arrested for a crime for which they are not ultimately charged retain significant protection from public access to the allegations against them. The legislature and courts have acknowledged this important public interest. Overly broad public access to police reports undermines this legitimate concern. As a normal course of business, law enforcement often collects sensitive information related to matters that could evolve into a civil proceeding. This information is usually collected to document actions involving issues of a sensitive nature often times involving an individual's mental wellbeing, child custody cases, or civil assistance calls for service.

DEPARTMENT PROPOSAL: *The Department believes that the current CPRA Section 6255 (a)[2] sufficiently allows the Department appropriate discretion when deciding to release information.*

4. Operational Impacts/Constraints

Disclosure proposals should also consider the broader operational and resource issues facing the Department in order to implement the proposed ordinance language, mainly staff's ability to conduct its work and, more importantly, prioritize delivery of direct public safety services. This issue has been the subject of City Council discussion over the past year and has resulted in the development of a Police Department Five-Year Staffing Plan. *(Note: The Department would like to refer the SRTF and the public to the September 25, 2007 Council Agenda report regarding San Jose as the 'Safest Big City,' particularly the section that discusses a 10-Year history of demand for service and supply of resources. Copies will be provided in advance of this meeting.)*

As stated, this report provides initial operational issues that would impact the Department's direct ability to provide public safety services. Additionally, the Subcommittee's proposed ordinance language would also present some significant resource challenges that the City Council would need to resolve prior to the Department's ability to implement.

For instance, with respect to the provision to release redacted records, it is important to note that this would create a significant workload issue that the Department is not currently prepared to implement. The Department appreciates the Subcommittee's understanding that without a Department automated records management system, records will continue to be collected and redacted or summarized by hand/manually. This is an extremely time-consuming process and expansion of this practice would not be prudent before a long term sustainable solution such as an automated records management system is in place.

Additionally, with respect to the provision to produce quarterly statistical reports, the Department appreciates that the Subcommittee recognizes the high value placed on these published reports. The Department has taken great measures to ensure publication of these self-initiated reports, and it has often been the first, or one of the first law enforcement agencies to produce such data. This practice has been implemented because of the Department's value of transparency and disclosure of information to the public on police operations. Lessons learned recently by the Department have revolved around the importance of complete statistical analyses when correlating complex data to derive statistical significance/validity, such as correlating: crime/arrests/police activity with geographic location, ethnicity, use of force, etc. The Department believes that its recent practice of obtaining independent outside expertise to produce such analyses is the best direction and results in correct interpretation of the data.

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[2] Government Code Section 6255 (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under the express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclose of the record.

Further, it is important to note that the Department collects and compiles this data manually; the compilation is accomplished by having personnel work overtime. Additionally, over the past six months, the desire to provide the public with accurate statistical analysis has resulted in additional costs related to more rigorous/complete statistical analysis and the need to obtain outside expertise to perform these analyses. This has resulted in additional costs for the City.

DEPARTMENT PROPOSAL: *Direction to implement proposals that have significant impacts on the Department's current resources, or that result in the need for additional resources, should be considered during the City Council's budget deliberation process. This approach affords the City Council to weigh other public safety funding priorities against the SRTF's proposal, which, in some cases, the ability to implement is entirely impacted by available resources and capacity.*

CONCLUSION

The Department appreciates the Subcommittee's efforts in seeking to establish a sound policy on the release of police records and the opportunity to provide this report. It is not the intention of the Department to question the value of the Subcommittee's work or to minimize the value of providing information about Department operations to the public. The Department has clearly demonstrated a strong commitment to transparency over the years, such as the previously mentioned reports (i.e., Vehicle Stop Demographic Report, TASER Usage Data and Information, 911/Call Center Data). The Department is only suggesting that a closer and/or broader review of law enforcement concerns be considered prior to any SRTF action. For this reason, a comprehensive report summarizing the operational and legal concerns will need to be completed prior to consideration by the Rules & Open Government Committee or full City Council.

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While the Department supports the great value in releasing some information in these reports that will keep the community informed of crime trends via the Department's website, and coordinated police community outreach, serious reflection should be taken before the SRTF makes recommendations that might serve to undermine the very positive aspects of the current CPRA as it pertains to affording a police department the ability to serve the broader public interest from a law enforcement perspective and its ability to its job of protecting citizens.

ROBERT L. DAVIS
Chief of Police

RLD: GLK: LR

For any questions, contact Captain Gary Kirby, Bureau of Administration, at 408-277-5215

Attachment A: SRTF Subcommittee Proposed Ordinance and Final Report
Attachment B: Position paper by DDA JoAnne McCracken

ATTACHMENT A

To: The Sunshine Reform Task Force
From: Public Records Subcommittee
Subject: Opening police records
Date: 9/4/07

California law sets a clear standard of openness for government records. In almost every information category, all records are open – except for the small number of items whose disclosure might hinder the workings of government or improperly compromise personal privacy. But for police records, that standard is reversed. Unlike sunshine laws around the country, California's public records act makes only a select number of key facts public for each police-involved incident or arrest, while allowing all other information to remain secret, at the discretion of the police department. As the public records subcommittee learned during its weeks of work on this issue, the result of this approach is that most police records and much information about police activities are kept from the public at large.

By a unanimous vote, the Public Records subcommittee offers the attached draft language in hopes of opening many records of the San Jose police department to public scrutiny. The subcommittee believes this move will enhance the trust between the department and the residents it serves, and better inform the residents of San Jose about crime in their midst and the nature of police work. Our proposals would establish a level of openness unprecedented in California local government, although it is common in many other states. The subcommittee believes that San Jose, a city with a well-respected police department and a new commitment to the public's right to know, is well-situated to lead the way.

Here's a look at our recommendations.

Departmental reports – The subcommittee reviewed copies of each significant type of incident report produced by San Jose police officers and retained by the department. In general, these reports include information describing various types of incidents that merit a police response. They include descriptions of suspects, information about victims, and the laws that have allegedly been violated. When an arrest is made, that information is included, as well. Most reports also include a narrative description of the incident or crime to which they pertain.

We concluded that it is appropriate for these reports to be public records, with certain sensitive information excepted. However, we agreed that two reports – those detailing juvenile contacts and reports of domestic violence – are sensitive enough to require special protections, and we are proposing some limits on access to those reports.

There are many reasons we decided in favor of openness, but two are worth special mention.

First, it is clear that the current state of the law allows the police department a level of discretion that does not work in favor of public understanding. For instance, in arrest incidents, California law now requires police departments to reveal "the factual circumstances surrounding the arrest." A representative of the San Jose Police Department told the subcommittee that the department complies with this requirement merely by providing a list of the legal code sections allegedly violated by the arrestee. The representative conceded that a narrative summary of the arrest would comply more fully with "the spirit of the law," and stated that the department is willing to prepare such summaries when automated field reporting (a technological solution which has not been budgeted, and, thus, not purchased) is implemented. But the subcommittee concluded that the simplest and fullest disclosure would result from releasing the summary already compiled by the department on its police reports.

Second, it is important for the task force to understand that many of these reports already become public when the case proceeds to court. All court records are public records, except in the rare circumstances where they are sealed. Many court files contain copies of the police report in the case, after it has been redacted to eliminate sensitive information in much the same way that the subcommittee is recommending.

Investigations – Police departments collect information in the course of an investigation. In the event of prosecution all investigatory material that is admitted into evidence becomes public through the court process. Questions often arise, however, when an investigation does not succeed. Was the investigation pursued vigorously? Were obvious leads neglected? Were proper police procedures followed? If a resident was wrongfully accused at some point in the process, what lay behind the suspicion? Answering these questions can help greatly in ensuring that the public trusts the department's work.

For that reason, the subcommittee concluded that the public ought to have the right to review investigations after the need to protect the information has passed. This is one area where there is precedent in California for our recommendation: San Francisco has long made public the files of unsuccessful investigations. For consistency, we added the requirement that files of successful investigations become public after a case has concluded, but it is our expectation that most of the information on those cases will already have become public through the court process.

Protecting sensitive information – The primary objection offered to the release of police records is that sensitive information inevitably will be revealed along with more appropriate information. The full task force heard these concerns during the earlier public hearing. The subcommittee concluded that many of the concerns are misplaced.

Witnesses told the task force that it is critical to protect the identities of victims and those who may be wrongly accused. However, both of those pieces of information are already public under the California Public Records Act, Section 6254(f), except that the name of a victim of a sexual assault crime, domestic violence crime or hate crime may be withheld at the victim's request. Nothing in our recommendations affects the status of that information, nor do we have the power to do so.

More appropriate concerns involve the need to ensure the successful conclusion of an investigation and to protect the safety of individuals involved in the investigation. The subcommittee has adopted language, modeled on what already exists in state law, to accomplish those critical goals. It is our expectation that these exemptions will make information public on a sort of "sliding scale": Early in an investigation, the department would have greater need to withhold certain facts about an incident; once a prosecution proceeds, that need should diminish.

Finally, we have included language in the proposed ordinance to protect personal privacy, juveniles and victims of sex crimes. Again, we have consulted existing models to ensure this language achieves what we intend.

Statistical reports – Recent San Jose police department administrations have excelled in compiling and publicizing key statistical information about police activities – especially traffic stops and use of force. However, because leadership can change, the subcommittee concluded that the department should be required to continue these reports to the public. In addition, we are recommending a more expanded report on police misconduct that the city now produces, one that provides some information about how those complaints are resolved.

Personnel information – California law includes strong requirements making most police personnel information confidential. Among the protected information are the names of officers involved in disciplinary proceedings, and the reasons an officer may have been terminated from his job. While the subcommittee and task force heard recommendations that the city of San Jose should make this information public, the city does not have the power to do so.

Timing – The subcommittee is mindful that a new regimen for disclosure will place some burdens on the police department. After reviewing various forms used by the police department, we believe that the forms can be designed in such a way that will make it relatively simple to remove sensitive information. But because this effort will take time, and because some amount of training will also be needed, we propose that our recommendations not take effect until six months after they have received final council approval.

Section 5

Public Records

5.1 Public Information That Must Be Disclosed

5.1.1 Law Enforcement Information

5.1.1.010 Records Prepared By Law Enforcement

A. All reports prepared by Law Enforcement, including "Police Report," "Domestic Violence Supplemental," "Property Report," "Force Response Report," Traffic Collision Report" and "Juvenile Contact Report," are public records, except that:

1. A "Juvenile Contact Report" is exempt from disclosure unless a juvenile has been charged with a crime and will be tried as an adult in criminal court.

2. A "Domestic Violence Supplemental" is exempt from disclosure unless and until a Domestic Violence Supplemental is filed with the Superior Court. Any information redacted in the Domestic Violence Supplemental filed in Superior Court will remain exempt from disclosure.

B. Investigatory records prepared by Law Enforcement are public records.

5.1.1.020 When Records Prepared By Law Enforcement Must Be Disclosed

A. All reports prepared by Law Enforcement that are not exempt must be disclosed except as provided in Section 5.1.1.020(C).

B. Investigatory records prepared by Law Enforcement must be disclosed when:

1. The Law Enforcement agency has closed the case;

2. The statute of limitations has expired; or

3. If the case is prosecuted, at the time a judge or jury enters a conviction or acquittal.

C. If a report or investigatory record is not exempt, but disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation where the prospect of prosecution is likely, that particular item of information may be redacted.

D. If a particular item of information is redacted, the person responsible for withholding the information must explain that disclosure would either endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. Without compromising the information Section 5.1.1.020(C) seeks to protect, the explanation must describe why disclosure would either endanger the safety of a person involved in an investigation or the successful completion of the investigation or a related investigation.

5.1.1.030 Information That May Be Redacted From Records Prepared By Law Enforcement

Unless a report prepared by Law Enforcement or an investigatory record is requested by a person entitled to the information under state or federal law, the following information must be removed from the report or investigatory record before it is released:

A. With respect to the victim of any crime, the address, telephone number or electronic mail address of the victim, except in response to a request made pursuant to Government Code section 6254(f)(3);

B. With respect to the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code, the name of the victim may be withheld at the victim's request, to the extent permitted by Government Code section 6254(f)(2);

C. With respect to any person other than an arrestee or suspect, the address, telephone number or electronic mail address, any driver's license or 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, if contained in the report;

D. With respect to any person, including an arrestee or suspect, any social security number, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

E. The names of juvenile witnesses;

F. The name of any juvenile arrestee or suspect, unless and until it has been determined that the juvenile will be charged and prosecuted as an adult, provided that the first name and initial letter of the last name of any juvenile arrestee or suspect shall remain on the report in any event;

G. The identity of any confidential source.

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

Numerical or alphabetic designations should, to the extent practicable, be substituted for names omitted from any report.

5.1.1.040 Statistical Reports Prepared By The San Jose Police Department

The San Jose Police Department must produce:

A. A quarterly report on traffic stops conducted by San Jose police officers, including ethnicity of the person stopped, some geographic designation of the location of the stop, whether the vehicle was searched and whether an arrest occurred.

B. A quarterly report on the San Jose Police Department's use of force in arrests, including the ethnicity of the person arrested, some geographic designation of the location of the arrest, and the type of force used, by category (for example, firearms, tasers, batons, pepper spray, hands and feet).

5.1.1.050 Statistical Reports Prepared By The Independent Police Auditor

The Independent Police Auditor must maintain a report, kept separate from the personnel records of the Police Department, which reports the number and substance of citizen complaints against the Police Department or its officers, the number and types of cases in which discipline is imposed, and the nature of the discipline imposed. This record must be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly. However, a unique numerical or alphabetical designation should be assigned to each officer who is the subject of one or more complaints, so that the public can determine whether multiple complaints have been directed at a single officer and the nature of those complaints.

* * *

5.4 Effective Date

This section will become effective six months after the City Council approves these recommendations.

SUNSHINE REFORM

Panelist

JOANNE MCCRACKEN

Attorney

Biography

JoAnne McCracken has been an attorney since 1986. After a few years in a civil litigation firm, she joined the Santa Clara County District Attorney's office in 1989. She has prosecuted a wide range of cases, including homicide, sexual assault, domestic violence, and burglary. She spent several years as the Community Prosecutor for Alum Rock, Berryessa and Milpitas and worked extensively on community concerns, truancy and other public safety issues in those neighborhoods. She is now the Chief Trial Deputy, supervising the general felony trial calendar, the Lifer Unit and the Homicide Unit.

SUNSHINE REFORM

Panelist
JOANNE MCCRACKEN
Attorney

Position Statement

District Attorney's Concerns about Proposal to Expand Public
Access to Law Enforcement Records

San José, widely regarded as one of the safest big cities in the nation, is effective in its efforts to solve and prosecute crime. Despite this success, many crimes go unsolved. Cases may be rejected by the District Attorney because there is insufficient evidence, only to be resurrected later when further leads are developed. An ordinance which gives broad public access to police reports will have serious consequences to our community. Fewer crimes will be solved. More crime victims and witnesses will risk retaliation. More victims will decide not to report crimes to the police. Privacy will be violated. Access will be expensive. Each of these reasons is explored below.

SJPD Will Be Hindered in its Ability to Solve Crime: One key to law enforcement's success is that suspects do not have access to information in police reports. Suspects do not know, for example, whether a witness can identify them, whether fingerprints or DNA evidence has been left behind or whether their crime has been captured on videotape. This superior knowledge is crucial in police interviews of suspects and of witnesses. Crimes may be solved simply because a witness or suspect knew a key fact that had not been released to the public. Gang detectives maintain significant intelligence data on gang activities. Police reports contain information about police intelligence and security techniques that will be used in future investigations. Some crimes are solved only after a rash of similar offenses occurs. Many homicides and sexual assault cases remain unsolved for years, until a break in the investigation develops. If any of this information were available to the public, investigations could be compromised.

While the precise impact of public access to police reports cannot be determined, statistical data comparing San Francisco (a city with broad public access to police records) to San José, (where police records are available pursuant to Government Code Section 6254(f) only), is illuminating. Crime rates in San Francisco are significantly higher than in San José for both violent and property crime. However, San Francisco filed only 4824 felony cases in fiscal year 2003-2004. Of those felonies, felony convictions were obtained in only 457 cases---less than 10%. Dismissals or acquittals occurred in 2037 cases---more than 42%. By contrast, Santa Clara County filed 11,180 felony cases in the same period. Felony convictions resulted in nearly 70% of cases and dismissals or acquittals occurred in just 16% of cases.

Limiting public access to police records until after the District Attorney rejects charges or the statute of limitations has expired does not adequately protect investigations. Many cases are solved and charges filed after the District Attorney initially declined charges. Crimes barred by the statute of limitations can provide important evidence to help solve a similar crime committed by the same individual. For example, a child molestation charge may be barred by the statute of limitations, but would be important evidence in a more recent assault by the same suspect on a different child. If the suspect had access to the first police investigation, the second case could be compromised.

Even redacting reports would be burdensome and costly. In most cases, redacting would have to be done by an experienced police officer, familiar with what information could compromise future investigations or officer safety, rather than by clerical staff.

Retaliation Is Real: Witnesses and victims of crime all too often face retaliation for reporting crime. Tragically, this retaliation sometimes is fatal. Although victims and witnesses in gang cases are especially at risk, the police cannot predict with any degree of accuracy when retaliation will occur. Broad public access to police reports will compromise safety of victims and witnesses.

In other cases, public access could have devastating consequences to victims. For example, a child who reports sexual abuse by her father may face serious consequences if charges are not filed and her father had access to the police report.

Disclosure of Police Reports Will Have a Chilling Effect on Victims' Reporting of Crime: Most crime victims are afraid of the perpetrator. Victims and witnesses commonly understand that their identifying information may be disclosed only when charges are filed, but even then, not directly to the offender. If police reports were available to the public, victims and witnesses may feel reluctant to report crime.

Crime Victims Are Entitled to Privacy: Many victims feel ashamed or want the fact of their victimization to remain as private as possible. The legislature and courts have acknowledged this important public interest. Public access to police report undermines this legitimate concern.

Uncharged Suspects Are Entitled to Privacy: While some information is subject to disclosure under Government Code Section 6254(f), individuals arrested for a crime for which they are not ultimately charged retain significant protection from public access to the allegations against them. If one is innocent of a crime, shouldn't that person's privacy be protected? Additionally, public access to police records undoubtedly would be used by potential employers seeking to deny a job to anyone who has been accused of a crime. This would effect an extreme hardship on persons who are accused in a police report, whether or not the allegations had any merit.

Local Ordinance Requiring Disclosure of Police Reports Could Conflict with, Or Violate, State Laws: Disclosure of police reports could conflict with, or violate, other state laws. For example, police reports are protected under Government Code Section 6254(f). Police reports retain their confidential nature even after the criminal case has been adjudicated. The police would violate Penal Code Section 841.5 by providing a suspect or defendant with a police report or the name or address of a victim or witness. Evidence Code Sections 1040(b)(1) and 1041 may provide privileges from disclosure of certain information possessed by the police. Additionally, such an ordinance would conflict with state statutes ordering the sealing of records for defendants who successfully complete diversion, are found to be factually innocent, are acquitted at trial or are juveniles. These conflicts raise complicated preemption issues and may expose the City to costly litigation by persons whose privacy was violated by the release of records.