

## *Memorandum*

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**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** LEE PRICE, MMC  
CITY CLERK

**SUBJECT:** POLICE RECORDS  
CORRESPONDENCE

**DATE:** 01/15/09

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The attached correspondence received to-date from the public regarding police records, has been previously distributed and posted on the City's website. At the request of the Rules and Open Government Committee on January 7, 2009, the correspondence is being re-circulated.

# The Mercury News

September 10, 2008

Members of the Rules Committee:

The Committee's discussion of the Administration and Accountability proposals from the Sunshine Reform Task Force answered some questions but left others unanswered and raised many more. I will attempt in this letter to crystallize some of those, in hopes it helps with your continued deliberations.

As an aside, I must observe that it is regrettable the format of the previous meeting did not allow Rules Committee members to gain a fuller understanding of the reasoning behind the task force proposals, and I hope this can be rectified in future meetings. While the Rules Committee certainly has the right to go in a different direction from the Task Force, the Task Force's members put many hours in trying to craft a workable ordinance, and I believe the Committee would benefit from hearing why the Task Force made the recommendations it did. Ultimately, I believe the Task Force's perspective can enhance any procedure or ordinance the Rules Committee chooses to adopt.

With that said, and based on my understanding of the motion that ended the last meeting, here are some issues I would urge the committee and city staff to consider.

**What is the procedure to appeal an open government issue to the Rules Committee?** In my experience, most denials of public records requests don't take place according to anything like the formal process described by staff at the Rules Committee's 8/29 meeting. Instead, what happens is that someone asks a city staffer in a particular department for a record, is told no, and that's the end of it. Would a person in that situation have standing to go straight to the Rules Committee? Should the request first be made in writing? If the written request is denied, should the requestor be encouraged – or required – to go to the public records manager before going to the Rules Committee? Should a request also go through the city attorney's office? It was clear from the discussion at the Rules Committee that Committee members are not anxious to prescribe multi-step processes. But the Committee should consider what sort of mediation efforts it might prefer – or whether it prefers the Rules Committee to be the court of first resort.

**If some of the functions of an open government officer are undertaken by the public records manager, how will that work in practice?** Often, when people have a request turned down by a city staffer, they consider that "the city" has rejected them, and don't see the point in asking a second city staffer. Or to put it in the Mercury News' perspective, it's not realistic to think that a mid-level city administrator is going to order the police department to release a record. If it is desirable to create a credible mediator role short of the rules committee, what would it take to do that? Will the public be encouraged to take issues to the PRM, and if so how will they be encouraged? Is there a way to persuade

skeptical requestors that the PRM is a credible mediator (right now, I believe the PRM is more facilitator than mediator)? Should the PRM's standing in the organization be altered in order to create a perception and reality of independence (reporting directly to the city manager, for example, or to the city council)?

**If the elections commission is to be given a role in the process, how exactly will that work?** There are two different scenarios to be considered here: the first, where someone is dissatisfied with the answer they have received from the Rules Committee and wants an independent check on the process. In that case, the questions to be answered are how such "appeals" take place, and what standing a decision from the Elections Commission has (strictly advisory? Requiring a vote of the full council to accept or reject?). The second scenario involves issues where the Rules Committee may seem conflicted – and where, as a result, it may make sense for the Commission rather than the Committee to be the court of first resort. What if, for example, a requestor is seeking records from one of the members of the Rules Committee? Or what if the requestor is challenging the validity of a closed session in which members of the Rules Committee participated? Of course, neither the Rules Committee nor the Elections Commission would find it easy to evaluate in public the legitimacy of a closed session. But at least one option seems workable: The City Council could expressly grant the ability to review closed session tapes to a contract attorney hired by the Elections Commission, who could then render an opinion as to whether the session in question is legitimate.

**Depending on the committee's inclination regarding the previous question, what needs to be changed in the Election Commission's qualifications and training to make that work?** Open government laws are complicated, and any group that has some responsibility over them will need to have an understanding of them. Is there any reason to think that Commission members have that now? If not, are they willing to learn? Or does the city need to revise the qualifications for that job and reconstitute the Commission? Should it become the Elections and Open Government Commission? Part of the answer to these questions hinges on how substantial you imagine the Commission's role to be when it comes to open government, which was not clear from the discussion.

Thank you for your consideration.

Bert Robinson  
Assistant Managing Editor/News, San Jose Mercury News  
Chairman, Public Records Subcommittee, Sunshine Reform Task Force

**A P I** asian pacific islander | JUSTICE COALITION  
of Silicon Valley

September 29, 2008

San Jose City Council

Re: Public Access to Law Enforcement Records

Dear Mayor Reed and Council Members:

We are writing to express our strong support for the provisions of the proposed Sunshine Ordinance that would provide for greater access to law enforcement records. Adoption of these provisions will result in improved public trust of the police department, better police-community relations and, ultimately, an improved police department.

For too long, the San Jose Police Department has maintained a practice of not releasing underlying reports generated by its officers – police reports, use of force reports, etc. – to the general public, except where explicitly required by law. But even where required by law, the department's public records practices have been inadequate. For the last two years, the department has received grades of F and D on audits done by Californians Aware which measure access to police records.

Open access to police records is important for a number of reasons. It allows the public to learn how the police department is functioning, responding to calls for service and complaints, using force, or making arrests. It enables analyses of how the department implements policies and procedures it adopts – whether they be policies to prohibit racial profiling or regulating police use of force.

Ultimately, the most significant benefit of openness and transparency is public trust. Secrecy results in suspicion and hides potential problems. Openness engenders trust and leads to better police-community relations – especially with communities and in areas that have had negative experiences or have negative perceptions of the police.

The careful balance arrived at by the Sunshine Taskforce should not be watered down or diluted. Rather, we urge you to move quickly to adopt and implement the provisions.

Law enforcement officers have a great responsibility and a great amount of power, including the right to use force – even deadly force – under certain circumstances. The public should have a right to know about crime in their communities, police response to crime, and how police use their powers including the use of force. The Task Force approved law enforcement language provides this important access while safeguarding privacy and legitimate law enforcement goals.

Sincerely,

**Asian Pacific Islander Justice Coalition**

**Members:**

*Asian Americans for Community Involvement*  
*Asian American Recovery Services*  
*Asian American Women's Alliance*  
*Asian Law Alliance*  
*Asian Pacific American Leadership Institute*  
*Asian Pacific Bar Association of Silicon Valley*  
*Cambodian American Resource Agency*  
*Contemporary Asian Theatre Scene*  
*Filipino National History Society, Santa Clara Chapter*  
*Filipino Youth Coalition*  
*Filipino Community Support, Silicon Valley (FOCUS)*  
*Japantown Community Congress of San Jose*  
*Korean American Bar Association of Northern Cal.*  
*Korean American Community Services, Inc.*  
*Maitri*  
*MALAYA*  
*Nihonmachi Outreach Committee*  
*Organization of Chinese Americans, Silicon Valley*  
*South Bay First Thursdays*  
*Southeast Asia Community Center*  
*Vision New America*  
*Vietnamese Voluntary Foundation (VIVO)*  
*Yu-Ai-Kai*  
*International Children Assistance Network*  
*Akbayan (SJSU)*  
*Vietnamese American Bar Association of Northern California*

For more information, please contact **Richard Konda** by phone at (408) 287-9710 or email at [sccala@pacbell.net](mailto:sccala@pacbell.net).

Oct. 8, 2008

**To: The San Jose City Council Rules Committee**  
**From: The Sunshine Reform Task Force**  
**Bert Robinson, chair, public records subcommittee**  
**Re: Police Records**

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

The Sunshine Reform Task Force is proposing that San Jose take a major stride toward a better informed public by opening many police records. We reached this recommendation after a lengthy process that included extensive testimony on both sides of the issue, making significant modifications to our proposal along the way. Significantly, the task force – a diverse group whose members often disagreed among themselves – adopted these recommendations on a unanimous vote.

Here are some key aspects of our proposal.

**Existing law** – It is important to understand what is already public under California law, because that is the baseline from which we start. According to California Public Records Act Section 6254f, each time an arrest is made, police are required to release the name and description of the arrestee, the time and date of the arrest, and the factual circumstances surrounding the arrest. Each time the department receives a complaint or request for assistance, it is required to release the factual circumstances of the incident and the name and age of the victim, except for victims of certain sensitive crimes.

One important point here: The task force heard some testimony urging us to keep private the names of victims. As noted above, state law has already established that those names are public. Our proposals adhere to state law in this regard and do not make public additional identifying information about crime victims.

**Our recommendations** – The task force reviewed copies of each significant type of incident report produced by San Jose police officers and retained by the department. Those include “police reports,” “property reports,” “force response reports” and “traffic collision reports.” In general, these reports include descriptions of suspects, information about victims, and the laws that have allegedly been violated. Most reports also include a narrative description of the incident or crime to which they pertain, drawn from interviews with witnesses and observations at the scene. We concluded that it is appropriate for these reports to be public records, with certain sensitive information exempted.

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 does not work in favor of public understanding. The language making public “the factual circumstances” surrounding an arrest or incident is especially problematic. Some police agencies take that as a mandate to release a full recounting, while others make public only the barest details. The task force concluded that the surest way to provide consistent disclosure is to require release of the police report itself, with the extensive safeguards enumerated below. Release of these primary documents will also foster public trust, countering suspicions that the police force has something to hide when it releases information only selectively.

Second, it is important to understand that police reports do sometimes become public now – when they are attached to criminal complaints that are filed in court. There is significant inconsistency from case to case, so a member of the public who is interested in a particular report cannot count on obtaining it from the court. However, the department already has a mechanism in place to redact sensitive information from the reports that are attached to complaints, and those reports seem to cause few problems when they become public.

**Protections** – The task force included significant protections in its recommended ordinance to ensure that public and private interests are protected when police records are released. Those protections allow the police department a great deal of discretion – in fact, it is conceivable that the department could employ them to release no more information than it does currently, although we are optimistic that the department will adhere to the spirit of whatever law is adopted by the council. The protections include:

***Sensitive crimes*** – Reports involving rape and other sexual assault or sex abuse would remain exempt from disclosure. Also exempt would be the names of victims of hate crimes and stalking.

***Law enforcement prerogatives*** – Police may redact from reports any information that could compromise an investigation, or disclose confidential law enforcement techniques.

***Safety*** – Information that could compromise the safety of any person is exempt from disclosure. Witness names must be redacted unless the witness consents to the release.

***Personal privacy*** – In addition to the specific protections for victims and witnesses listed above, police may redact any information needed to prevent an unwarranted invasion of personal privacy. Finally, in order to protect the privacy of the accused, no police reports would be disclosed in response to a request for information about a specific person or address, if the request is made 60 days after the date of the initial police report.

In the memo from the staff, the police department and the city attorney’s office raised a number of concerns about the workings of the ordinance as proposed by the task force. Many but not all of those had been raised to the task force during its deliberations and considered at some length. The attorney for the Task Force, Ed Davis, has prepared a

detailed response to the staff's memo. It was previously provided to city staff, and we are including it here for the benefit of the Rules Committee.

### **Memo from Ed Davis, legal adviser, Sunshine Reform Task Force**

#### Law Enforcement Objectives.

The Task Force understands and appreciates the challenges—both fiscal and practical—that the San Jose Police Department faces on a daily basis. However, it was clear to the Task Force that public access to important law enforcement records could be improved without compromising the mission of SJPD.

The Task Force originally considered a mechanism that would increase access to police reports *and* law enforcement investigatory records. Based on information offered both by SJPD and the District Attorney's office, it became clear that including investigatory records in an Open Government Ordinance would be neither practical nor desirable. Instead, the Task Force concentrated on a specific type of law enforcement record—police reports. And, to further ensure that there was no confusion about what needed to be disclosed, the Task Force defined what a police report was based on specific examples provided by SJPD.

Most of Staff's current concerns about the Open Government Ordinance interfering with legitimate law enforcement objectives were communicated to the Task Force both in plenary sessions and during meetings of the Public Records Subcommittee. The Task Force carefully considered the concerns discussed by Staff in its Comments and believes that they are unjustified. For example:

- "The reports covered would include all reports written by the Bureau of Field Operations, including reports and files of the Special Operations Unit that conducts high-risk arrest and search and seizure operations." (See Staff Comments, page 25.)

The proposed Ordinance does not require SJPD or any law enforcement agencies to turn over *files*. The proposal covers only defined police *reports*. More important, however, is the cardinal principle that guided the Task Force in this area: The public is not entitled to any records that would jeopardize "*the successful completion of the investigation or a related investigation.*" (See Section 6.1.1.020(2), emphasis supplied.)

- "Reports containing tactical plans, security procedures, an investigator's analysis and conclusions about an investigation, an officer's notes outlining his or her thought processes, conclusions and analysis all would be subject to public disclosure." (See Staff Comments, pages 25.)

The Task Force asked SJPD to supply examples of Police Reports. No proffered police report contained any of the information about which Staff is concerned. Police reports seldom, if ever, contain "tactical plans" or "security procedures." Officer's notes do not fall within the definition of Police Reports. As a matter of fact, law enforcement agencies, including SJPD, have routinely attached police reports to complaints filed to initiate a prosecution.

As noted above, any information that would jeopardize an investigation is exempt from release. Moreover, if "tactical" or "security" data happen to find their way into a Police Report, they are exempt from disclosure if necessary to *"prevent the disclosure of legitimate law enforcement techniques that require confidentiality in order to be effective."* (See Section 6.1.1.020(3).

- "The definition of 'Police Reports' would also include reports written by officers assigned to state and federal law enforcement agency task forces." (See Staff Comments, page 25.)

The Task Force was not under the impression that its definition of Police Report would include intra-agency reports. However, it Staff believes it does and if disclosure would create intra-agency problems, the definition can be modified.

- "The Department would interpret the term "Police Report" . . . to also include police communications recordings (telephone calls from the public and radio traffic between Department members and other law enforcement agencies) as well as audio recordings of interviews of suspects, witnesses and complaining parties." (See Staff Comments, page 25.)

As Staff is well-aware, it was never the intention of the Task Force to include interview recordings within the definition of Police Reports. If there is ambiguity, it can be corrected.

Additionally, although not incorporated in the definition of Police Reports, some law enforcement communications are already accessible to the public. They do not, however, fall within the proposed ordinance's definition of a Police Report.

- "The Department believes the Task Force's recommendations go too far and will effectively repeal the exemption for police records and require that most police records regarding investigations, arrests and calls for service be open to the public." (See Staff Comments, page 26.)

There is no general exemption for police reports. The Task Force has carefully defined "Police Report" and carefully constructed exemptions that would ensure that legitimate police operations are not disrupted. This inaccurate generalization does not further thoughtful consideration of the Task Force's proposal.

*"Unintended Consequences" and other negative impacts.*

Staff details a number of what it calls "unintended consequences" and other negative impacts that would supposedly result from the proposed Open Government ordinance. (See Staff Comments, pages 26-30.) The Task Force was sensitive to these concerns, and is satisfied that they are unjustified.

- "Disclosure of Police Records to Criminal Suspects and Defendants Outside of the Criminal Discovery Process." (See Staff Comments, pages 26-27.)

Criminal discovery statutes provide to defendants the right to see information far beyond that contained in Police Reports. Conversely, the Task Force is not aware of any information that would be available via the Open Government proposal and unavailable via discovery in a criminal case. Accordingly, no constitutional, statutory or other rights are violated by the proposal and defendants would not be the beneficiaries of information they would not otherwise be entitled to see.

Staff's recommendations do not identify any information that falls within this category, and neither Staff nor SJPD identified any such information during the Task Force's consideration of this issue. If such information is at risk, Staff should identify it and the proposal can be modified to protect it.

- "[M]uch of the California Legislature's purpose for exempting police records in the CPRA was to keep police records out of the hands of criminals and those who would exploit criminal records for commercial gain or private voyeurism." (See Staff Comments, page 26.)

The Legislature has not broadly exempted police records. If it had, the Task Force would not have made the proposal it did; it makes no sense to recommend access to records that are protected by law.

If what Staff really means is that the proposal would enable criminals to take advantage of information in the Police Reports before they are charged (the information would certainly be available to the charged defendant), the concern is again misplaced.

Information generally contained in the type of police report defined by the Open Government proposal is hardly that which would enable a criminal to avoid detection or capture. However, the exemptions would protect against the remote risk that such information might be helpful for the uncharged defendant, *e.g.*, if it jeopardized the investigation or endangered a witness.

- "The Department understands that the broad exemption against disclosure of police records of complaints to and investigations conducted by the Department is to prevent the CPRA from becoming a conduit for criminals to gain information about police investigations, methods of conducting investigations, security procedures, intelligence and tactical information." (See Staff Comments, page 27.) This assertion is, quite simply, false. As discussed above, there is a clear exemption in the Task Force's proposal for each of the concerns raised by Staff. See, for example, Section 6.1.1.020(3). In any event, such information is rarely contained in a police report—at least in the ones supplied to the Task Force.

- "Negative Impact of Task Force Recommendations on Operations and Resources." (See Staff Comments, page 27-28.)

Staff's arguments on this point are so broad that it is difficult to address them all. Many are simply repeats of earlier arguments that ignore the broad exemptions in the proposed ordinance. Some arguments, however, raise questions whether Staff understands what this part of the Open Government proposal actually says. For example:

- "[T]he SRTF recommendations permit access to investigative files maintained by every unit within the Department . . ." (See Staff Comments, page 28.)

The proposal does no such thing. It does not apply to investigative files. It applies to certain defined Police Reports that were vetted with SJPD.

- "Law enforcement reports of child abuse and neglect case are confidential under the Child Abuse and Neglect Reporting Act." (See Staff Comments, page 28.)

This assertion is correct. And the definition of Police Report does not require disclosure of such information. The Task Force consulted with Capt. Kirby to satisfy itself that such information would *not* be accessible to the public. It achieved this result through its careful definition of Police Report and broad exemptions dealing with children and sex offenses. (See Sections 6.1.1.030(1-4).

- "In short, detectives will spend less time investigating crimes and more time redacting reports." (See Staff Comments, page 28.)

The Task Force was very concerned about the drain on limited SJPD resources. On several occasions it requested data so it could determine whether the burden on police officers would be significant. The Task Force also urged SJPD, Staff and the District Attorney's office to make suggestions how any burden could be minimized. Neither specifics nor suggestions were forthcoming from any of these sources.

After reviewing police reports and narrowing the definition of the type of report that would be covered by an ordinance, the Task Force is satisfied that the burden on SJPD would not interfere with its law enforcement responsibilities. A police report contains very basic information; it is not the kind of investigative report that includes sensitive materials such as scientific reports, medical reports, psychiatric evaluations, case analyses and in-custody interviews. Indeed, much of what is contained in a police report is already discussed in the Public Records Act. For example, the Public Records Act requires disclosure of, among other things:

- the name and physical description of an arrestee;
- descriptions of complaints and requests for assistance, including the time substance, and location, information about alleged crimes;
- the time date and location of the occurrence;

- the name and age of the victim;
- the factual circumstances surrounding the incident; and,
- a description of injuries or property or weapons involved. (See Cal. Government Code Section 6254(f).)

This information is subject to the same type of exemptions included in the proposed ordinance, *e.g.*, if access would endanger an investigation or safety or if juveniles are involved it need not be disclosed. Thus, *SJPD must already review its police reports and make the same type of decisions that would be required by the proposed ordinance.*

- "Adverse Effect on Successful Prosecution of Crime." (See Staff Comments, page 28.)

The District Attorney's office on several occasions told the Task Force that its ability to prosecute criminals would be hampered by the proposal. It failed then, and Staff's report now fails, to provide anything other than the rankest speculation about how that could occur. Those legitimate concerns that were raised were addressed.

For example, when the District Attorney raised the possibility that witnesses might be discouraged from cooperating if they would be identified in a police report, the Task Force responded with Section 6.1.1.03B(2) which exempts the "name of any witness, juvenile or adult, unless the witness consents." Although Staff raises the same argument, it does not mention this exemption.

All of the legitimate, specific concerns raised by law enforcement representatives were considered and addressed by the Task Force. The lack of specificity in Staff's recommendations appears to underscore the fact that the Task Force has done a good job in addressing real problems.

- "Adverse Affect on Old and Closed Cases." (See Staff Comments, page 28-29.)

Other than asserting that access to Police Reports would give criminals in cold cases an opportunity to "cover his or her tracks," Staff does not provide much enlightenment as to how this would happen. Again, the proposed ordinance does not deal with investigative files where such evidence would most likely reside.

None of the actual police reports reviewed by the Task Force contain the type of information that would jeopardize cold cases; and, if it did, such information could be redacted under the exemptions contained in the proposed ordinance.

- "Privacy and Litigation Concerns." (See Staff Comments, page 29-30.)

The Task Force was very aware of the need to protect privacy interests. Accordingly, it build into the proposed ordinance a number of privacy protections. For example,

- Section 6.1.5.030B(2) prevents access to the identity of *any* witness absent consent.

- Section 6.1.5.030B(3) identifies specific private information that cannot be disclosed, *e.g.*, residence address, residence phone number, social security number, credit card or bank account numbers. If Staff believes the specific list is not adequate, the Task Force believes it would be helpful for Staff to identify how the section could be modified.
- Section 6.1.5.030B(6) prevents access to 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." This provision was drafted in response to specific concerns that unsubstantiated accusations against an individual would be included in a police report and thus cause unjustified harm to a reputation.
- Staff contends that the law is clear that the "only information available to the public is current information on contemporaneous police activity . . .," citing *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal.App.4th 588 (1993). (See Staff Comments, page 29.) Although the law is not as clear as Staff suggests, the Task Force took a conservative approach to this issue and foreclosed access to "information that could be used to identify a specific member of the public or specific address" sixty days after a Police Report. Section 6.1.030(C). The Task Force believes this provision will ensure privacy interests in general, satisfy California law governing compilation of criminal history information, and comply with *Kusar*.
- Finally, any information could be redacted if necessary to "prevent an unwarranted invasion of privacy." Section 6.1.5.030A(4). Although Staff appears to argue that this broad protection of privacy is too vague to be of practical use, (see Staff Comments, pages 27-28), the City Attorney's office should be well aware of its origin: the language is taken from the Public Records Act itself. (See Cal. Government Code Section 6254.) The City Attorney deals with this standard perhaps on a daily basis; it codifies the privacy protection contained in the California Constitution.

A word about the California right to privacy is appropriate here. The District Attorney's office was somewhat cavalier with its interpretation of privacy in its presentations to the Task Force, and Staff appears to have embraced this approach. Not all assertions of "privacy" violate the California Constitution; only "unwarranted" invasions of privacy are violations. The constitutional test involves balancing of interests. Thus, the salary of a private individual is private; the salary of a government employee is not. Accordingly, simply claiming a privacy interest does not make it so.

The proposal offered by the Task Force is designed to comply with California's Constitutional privacy mandate. It requires application of the very balancing test that is employed by the Public Records Act and that has been blessed by the California Supreme Court. Indeed, the proposed ordinance goes even further, as it enumerates several specific exemptions that are designed to ensure that legitimate privacy interests are protected.

## **PUBLIC COMMENT**

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DATE: October 10, 2008  
TO: Rules & Open Government Committee, San Jose City Council  
FROM: James Chadwick, on Behalf of the San Jose Mercury News  
RE: **Access to Police Department Records**

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### **Introduction**

The San Jose Mercury News supports the recommendations of the Sunshine Reform Task, which provide access to police reports with limitations that ensure that public safety and personal privacy will not be impaired.

### **The Work of the Task Force**

The Task Force comprehensively considered the issue of providing greater public access to law enforcement information, and the ramifications of doing so. The San Jose Police Department and the Santa Clara County District Attorney's Office were represented at virtually every meeting of the Public Records Subcommittee and of the Task Force pertaining to this subject. They provided their perspective and concerns regarding every aspect of the Task Force recommendations. Their concerns have been carefully considered and taken into account in the proposed provisions of the Sunshine Ordinance regarding access to law enforcement information.

### **The Public Perspective**

As the Committee is aware, based on prior public sessions devoted to the question of access to law enforcement information, there is widespread mistrust of law enforcement in the City of San Jose. This mistrust exists among a substantial portion of the population despite the fact that the San Jose Police Department is both efficient and professional.

Law enforcement officials in San Jose have expressed consternation about this public perception. But it's not difficult to understand its source. As the United States Supreme Court has observed: "People in an open society do not demand infallibility from their institutions, but it is difficult from them to accept what they are prohibited from observing." (*Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).)

Although the San Jose Police Department has provided some public information—providing, for example, statistical data on traffic stops and use of force—it has refused to make the underlying information available, thereby preventing the public from evaluating the validity of the Department's conclusions. In other contexts, the Department frequently refuses to provide even routine information about crimes and arrests required to be disclosed under the California Public Records Act (CPRA).

In short, the Department's own failure to provide transparency has resulted in the mistrust of which it complains.

### **The Problem**

In an article last Fall that appeared in the Mercury News, San Jose Police Chief Rob Davis expressed the Department's perspective in a nutshell: "The California Public Records Act has been in place for 39 years. What's broken with it?"

The answer to that question is threefold.

**First**, the CPRA does not require the disclosure of information necessary to an informed public understanding of what the Department is doing and how it is doing it.

The CPRA expressly exempts from disclosure all "investigatory or security files" of law enforcement agencies. (Government Code § 6254(f).) Although it requires disclosure of certain basic information about arrests and requests for assistance, it does not require law enforcement agencies to provide the public with vital information. For example, it does not require the disclosure of any information about the use of force by law enforcement officers in apprehending or handling a suspect, or any information regarding how police have responded to a request for assistance. Moreover, it does not provide for public access to the basic narrative descriptions of crimes and arrests, which alone can provide the public with the information to evaluate the significance of any particular crime and the appropriateness of the Department's response.

The United States government, in the federal Freedom of Information Act, and most states around the country take a different approach. Attached is a summary of the Freedom of Information Act provisions governing access to police reports, and of the correlative provisions of the public records laws of all 50 states. As this summary shows, the approach adopted by the CPRA—prohibiting access to all law enforcement records, and providing for disclosure of only certain limited items of information—is not typical. Indeed, California and other states that follow this approach are a distinct minority. Much more common are: (1) an approach that provides access to routine records, such as arrest and incident reports or police "blotters" (chronological logs of arrests including basic information about crimes and arrestees), with a limited or qualified right of access to other investigatory records; or (2) the approach taken by the Freedom of Information Act, which creates a presumption of public access to all law enforcement records that can be overcome only if the government demonstrates a probability of harm to an important countervailing interest.

**Second**, historically there has been poor compliance with even with the minimal requirements of the CPRA. This is the result of both simple failure to comply with the CPRA, and broad interpretations of the loopholes it creates.

Recent audits of California law enforcement agencies found that the San Jose Police Department—like many others—failed to comply with even the basic requirements of the CPRA. (See Californians Aware, Audit Report 2007—Public Access to Law Enforcement Information, at <https://www.calaware.org/audits>.) Information expressly required to be made public, such as the disclosure of potential financial conflicts of interest by senior law enforcement officials, was not provided when requested.

Moreover, the San Jose Police Department has adopted broad interpretations of the exemptions provided by the CPRA, and narrow interpretations of its disclosure requirements. For example, as interpreted by the Department, the provision for disclosure of the "factual circumstances surrounding" a crime or arrest requires the disclosure only of the criminal laws that may have been violated. The Department has persisted in this position despite the enactment of Proposition 59, which added to the California Constitution an express mandate to all public agencies that California laws providing public access to information must be "broadly construed," and that any limitations on access must be "narrowly construed." (Cal. Const., Art. I, section 3(b)(2).)

**Third**, the CPRA is difficult and burdensome to enforce. If a public agency such as the San Jose Police Department fails to comply with the CPRA, the only recourse is to find a lawyer and sue in Superior Court. This is simply not an option for most ordinary members of the public. Even media organizations are forced to pick their fights carefully, because non-compliance is so common.

While the CPRA provides for an award of attorneys' fees to anyone who prevails in such a case, it is usually difficult if not impossible for ordinary citizens to afford to pay an attorney to bring it, or to find an attorney who will take such a case on the chance of recovering fees if successful. (The difficulty is exacerbated by the fact that public agencies—including the City of San Jose—generally vigorously

defend these cases, and that even if successful a member of the public may not be awarded full compensation for attorneys' fees.) Public agencies often appeal adverse decisions, further adding to the delay and expense of pursuing a request for public records.

Thus, with respect to law enforcement information at least, the answer to the question "What's broken?" is "just about everything."

### The Department's Concerns

The San Jose Police Department has raised a number of concerns about the consequences of increased public access to law enforcement information, some of which are addressed below.

The Department ignores the most likely and significant consequences of increased public access to law enforcement information: greater public knowledge of crime and law enforcement activities in the community, better understanding of how the Department addresses crime and suspects, and increased trust in and respect for law enforcement.

Instead, the Department focuses on claims that access to law enforcement records will endanger public safety and the damage the reputations of members of the public who have been wrongly accused. However, most of the Department's claims do not withstand scrutiny.

**First**, the Department's claims are contradicted by the fact that numerous other states routinely disclose law enforcement records. There is no evidence that this practice has impaired law enforcement in other states. Surely such a widespread practice would have been modified long ago if it caused any serious impairment of public safety.

The Santa Clara County District Attorney's office has asserted that throwing sunshine on law enforcement will result in increased crime rates, pointing to San Francisco as a city that has both a Sunshine Ordinance and higher crime rates than San Jose. However, San Francisco's Sunshine Ordinance does not provide for disclosure of law enforcement records, and the District Attorney has not explained how the San Francisco Sunshine Ordinance might otherwise facilitate the commission of crimes, or impair law enforcement. Rates of crime are affected by many factors, and it is difficult to draw any valid conclusions about the effect of any single factor on crime rates. The suggestion that there is a correlation between the disclosure of police reports and increased crime rates simply is not supported by any evidence. A comparison of crime rates in states that disclose such records with crime rates in California, which does not, does not support any correlation.

**Second**, the Department has asserted that Task Force recommendations would impair the safety of victims and witnesses.

The Department has asserted that access to police reports would enable "serial burglars" and "pedophiles" to learn about investigative techniques and thereby become "more successful." It is not clear what reports the Department believes contain detailed information about investigative techniques. Typically, arrest and incident reports do not. To the extent that such information may be contained in other investigatory reports, it can be withheld if its disclosure would impair the successful completion of an investigation or reveal confidential law enforcement techniques.

The Department also asserts that victims and witnesses must be protected from intimidation and retaliation. It is important to note that **the CPRA already requires that the names of victims be made public**, except that the names of victims of certain crimes may be withheld at the request of the victim. Names, addresses, and other information regarding victims and witnesses are routinely provided to the defense in a criminal prosecution. (See Pen. Code § 841.5.) Nonetheless, the Task Force recommendations accommodate the need to protect witnesses and victims. They require redaction of the name of any victim or witness, unless the victim or witness consents. They also allow the redaction of **any** information the disclosure of which would endanger the safety of a person involved in an

investigation. The recommended provisions therefore provide ample protection for victims and witnesses. Indeed, they provide greater protection than does the CPRA.

**Third**, the Department expresses a concern about the consequences of disclosure for people wrongfully accused and not charged with a crime.

The Department expresses concern that individuals arrested for a crime with which they are not ultimately charged should be protected from embarrassment, social opprobrium, and other adverse consequences. It is unusual for a person who has actually been arrested not be charged with any crime, but again, **the CPRA already requires that the names and other information about arrestees be made public**. In addition, the Task Force recommendations expressly require the redaction of the names of anyone accused of a crime who has not been arrested or charge, as well as the names of all juvenile arrestees or suspects, unless and until the juvenile is charged as an adult.

Moreover, an arrest should not occur without substantial justification. (See Pen. Code § 836.) The public has an interest in knowing that a person has been arrested, even if they are not charged. Indeed, it may be vital to the public to know that, for example, a powerful or well-connected public official or a notorious criminal has been arrested but is never subsequently charged. Such events directly implicate the public interest in evaluating the conduct of law enforcement agencies. "Newspapers have traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed." (*Kapellas v. Kofman*, 1 Cal. 3d 20, 38 (1969).)

**Fourth**, the Department raises a concern about the increased workload entailed by compliance with the Subcommittee's recommendations. The Department has a legitimate concern that resources should not be unduly diverted from the protection of public safety. If the Department's characterizations of its current record keeping systems are accurate, then those systems require enhancement for reasons entirely independent of compliance with the proposed Sunshine Ordinance.

However, the fiscal burden of compliance is manifestly overstated. The adoption of standard forms and of protocols for the redaction and release of information would eliminate or at least substantially reduce the need for involvement of sworn personnel in responding to public records requests. In any event, an incremental addition to the Departments efforts to comply with public records requirements should not be allowed to dictate the content of the proposed ordinance in an area as critical as providing information necessary for public understanding of and confidence in the law enforcement agencies that serve it.

### **Conclusion**

In many ways, the Task Force recommendations do not go far enough. The Task Force has consistently erred on the side of accommodating law enforcement concerns, even though there has been little more than conjecture and hyperbole to support those concerns. However, the Task Force recommendation constitute a worthy first step toward increasing public understanding of, and faith in, the system of law enforcement in San Jose. The recommendations of Task Force regarding access to law enforcement records should be adopted.

Respectfully submitted,

*James Chadwick*

James Chadwick  
Sheppard Mullin Richter & Hampton, LLP  
on Behalf of the San Jose Mercury News

## **Survey of Public Records Laws: Access to Police Records in the United States**

### **I. Overview**

The United States government and every state in the union have adopted statutory or constitutional provisions governing access to public records. In some states, statutory or constitutional rules are supplemented by common law principles. The federal government and the states take a variety of approaches to public records. Indeed, every state's approach is unique in at least some aspects. However, public records statutes generally fall into a few broad categories.

The federal government and six states have adopted the approach taken by the Freedom of Information Act, which creates a presumption of public access to all law enforcement records that can be overcome only if the government demonstrates a probability of harm to an important countervailing interest.

A small number of states have adopted the approach taken in California, which exempts all law enforcement records from disclosure but requires that the public be provided with certain specific categories of information. Only 5 states, including California, appear to take this approach.

An even smaller number of states (only 3) appear to exempt all law enforcement records, and require no disclosure of information about arrests and crimes.

The rest, comprising the substantial majority of the states, have adopted public access laws that provide greater access than does California, including access to at least some law enforcement records. The approach used most often by these states provides access to routine records, such as arrest and incident reports or police "blotters" (chronological logs of arrests including basic information about crimes and arrestees), with a limited or qualified right of access to other investigatory records.

Thus, the national experience of many decades refutes the claim that disclosure of routine arrest and incident reports will compromise public safety or personal privacy.

### **II. Access to Law Enforcement Records Under the Federal Freedom of Information Act**

Unlike California law, the federal Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), does not create a blanket exemption for law enforcement records.

Rather, under FOIA, law enforcement records are presumptively public, and can be redacted or withheld from public disclosure only if the government demonstrates that one or more specified harms will occur if public access is granted. Thus, under FOIA, access to records

or information compiled for law enforcement purposes may be denied only to the extent that disclosure:

- a. could reasonably be expected to interfere with enforcement proceedings;
- b. would deprive a person of a right to a fair trial or an impartial adjudication;
- c. could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- d. could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
- e. would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
- f. could reasonably be expected to endanger the life or physical safety of any individual.

5 U.S.C. § 552(b)(7). Records relating to the commission of crimes are subject to disclosure and often are disclosed pursuant to FOIA, notwithstanding the limitations imposed by this exemption. *See, e.g., Lissner v. United States Customs Service*, 241 F.3d 1220 (9th Cir. 2001).

As shown by the following outline, the federal approach of making law enforcement records presumptively public, but permitting redaction or non-disclosure of records when public access is likely to result in harm to an important countervailing interest, has been followed in many states.

### **III. Outline of State Open Records Laws and Exceptions Pertaining to Police, Criminal and/or Law Enforcement Records**

#### **I. Alabama**

Under the Alabama Freedom of Information Law (Ala. Code 1975 §§ 36-12-40, et. seq.), "every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." Ala. Code 1975 § 36-12-40.

Police blotters and basic complaint and incident reports are public records. *Birmingham News Co. v. Watkins*, No. 38389 (Cir. Ct. of Jefferson County, Ala., Oct. 30, 1974) (based upon First Amendment, not Public Records Law, with discretion for police department to withhold portions of records or entire records if and as necessary to prevent "actual interference")

with law enforcement); *see also* Op. Att'y Gen. Ala. No. 97-00043 (Nov. 27, 1996) (Alabama Uniform Incident/Offense Report is public record, but "portions of such reports may be kept confidential and not subject to public disclosure, especially any portion the disclosure of which would compromise criminal investigations, result in potential harm to innocent persons or infringe upon the constitutional rights of the accused"); *Washington County Publications v. Wheat*, No. CV-99-94 (Cir. Ct. of Washington County, Ala., May 1, 2000) (Complaint reports, including the front side of incident/offense reports are public, subject to the right of the sheriff to withhold or redact certain information on a case-by-case basis depending on the nature of the case, the status of the investigation, whether the victim would be subject to threats or intimidation, or when public disclosure would hinder the investigation); *Birmingham News Co. v. Jones*, CV-00-677 (Cir. Ct. of Shelby County, Ala., Oct. 27, 2000) (back side of Alabama Uniform Incident/Offense Report is work product of officer and therefore not subject to public inspection; front side is generally public record but sensitive information, such as Social Security numbers, may be redacted on case-by-case basis). *But see Stone v. Consolidated Publishing Company*, 404 So. 2d 678, 681 (1981) ("Recorded information received by a public officer in confidence, . . . pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure.")

Law enforcement "investigative reports and related investigatory material" generally are not public records. Ala. Code § 12-21-3.1(b) (Supp. 2005).

## 2. Alaska

Under the Alaska Public Records Act (Alaska Statutes § 40.25.100, et. seq.), "every person has a right to inspect a public record in the state, including public records in recorders' offices." Alaska Stat. § 40.25.120(a).

Access to "records or information compiled for law enforcement purposes" is limited when access to such records "(A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness; (D) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions; (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or (G) could reasonably be expected to endanger the life or physical safety of an individual." Alaska Stat. § 40.25.120(a)(6).

## 3. Arizona

Under Arizona's Public Records Law (Arizona Revised Statutes § 39-121, et. seq.), "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." A.R.S. § 39-121.

In *Cox Arizona Publications Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1998 (1993), the Arizona Supreme Court reversed the court of appeals' ruling that the public is not entitled to examine police reports in "an active ongoing criminal prosecution." The Arizona

Supreme Court held that such a "blanket rule . . . contravenes the strong policy favoring open disclosure and access." Thus, public officials bear the "burden of showing the probability that specific, material harm will result from disclosure" before it may withhold police records. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984).

Arizona law makes certain information exempt from disclosure, for example communications with confidential informants. A.R.S. § 12-2312 ("A record of a communication between a person submitting a report of criminal activity to a silent witness, crime stopper or operation game thief program . . . is not a public record."). Wiretapping activity cannot be revealed except to specific public officials involved in the investigation. A.R.S. § 13-3011.

#### 4. Arkansas

Under the Arkansas Freedom of Information Act (Arkansas Code Annotated §§ 25-19-101, et. seq.) "all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records." A.C.A. § 25-19-105(a)(1)(A).

Police blotters, incident reports, dispatch logs, and similar "routine" records are open to the public. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991); Ark. Op. Att'y Gen. No. 87-319.

"Undisclosed investigations by law enforcement agencies of suspected criminal activity" generally are not open to the public. A.C.A. § 25-19-105(b)(6). This exemption applies to records that are investigative in nature (*Hengel*, 307 Ark. 457, 821 S.W.2d 761), but only if the investigation remains ongoing (*Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989)). It may also apply to opinions and impressions of investigating officers. *Hengel*, 307 Ark. 457, 821 S.W.2d 761; Ark. Op. Att'y Gen. No. 99-110 (exemption applies to opinions and impressions of investigating officer).

#### 5. California

Under the California Public Records Act (Cal. Gov. Code §§ 6250-6268), "public records are open to inspection . . ." Cal. Gov. Code § 6253(a). Under section 6254, however, disclosure of certain law enforcement records is not required. "Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes." Cal. Gov. Code § 6254(f).

Notwithstanding this exemption, the CPRA does require disclosure of certain information "except to the extent that disclosure of a particular items 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." Cal. Gov. Code § 6254(f)(1)-(3). The information required to be made public includes, for example: the full name, occupation and

physical description of every arrestee and, the time, date and location and factual circumstances of the arrest. Cal. Gov. Code §§ 6254(f)(1), 6254(f)(2).

## 6. Colorado

Under Colorado law, records of "official actions . . . shall be open for inspection." C.R.S.A. § 24-72-303(1).

Records of official actions, including records of arrests, are public records under Colo. Rev. Stat. §§ 24-72-303 and 24-72-304.

Criminal justice investigatory records "may be open for inspection . . . at the discretion of the official custodian." C.R.S.A. §§ 24-72-304(1), 24-72-305(5) However, this discretion is limited, and investigatory records are subject to public inspection unless, in the opinion of the records custodian, their disclosure would be "contrary to the public interest." *See Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985). Generally, inspection of records of active investigations may be denied if disclosure would impair or impede the investigation. *Id.*

## 7. Connecticut

Under the Connecticut Freedom of Information Act, "all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to" inspect and copy such records." C.G.S.A. § 1-210(a).

Disclosure of law enforcement information is not required under certain circumstances. C.G.S.A. § 1-210(b)(3). "Nothing in the Freedom of Information Act shall be construed to require disclosure of [r]ecords of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216." *Id.*

It appears that routine reports of incidents and arrests are not exempt from disclosure. In *Town of Trumbull v. FOIC*, 5 Conn. L. Trib. No. 34 (1979), the Superior Court held that daily activity sheets, after the deletion of certain exempt information, were not exempt from disclosure under Connecticut law. In *Gifford v. FOIC*, 227 Conn. 641, 631 A.2d 252 (1993), the Connecticut Supreme Court ruled that reports prepared by police in connection with arrests were not required to be disclosed to the public during the pendency of the related criminal

prosecution, and that the law—as it then existed—required the police to disclose only limited data: the name and address of the person arrested, the date, time and place of the arrest, and the offense for which the person was arrested. However, in 1994, Connecticut law was amended to provide that in addition to the aforesaid required disclosures, the police must also disclose one of the following: "arrest report, incident report, news release or other similar report of the arrest of a person."

#### **8. District of Colombia**

Under the District of Colombia Freedom of Information Act, certain law enforcement "records . . . shall be open to public inspection." D.C. ST. § 5-113.06(a). This includes: general complaint files; records of lost, missing or stolen property; and arrest records containing, *inter alia*, date of arrest, personal information of the arrestee, and the crime he was charged with. D.C. ST. § 5-113.01(1), (2) and (4).

#### **9. Delaware**

Under Delaware's Freedom of Information Act, "all public records shall be open to inspection and copying by any citizen of the State . . . ." 29 Del. Code § 10003(a).

Under Delaware Code section 10002(g), the following law enforcement records are not open: "[i]nvestigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;" and "[c]riminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy." 29 Del. Code § 10002(g)(3) and (4).

According to the Reporter's Committee for Freedom of the press, routine "police blotter" information is not exempt from disclosure.

#### **10. Florida**

Under Florida's Public Records Law (Fla. Stat. § 119.01, et. seq.), with certain exceptions, "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so . . . ." Fla. Stat. § 119.07(a)(1) (Bender 2008).

The Public Records Law's "agency investigation" exception exempts from disclosure records containing "[a]ctive criminal intelligence information and *active* criminal investigative information," "[a]ny information revealing the substance of a confession of a person arrested . . . until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition" and "[a]ny information revealing the identity of a confidential informant or a confidential source . . . ." Fla. Stat. § 119.071(2)(c), (e) and (f) (emphasis provided). This exemption is similar to that found in the CPRA, section 6254(f), however, the Florida statute only exempts law enforcement records for *active* cases. Fla. Stat. § 119.071(2). "Active" means that, "an arrest or prosecution *may* result" in the "foreseeable future." *Barfield v. Ft. Lauderdale Police Dept.*, 639 So. 2d 1012, 1017 (Fla. App. 1994).

"Criminal intelligence information' means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Fla. Stat. § 119.011(3)(a). "Criminal investigative information' means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Fla. Stat. § 119.011(3)(b).

Notwithstanding these agency investigation exemptions, Florida's Public Records Act requires disclosure of certain law enforcement information. Fla. Stat. § 119.011(3)(c). "Criminal intelligence information' and 'criminal investigative information' shall not include: (1) the time, date, location, and nature of a reported crime; (2) the name, sex, age, and address of a person arrested or of the victim of a crime except [for crimes of sexual battery]; (3) the time, date, and location of the incident and of the arrest; and (4) the crime charged." Fla. Stat. § 119.011(c).

Furthermore, according to the Florida First Amendment Foundation, the Attorney General's Office and Florida case law, the difference between Florida and California law as it relates to disclosure of law enforcement information is that in Florida, public law enforcement information is released in the form of an Incident Report. A 1996 Advisory Legal Opinion from the Florida Attorney General's Office confirms this, specifically noting the public nature of "incident reports."

This office has consistently stated that crime and incident reports containing information given during the initial reporting of a crime are generally considered to be open to public inspection. Such reports relate to a specific crime and are prepared after an alleged crime has been committed, but prior to the arrest of a suspect. Crime and incident reports are not ordinarily considered criminal intelligence information since they do not contain information collected in anticipation of criminal activity, nor are they criminal investigative information because the report initiates but is not part of the investigative process. However, if a crime or incident report contains information compiled during the investigation of the crime, such information may well qualify as "criminal investigative information," as defined in section 119.011(3)(b), Florida Statutes, that would not be subject to disclosure.

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not shield the entire report from disclosure. Section 119.07(2), Florida Statutes, requires the custodian of the document to delete only that portion of a record for which an exemption applies and to provide the remainder of the record for examination.

AGO 96-27 (April 26, 1996). Florida cases also mention that "incident reports" are properly disclosed under Florida law. *See, e.g., Miami v. Post-Newsweek Stations Florida, Inc.*, 837 So. 2d 1002, 1004-1005 (Fla. App. 2002) (mentioning that a one-page incident report was released); *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128, 1132 (Fla. App. 1985)

(pointing out that the disclosure of time, date, location, and nature of the crime is generally included in a report or document).

## 11. Georgia

Under Georgia's Open Records Act, with certain exemptions, "[a]ll public records . . . shall be open for a personal inspection by any citizen of this state at a reasonable time and place." Ga. Code Ann. § 50-18-70.

The Act specifically provides that "initial police arrest reports and initial incident reports" are public records and must be disclosed. O.C.G.A. § 50-18-72(a)(4).

Disclosure is not required for investigatory records "compiled for law enforcement or prosecution purposes" to the extent that "production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation." Also exempt are "[r]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated." Ga. Code Ann., § 50-18-72(3) and (4).

## 12. Hawaii

Under Hawaii's Uniform Information Practices Act ("UIPA"), "all government records are open to public inspection unless access is restricted or closed by law." H.R.S. § 92F-11(a).

Police blotters, chronological records of police arrests, are public records when they concern adults. Public Access to Police Blotter Information, OIP Op. Ltr. No. 91-4 (Mar. 25, 1991) (holding also that under a prevailing public policy against secret arrests constitutional and statutory protections against disclosure of criminal history records do not apply to a record of the agency's own activity). The OIP Opinion also notes, however, that the law exempts public disclosure of police blotter data concerning juvenile offenders. *Id.*

The UIPA does not require disclosure of "[g]overnment records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;" or "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." H.R.S. § 92F-13.

Reports pertaining to pending investigations are confidential if their disclosure would likely interfere with agency law enforcement activities, frustrate a legitimate government function, or reveal deliberative processes. An examination of all factors is necessary to determine whether such reports must be disclosed. *See, e.g.,* RFO 98-004 - Honolulu Police Department; Request for Opinion on *The Honolulu Advertiser; Request for Internal Affairs Reports*, OIP Op. Ltr. No. 98-5 (Dec. 20, 1998) (opining that redacting portions of the report is appropriate to

protect privacy interests and to prevent frustrating the agency's ability to conduct full and accurate investigations); Investigative Reports Concerning Molokai Ranch Ltd. and Perreira Ranch, OIP Op. Ltr. No. 91-6 (May 2, 1991) (holding Department of Agriculture investigative reports concerning corporate agricultural operations disclosable because the reports did not reveal confidential sources, deprive individual of a right to an impartial adjudication, or reveal enforcement techniques or procedures).

Investigatory records regarding closed criminal investigations should be made available after redaction of information identifying the victim, witnesses and defendant's Social Security number, home address, and home telephone number. Release of Police Records, OIP Ltr. Op. No. 99-2 (Apr. 5, 1999); *see also* HPD Police Report No. X-248000 Concerning the Unattended Death of Bradley D. Kosbau on July 11, 1987, OIP Op. Ltr. No. 95-21 (Aug. 28, 1995) (police report and supplemental reports must be made available for public inspection once criminal law enforcement proceeding is no longer a reasonable possibility and after redaction of information identifying individuals who furnished information or were of investigatory interest).

### **13. Idaho**

Police records are subject to disclosure pursuant to Idaho code § 9-335.

"[I]nvestigatory records compiled for law enforcement purposes by a law enforcement agency" need not be disclosed if such disclosure would: "(a) Interfere with enforcement proceedings; (b) Deprive a person of a right to a fair trial or an impartial adjudication; (c) Constitute an unwarranted invasion of personal privacy; (d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source; (e) Disclose investigative techniques and procedures; or (f) Endanger the life or physical safety of law enforcement personnel." I.C. § 9-335.

### **14. Illinois**

Under Illinois' Freedom of Information Act, "[e]ach public body shall make available to any person for inspection or copying all public records." 5 ILCS 140/3.

Arrest logs and other "police blotter" records are publically available. 5 ILCS 140/7(1)(d). Arrest information is also required to be provided to the news media under the arrest reports provision of the State Records Act, 5 ILCS 160/4a; the article of the Civil Administrative Code of Illinois concerning the Department of State Police, 20 ILCS 2605/2605-302; the Local Records Act, 50 ILCS 205/3b; and the Campus Security Act, 110 ILCS 12/15. Those statutes require that, when an individual is arrested, the following information must be made available to the news media for inspection and copying:

- a. Information that identifies the person, including the name, age, address and photograph, when and if available.
- b. Information detailing any charges relating to the arrest.
- c. The time and location of the arrest.
- d. The name of the investigating or arresting law enforcement agency.

- e. If incarcerated, the amount of any bail or bond.
- f. If incarcerated, the time and date that the individual was received, discharged or transferred from the arresting agency's custody.

The time and location of the arrest, the name of the investigating or arresting law enforcement agency, and, if incarcerated, the amount of any bail or bond and the time and date that the individual was received, discharged, or transferred from the arresting agency's custody may be withheld if it is determined that disclosure would: (1) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency, or (2) endanger the life or physical safety of law enforcement or correctional personnel or any other person, or (3) compromise the security of any correctional facility.

Other law enforcement records are exempt from disclosure to the extent disclosure would: "(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency; (ii) interfere with pending administrative enforcement proceedings conducted by any public body; (iii) deprive a person of a fair trial or an impartial hearing; (iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source; (v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct; (vi) constitute an invasion of personal privacy under subsection (b) of this Section; (vii) endanger the life or physical safety of law enforcement personnel or any other person; or (viii) obstruct an ongoing criminal investigation." 5 ILCS 140/7.

## 15. Indiana

Under Indiana's Open Records law, "[i]f a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying: (1) Information that identifies the person including the person's name, age, and address; (2) Information concerning any charges on which the arrest or summons is based; (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the (A) time and location of the arrest or the issuance of the summons, (B) investigating or arresting officer (other than an undercover officer or agent) and (C) investigating or arresting law enforcement agency." Ind. Code § 5-14-3-5(a).

"If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying: (1) Information that identifies the person including the person's name, age, and address; (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held; (3) The time and date that the person was received and the time and date of the person's discharge or transfer and (4) The amount of the person's bail or bond, if it has been fixed." Ind. Code § 5-14-3-5(b).

In addition, law enforcement agencies "shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made

available for inspection and copying: (1) The time, substance, and location of all complaints or requests for assistance received by the agency; (2) The time and nature of the agency's response to all complaints or requests for assistance; (3) If the incident involves an alleged crime or infraction (A) the time, date, and location of occurrence, (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4, (C) the factual circumstances surrounding the incident and (D) a general description of any injuries, property, or weapons involved." Ind. Code § 5-14-3-5(c).

## 16. Iowa

Under Iowa's Open Records law, "[e]very person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." I.C.A. § 22.2.

"Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation . . ." are exempt from disclosure. I.C.A. § 22.7. "However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual." I.C.A. § 22.7.

"Daily logs" of incidents and arrests, prepared at the direction of law enforcement agency heads, are not protected under this section. 76 Op. Att'y Gen. 559, 561 (April 26, 1976). In addition, *Hawk Eye v. Jackson*, 521 N.W.2d 750 (Iowa 1994), held that the privilege protecting peace officers' investigative reports and communications made to public officers in official confidence is *qualified*, and the official claiming the privilege must show that the communication was made in official confidence, and that the public interest would suffer by disclosure.

## 17. Kansas

Under Kansas' Open Records Act (K.S.A. 45-201, et. seq.), "public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy." K.S. ST. § 45-216.

Police blotter entries are public records. K.S.A. 45-217(b) ("Criminal investigation records" means records of an investigatory agency or criminal justice agency . . . compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities . . .") In addition, the incident-based reporting system code sheet used by law enforcement agencies is a public record that must be disclosed upon request. Op. Atty. Gen. 93-9 (1993).

Public agencies are not required to disclose other criminal investigation records unless disclosure is "in the public interest," "would not interfere with any prospective law enforcement action, criminal investigation or prosecution," "would not reveal the identity of any confidential source or undercover agent," "would not reveal confidential investigative techniques

or procedures not known to the general public," "would not endanger the life or physical safety of any person," and "would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense." K.S. ST. § 45-221.

#### 18. Kentucky

Under Kentucky's Open Records Act (K.R.S. § § 61.870-61.884), "free and open examination of public records is in the public interest" and exceptions to public disclosure shall be strictly construed." K.R.S. § 61.871.

"Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations" are presumptively open, and are exempt from disclosure only "if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication." K.R.S. § 61.878(h). After the action is completed or proper entity decides not to take action, the information is not exempted unless it would disclose confidential informants. KRS 61.878(1)(h); *Palmer v. Driggers*, 60 S.W.3d 591 (Ky. App., 2001).

#### 19. Louisiana

Under Louisiana's Public Records Law, "[p]roviding access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees." LSA-R.S. § 44:31. Section 44:3 exempts from disclosure certain law enforcement records. LSA-R.S. § 44:3.

"Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled" and "records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction" are exempt from disclosure. LSA-R.S. § 44:3(1) and (4)(a).

"However, the initial report of the officer or officers investigating a complaint . . . shall be a public record." LSA-R.S. § 44:3(4)(a). The initial report includes: "(i) A narrative description of the alleged offense, including appropriate details thereof as determined by the law enforcement agency; (ii) The name and identification of each person charged with or arrested for the alleged offense; (iii) The time and date of the alleged offense; (iv) The location of the alleged offense; (v) The property involved; (vi) The vehicles involved; and (vii) The names of investigating officers." LSA-R.S. § 44:3(4)(b).

In addition, every law enforcement officer making an arrest must promptly book the individual arrested by entering certain specified information into a book kept for that purpose. La. Code Crim. P. Art. 228. The book and booking information summaries are always open for public inspection. *Id.*; La. Rev. Stat. Ann. § 44:3(A)(4); Op. Att'y Gen. 78-1159.

## 20. Maine

Maine's Freedom of Access Act (Maine Revised Statutes Annotated § 401 et. seq.), provides that public records are "open to public inspection." 1 M.R.S.A. §§ 401, 408.

Records including basic information about incidents leading to arrests must be made public. Maine law requires creation of a record that includes the following information: "A. Identity of the arrested person, including name, age, residence and occupation, if any; B. Offenses charged, including the time, place and nature of the offense; C. Time and place of arrest; and D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any." 16 M.R.S.A. § 612. It also provides that this record "shall be a public record, except for records of the detention of juveniles . . . ." 16 M.R.S.A. § 612

Pursuant to 16 M.R.S.A. § 614(1), other law enforcement records that contain intelligence and investigative information are exempt from disclosure if there is a reasonable possibility that public release or inspection of the reports or records would:

- A. Interfere with law enforcement proceedings;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Constitute an unwarranted invasion of personal privacy;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;
- F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;
- G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;
- H. Endanger the life or physical safety of any individual, including law enforcement personnel;
- I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;
- J. Disclose information designated confidential by some other statute; or
- K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

## 21. Maryland

Maryland's Public Information Act (Maryland State Government Code § 10-611, et. seq.), provides that public records are open to public inspection. MD State Gov't Code § 10-613.

Police blotters, providing basic information about incidents and arrests, are not exempt from disclosure, because they are not records of investigations or investigatory files. *See* §§ 10-616(h), 10-618(f); *see, e.g.*, 63 Op. Att'y Gen. 543 (1978) (finding under the then-new version of the statute that because arrest records were not mentioned in either section, they were open for inspection).

Records of active investigations may be closed under specified circumstances. Maryland Code, Title 10, § 10-618(f). *See also Superintendent, Maryland State Police v. Henschen*, 279 Md. 468, 475, 369 A.2d 558 (1977). Specifically, public officials may deny access to: "(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff; (ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or (iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff." However, they may deny access only to the extent that inspection would: "(i) interfere with a valid and proper law enforcement proceeding; (ii) deprive another person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of a confidential source; (v) disclose an investigative technique or procedure; (vi) prejudice an investigation; or (vii) endanger the life or physical safety of an individual." Moreover, once an investigation is closed, investigatory files are subject to disclosure. *See Fioretti*, 351 Md. at 83, 716 A.2d at 267; *Bowen v. Davison*, 135 Md. App. 252, 761 A.2d 1013, 1015 (2000).

## 22. Massachusetts

Under the Massachusetts Public Records Law, "[e]very person having custody of any public record . . . shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee." M.G.L.A. c. 66, § 10.

Police logs listing, in chronological order, responses to valid complaints, crimes reported, names and addresses of persons arrested and charges against such persons, are public records. M.G.L.A. c. 41 § 98F.

Other law enforcement investigatory records pertaining to active investigation are generally exempt from disclosure. M.G.L.A. c. 4, § 7, cl. 26(f). However, such records are required to be made public if disclosure would not "probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." M.G.L.A. c. 4, § 7, cl. 26(f). Whether the exemption applies is determined on a case-by-case basis, and the custodian bears the burden of proving that the exemption applies. *Rafuse v. Stryker*, 61 Mass. App. Ct. 595, 597-98, 813 N.E.2d 558, 560-61 (2004). Completion of an investigation is not conclusive as to continuing confidentiality. *District Attorney for Norfolk District v. Flatley*, 419 Mass. 507, 646 N.E. 2d 127 (1995); *Globe Newspaper Co. v. Police Comm'r of Boston*, 419 Mass. 852, 648 N.E. 2d 419 (1995). The passage of time may be considered in determining the availability of documents. *Rafuse v. Stryker*, 61 Mass. App. Ct. 595, 813 N.E.2d 558.

### 23. Michigan

Michigan's Freedom of Information Act provides that public records are open for public inspection. M.C.L.A. 15.233.

Police incident reports are generally public unless the public body can justify the application of an exemption. *See Evening News Ass'n v. City of Troy*, 417 Mich. 481, 339 N.W.2d 421 (1983).

Other law enforcement records are exempt from disclosure, but "only to the extent that disclosure as a public record would do any of the following: (i) Interfere with law enforcement proceedings; (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication; (iii) Constitute an unwarranted invasion of personal privacy; (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source; (v) Disclose law enforcement investigative techniques or procedures; or (vi) Endanger the life or physical safety of law enforcement personnel." M.C.L.A. 15.243.

### 24. Minnesota

Under the Minnesota Data Practices Act (Minn. Statutes § 13.01, et. seq.), "[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." M.S.A. § 13.03.

Under the Minnesota Act, specified information must be provided regarding arrests and responses to incidents or requests for assistance. Regarding arrests, the following information must be provided: "(a) time, date and place of the action; (b) any resistance encountered by the agency; (c) any pursuit engaged in by the agency; (d) whether any weapons were used by the agency or other individual; (e) the charge, arrest or search warrants, or other legal basis for the action; (f) the identities of the agencies, units within the agencies and individual persons taking the action; (g) whether and where the individual is being held in custody or is being incarcerated by the agency; (h) the date, time and legal basis for any transfer of custody and the identity of the agency or person who received custody; (i) the date, time and legal basis for any release from custody or incarceration; (j) the name, age, sex and last known address of an adult person or the age and sex of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived of liberty; (k) whether the agency employed wiretaps or other eavesdropping techniques, unless the release of this specific data would jeopardize an ongoing investigation; (l) the manner in which the agencies received the information that led to the arrest and the names of individuals who supplied the information unless the identities of those individuals qualify for protection . . . ; and (m) response or incident report number." M.S.A. § 13.82, subd. 2.

The following categories of information must be provided with respect to responses to incidents and requests for assistance: (a) date, time and place of the action; (b)

agencies, units of agencies and individual agency personnel participating in the action unless the identities of agency personnel qualify for protection . . . ; (c) any resistance encountered by the agency; (d) any pursuit engaged in by the agency; (e) whether any weapons were used by the agency or other individuals; (f) a brief factual reconstruction of events associated with the action; (g) names and addresses of witnesses to the agency action or the incident unless the identity of any witness qualifies for protection . . . ; (h) names and addresses of any victims or casualties unless the identities of those individuals qualify for protection . . . ; (i) the name and location of the health care facility to which victims or casualties were taken; (j) response or incident report number; (k) dates of birth of the parties involved in a traffic accident; (l) whether the parties involved were wearing seat belts; and (m) the alcohol concentration of each driver." M.S.A. § 13.82, subd. 6.

Investigative records prepared by a law enforcement agency "in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility" are exempt from disclosure while the investigation is active. "Inactive investigative data is public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under [the statute]." M.S.A. § 13.82, subd. 7.

## **25. Mississippi**

Under the Mississippi Public Records Act of 1983, law enforcement records may be withheld if disclosure would harm one or more of certain specified interests. Miss. Code Ann. § 45-29-1. "Records . . . that (i) are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm such investigation; (ii) would reveal the identity of informants; (iii) would prematurely release information that would impede the public body's enforcement, investigative or detection efforts in such proceedings; (iv) would disclose investigatory techniques; (v) would deprive a person of a right to a fair trial or an impartial adjudication; (vi) would endanger the life or safety of a public official or law enforcement personnel; or (vii) are matters pertaining to quality control or PEER review activities, shall be exempt from the provisions of the Mississippi Public Records Act of 1983." Miss. Code Ann. § 45-29-1.

## **26. Missouri**

Under Missouri's Public Records Law, "all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen." V.A.M.S. 109.180.

Local law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints are required to make certain information available to the public, including the time, substance and location of all complaints or requests for assistance, the time and nature of the agency's response, information relating to the underlying occurrence, the name and age of certain victims, and a general description of the injuries, property or weapons involved. Mo. Rev. Stat. § 610.200.

The Montana "Arrest Record Law" (Mo.Rev.Stat. §§ 610.100 et seq.) governs arrest, incident and investigation reports of law enforcement agencies.

"Arrest reports" are records of an arrest and of any detention or confinement incident to an arrest. Mo.Rev.Stat. § 610.100.1(2). "Incident reports" consist of facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by the law enforcement agency. Mo.Rev.Stat. § 610.100.1(4). "Investigative reports" are reports other than arrest reports or incident reports that are prepared by a law enforcement agency inquiring into a crime or suspected crime, either in response to an incident report or to evidence developed by law enforcement officers in the course of their duties. Mo.Rev.Stat. § 610.100.1(5)

All arrest reports and incident reports are public records. Mo.Rev.Stat. § 610.100.2. However, if a person who is arrested is not charged with an offense within thirty days, official records of the arrest and of any confinement incidental to that arrest become closed records. *Id.* If a person is arrested and charged, but the charge is later dismissed, or the person is acquitted or receives a suspended sentence, records of the arrest and the criminal proceedings are closed. Mo. Rev. Stat. § 610.105.

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person." Mo. Rev. Stat. § 610.100.3. Law enforcement agencies may also withhold otherwise public records if disclosure would "jeopardize a criminal investigation," or would disclose the identity of a source wishing to remain confidential or of a suspect not in custody. *Id.*

Other investigatory records are closed until the investigation becomes "inactive." Mo. Rev. Stat. § 610.100.2. An investigation is "inactive" is upon a decision by a law enforcement agency not to pursue a case, the expiration of the applicable statute of limitations, or the finality of convictions and exhaustion of all appeals. Mo. Rev. Stat. § 610.100.1(3).

## 27. Montana

Under Montana's Open Records Law (Montana Code § 2-6-101, et. seq.), "[e]very citizen has a right to inspect and take a copy of any public writings of this state" with certain exceptions. MT ST 2-6-102.

"Police records including accident reports, police blotters, 911 tapes, and initial arrest records are all public criminal justice information." *See Barr v. Great Falls Intern. Airport Authority*, 326 Mont. 93, 107 P.3d 471 (2005) (holding arrest record from Alaska contained in national computer database was public criminal justice information).

Other investigative records, active and closed, including criminal histories, confessions, confidential informants, and police techniques, are all confidential criminal justice information subject to a balancing test. *See* Mont. Code Ann. §§ 44-5-101 to 515; *Engrav v. Cragun*, 769 P.2d 1224 (1989); 42 A.G. Op. 119 (1988).

## 28. Nebraska

Under the Nebraska Public Records Statutes, "original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies" are records open to the public. Neb. Rev. Stat. § 29-3521(2). Arrest records are available for public inspection as a part of criminal history information, notwithstanding the language of the exception for investigatory records. See Neb. Rev. Stat. §§ 29-3506; 29-3520.

Certain other law enforcement records are exempt from disclosure: "[r]ecords developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person." Neb. Rev. Stat. § 84-712.05.

## 29. Nevada

Under the Nevada Open Records Act (NV Revised Statutes § 239, et. seq.), "all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records." Nev. Rev. Stat. Ann. § 239.010.

Law enforcement records generally are subject to disclosure, pursuant to a balancing test. "Courts should use a balancing test, by weighing the absence of any privacy or law enforcement policy justifications for nondisclosure against the general policy in favor of open government, to determine when police investigative reports should be released to the public." *Donrey of Nev., Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).

## 30. New Hampshire

Under the New Hampshire Right to Know Law (Title VI, Ch. 91A), "[e]very citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda, abstracts, and photographic or photostatic copies of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5." N.H. Rev. Stat. Ann. § 91-A:4. There is no express exemption for law enforcement records.

According to the Reporter's Committee for Freedom of the Press, the Right to Know Law does not explicitly cover police blotters, but the general practice is that these records are public. Other investigatory records are governed by the test imposed under the federal Freedom of Information Act, 5 U.S.C. Sec. 552(b)(7). *Lodge v. Knowlton*, 118 N.H. 574 (1978).

### 31. New Jersey

Under New Jersey's Open Public Records Act, "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access . . . shall be construed in favor of the public's right of access. N.J. Stat. § 47:1A-1.

Records pertaining to active law enforcement records are exempt from disclosure. N.J. Stat. § 47:1A-3. "[W]here a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any" shall be made public. N.J. Stat. § 47:1A-3. "[I]f an arrest has been made, information as to the name, address and age of any victims," with a few exceptions, shall be released. N.J. Stat. § 47:1A-3.

In the case of a closed investigation, while the records are not statutory public records, police reports and internal police records are considered common law public records which may be subject to disclosure following an *in camera* review and balancing of interests by the court. See *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 610 A.2d 985 (App. Div. 1992); *Asbury Park Press Inc. v. Borough of Seaside Heights*, 246 N.J. Super. 62, 586 A.2d 870 (Law Div. 1990).

### 32. New Mexico

In New Mexico, the following law enforcement records are open to the public: "original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if the records are organized on a chronological basis." N.M. Stat. Ann. § 29-10-7(2).

### 33. New York

Under New York's Freedom of Information Law, "[e]ach agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that . . . are compiled for law enforcement purposes and which, if disclosed, would: interfere with law enforcement investigations or judicial proceedings; deprive a person of a right to a fair trial or impartial adjudication; identify a confidential source or disclose confidential information relating to a criminal investigation; or, iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures." NY C.L.S. Pub. O. § 87.

### 34. North Carolina

In North Carolina, "[r]ecords of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records" subject to public disclosure. N.C. Gen. Stat. § 132-1.4(a). "Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction." N.C. Gen. Stat. § 132-1.4(a).

Certain information is subject to public disclosure. N.C. Gen. Stat. § 132-1.4(c). For example, "[t]he time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency;" "[t]he name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted;" "[t]he circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest;" "[t]he contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness;" "[t]he contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways;" and "[t]he name, sex, age, and address of a complaining witness." N.C. Gen. Stat. § 132-1.4.

### **35. North Dakota**

Under North Dakota's Open Records Law, with certain exceptions, "all records of a public entity are public records, open and accessible for inspection during reasonable office hours." N.D.C.C., § 44-04-18.

"Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18." N.D.C.C. § 44-04-18. However, "'[c]riminal intelligence and investigative information' does not include: arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee; facts concerning the arrest, including the cause of arrest and the name of the arresting officer; conviction information, including the name of any person convicted of a criminal offense; disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person; a chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; a crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number; radio log, including a chronological listing of the calls dispatched; general registers, including jail booking information; or arrestee photograph, if release will not adversely affect a criminal investigation." N.D.C.C. § 44-04-18.

Thus, under North Dakota's Open Records Law, records that consist of "a chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred" are not exempt from disclosure.

When an investigation is inactive with no expectation that it will recommence, there is no ongoing investigation and information regarding the investigation is open to the public, unless it relates to another ongoing investigation. N.D.C.C. § 44-04-18.7

### **36. Ohio**

Routine incident reports are not exempt from disclosure in Ohio. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994). Arrest records are also open.

*State ex rel. Outlet Communications Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988).

Other "confidential law enforcement investigatory records" are exempt if public disclosure would result in harm to a specific interest. See O.R.C. Ann. § 149.43. "'Confidential law enforcement investigatory record' means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following: (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised; (b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity; (c) Specific confidential investigatory techniques or procedures or specific investigatory work product; (d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source." O.R.C. Ann. § 149.43(2).

### **37. Oklahoma**

Under the Oklahoma Open Records Act (Oklahoma Statutes Annotated Section 24A.1, et. seq.), "[a]ll records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours." 51 Okl. St. § 24A.5.

This includes certain law enforcement records, for example, records of "[a]n arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee; facts concerning the arrest, including the cause of arrest and the name of the arresting officer; a chronological list of incidents pertaining to the arrest, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; and radio logs, including a chronological listing of the calls dispatched." 51 Okl. St. § 24A.8(A).

Law enforcement agencies must also make available "[c]onviction information, including the name of any person convicted of a criminal offense; disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person; a crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number; and jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner." 51 Okl. St. § 24A.8(B).

Other law enforcement records are subject to a balancing test: "Except for the records listed in subsections A and B of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial." 51 Okl. St. § 24A.8(C).

### 38. Oregon

Under the Oregon Public Records Law (Oregon Revised Statutes §§ 192.410-192.505), "[e]very person has a right to inspect any public record of a public body in this state" with certain exceptions. O.R.S. § 192.420.

"Investigatory information compiled for criminal law purposes" is generally exempt from disclosure. However, "[t]he record of an arrest or the report of a crime shall be disclosed unless . . . there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim." O.R.S. § 192.501.

### 39. Pennsylvania

Pennsylvania's Right-to-Know Law (65 P.S. § 67.101, et. seq.), provides that, with certain exceptions, public records are open for inspection. See 65 P.S. § 67.101, et. seq.

Police blotters specifically have been held to be "public" records, but the request must be directed to the proper custodian. See *Commonwealth v. Mines*, 680 A.2d 1227 (Pa. Cmwlth. 1996); *Lebanon News Publ'g Co. v. City of Lebanon*, 451 A.2d 266 (Pa. Cmwlth. 1982). Police incident reports are also public records under the Act. *Tapco Inc. v. Township of Neville*, 695 A.2d 460, 465 (Pa. Cmwlth. 1997); see also *Brady v. Bond*, No. GD. 82-05839 (Allegheny Cty. C.P., March 30, 1982) (where the Allegheny County Court of Common Pleas held that police crime, death and accident reports are public records that must be made available); *Scheetz v. Morning Call Inc.*, 747 F. Supp. 1515 (E.D. Pa. 1990), *aff'd*, 946 F.2d 202 (3d Cir. 1991), *cert denied*, 502 U.S. 1095 (1992) (where, in dicta, the federal court stated that incident reports should be treated the same as police blotters).

In addition, criminal justice agencies must maintain a repository of specific information about individuals charged with crimes, including arrests, charges and dispositions. 18 P.S. §§ 9101-83. This information must be disclosed on request, for a fee, to individuals, after certain specified "outdated" information (such as arrests when there has been no disposition after 18 months) has been expunged. 18 P.S. § 9122.

Other records "maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority" are exempt from disclosure. 65 P.S. § 67.708. Generally speaking, police investigatory records are not subject to disclosure. *Tapco Inc. v. Township of Neville*, 695 A.2d 460, 464; see also *Commonwealth v. Mines*, 680 A.2d 1227 (Pa. Cmwlth. 1996).

### 40. Rhode Island

Under Rhode Island's Access to Public Records Act (R.I. Gen. Laws. § 38-2-1 et. seq.), with certain exceptions, "all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at

such reasonable time as may be determined by the custodian thereof." R.I. Gen. Laws § 38-2-3. Certain law enforcement records, however, are not deemed public. R.I. Gen. Laws § 38-2-2(D).

Records reflecting the initial arrest and any complaint against an adult filed in court by a law enforcement agency are public. *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Other records "maintained by law enforcement agencies for criminal law enforcement" and "all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency" are generally exempt, but only to the extent "the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual." R.I. Gen. Laws § 38-2-2(D).

#### 41. South Carolina

South Carolina's Freedom of Information Act (S.C. Code Ann. § 30-4-10, et. seq.), provides that "[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30.

Police reports that disclose the nature, substance and location of any crime or alleged crime reported as having been committed are public. S.C. Code Ann. § 30-4-50(A)(8). A citizen may have access to such records for the 14-day period preceding the current day by appearing in person and requesting access. S.C. Code Ann. § 30-4-30(d)(2).

As to other law enforcement records, "[a] public body may but is not required to exempt from disclosure . . . [r]ecords of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by: (A) disclosing identity of informants not otherwise known; (B) the premature release of information to be used in a prospective law enforcement action; (C) disclosing investigatory techniques not otherwise known outside the government; (D) by endangering the life, health, or property of any person; or (E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial." S.C. Code Ann. § 30-4-40(a).

Thus, active investigative records may be sheltered from disclosure if the public disclosure of the record would interfere with one of these interests. *Turner v. North Charleston Police Dept.*, 351 S.E.2d 583 (S.C. App. 1984). However, investigative files, including closed files, are not automatically exempt in their entirety from disclosure; each report must be

examined to determine if portions are subject to the mandatory disclosure requirements of the Act. *Newberry Observer v. Newberry County Comm'n. on Alcohol and Drug Abuse*, 417 S.E.2d 870, 20 Media L. Rep. 1420 (S.C. 1992).

#### 42. South Dakota

Under the South Dakota Open Records Act, "[i]f the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours." S.D. Codified Laws § 1-27-1.

Furthermore, "[e]very municipal officer shall keep a record of the official acts and proceedings of his office, and such record shall be open to public inspection during business hours under reasonable restrictions." S.D.C.L. § 9-18-2. According to the Reporter's Committee for Freedom of the Press, police blotters are generally open, pursuant to this statute.

As to other law enforcement records, South Dakota law provides that "the provisions of § 1-27-1 do not apply to confidential criminal justice information." S.D.C.L. § 23-5-11. This includes "information associated with an individual, group, organization, or event compiled by a law enforcement agency in the course of conducting an investigation of a crime or crimes. This includes information about a crime or crimes derived from reports of officers, deputies, agents, informants, or investigators or from any type of surveillance." S.D.C.L. § 23-5-10. However, "[i]nformation about calls for service revealing the date, time, and general location and general subject matter of the call is not confidential criminal justice information and may be released to the public, at the discretion of the executive of the law enforcement agency involved, unless the information contains intelligence or identity information that would jeopardize an ongoing investigation."

#### 43. Tennessee

The Tennessee Open Records Act (Tenn. Code Ann. § 10-7-501, et. seq.) provides, with certain exceptions, that "all state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee." Tenn. Code Ann. § 10-7-503.

Certain law enforcement records are deemed confidential and are thus exempt from disclosure. Tenn. Code Ann. § 10-7-504. Under this section, "[a]ll investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public." Tenn. Code Ann. § 10-7-504(2)(A).

#### 44. Texas

Under the Texas Public Information Act (Tex. Gov't Code § 552, et. seq.), "[p]ublic information is available to the public at a minimum during the normal business hours of the governmental body." Tex. Gov't Code § 552.021.

Under this section, "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or (4) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state." Tex. Gov't Code § 552.108(a).

In addition, "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state." Tex. Gov't Code § 552.108(b).

"This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime." Tex. Gov't Code § 552.108(c).

A series of decisions involving the City of Houston has provided guidance as to what "basic" police records are public or exempt. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App. 1975). The police "blotter," "showup sheet," and arrest sheet are not exempt from disclosure while the offense report, arrest record, and personal history are exempt. *Id.* The Texas Attorney General has discussed this case in detail and concluded that public release is required of the following:

- a. Police blotter. (1) arrestee's Social Security number, name, alias, race, sex, age, occupation, address, police department identification number, and physical condition; (2) name of arresting officer; (3) date and time of arrest; (4) booking information; (5) charge; (6) court in which charge is filed; (7) details of arrest; (8) notification of any release or transfer; (9) bonding information;
- b. Show-up sheet (chronological listing of people arrested during 24-hour period). (1) arrestee's name, age, police department identification number; (2)

place of arrest; (3) names of arresting officers; (4) numbers for statistical purposes relating to modus operandi of those apprehended;

- c. Arrest sheet (similar chronological listing of arrests made during 24-hour period). (1) arrestee's name, race and age; (2) place of arrest; (3) names of the arresting officers; (4) offense for which suspect is arrested;
- d. Offense report-front page. (1) offense committed; (2) location of crime; (3) identification and description of complainant; (4) premises involved; (5) time of occurrence; (6) property involved; (7) vehicle involved; (8) description of weather; (9) detailed description of offense; (10) names of investigating officers.

Tex. Att'y Gen. ORD-127 (1976).

#### 45. Utah

Under the Utah Government Records Access and Management Act (Utah Code Annotated § 63-2-101, et. seq.), "[e]very person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours." Utah Code Ann. § 63G-2-201. Access to public records may be denied if "there is no interest in restricting access to the record" or if "the interests favoring access outweighs the interest favoring restriction of access." Utah Code Ann. § 63G-2-201(5)(b).

The chronological logs and initial contact reports of law enforcement agencies are generally public records. Utah Code Ann. § 63-2-301(2)(g). In *Weibel v. Logan City*, No. 94-06 (Utah State Rec. Comm. May 9, 1994), the State Records Committee held that the portion of police reports pertaining to persons against whom the city contemplated no further action were public, but the portion pertaining to persons against whom criminal action was contemplated or pending were protected. A Utah District Court held that Sheriff's reports containing information on sexual abuse of minor children were public records. *Fox Television Stations v. Clary*, No. 940700284 (Utah 2d Dist. Dec. 5, 1995).

Access to other investigatory records may be restricted if release of such records: (1) reasonably could be expected to interfere with the investigation; (2) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; (3) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (4) reasonably could be expected to disclose the identity of a confidential source; or (5) reasonably could be expected to disclose confidential investigative or audit techniques. Utah Code Ann. § 63-2-304(9) (1997).

#### 46. Vermont

Vermont's Open Records Law provides that "[a]ny person may inspect or copy any public record or document of a public agency." 1 V.S.A. § 316.

"[R]ecords dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency" are generally exempt from public disclosure. 1

V.S.A. § 317(c)(5). "[H]owever, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public." 1 V.S.A. § 317(c)(5).

#### **47. Virginia**

Under the Virginia Freedom of Information Act (Code of VA, Title 2.2, Administration of Government, Ch. 37), with certain exceptions, "all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth." Va. Code Ann. § 2.2-3704.

The Act requires the release of "criminal incident information" in felony cases. "Criminal incident information" is defined as "a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen. Va. Code Ann. § 2.2-3706.(A), (B). Criminal incident information relating to felony offenses is not exempt unless disclosure is likely to jeopardize an ongoing criminal investigation, compromise the safety of an individual, cause a suspect to flee, or result in destruction of evidence. Va. Code Ann. § 2.2-3706(B).

In addition, Virginia law requires certain records to be maintained by law-enforcement agencies, specifically "personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency." Va. Code Ann. § 15.2-1722. These records are subject to public access, except for: "1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person; 2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or 3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law." Va. Code Ann. § 2.2-3706(G).

Certain other law enforcement investigatory records are exempt from disclosure, but "may be disclosed by the custodian, in his discretion." Va. Code Ann. § 2.2-3706.

#### **48. Washington**

Under the Washington Public Records Act, "[e]ach agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records." Rev. Code Wash. (ARCW) § 42.56.070.

According to the Reporters Committee for Freedom of the Press, police blotters, jail registers, and incident reports are generally available. However, the Public Records Act permits nondisclosure of such records if nondisclosure "is essential to effective law enforcement or for the protection of any person's right to privacy." RCW § 42.56.240(1). In addition, the Washington Criminal Records Privacy Act, which limits disclosure in some circumstances, does not apply to "[o]riginal records of entry maintained by criminal justice agencies" if the records are "compiled and maintained chronologically and are accessible only on a chronological basis." RCW 10.97.030(1)(b).

Other law enforcement information is generally exempt from public inspection and copying: "(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy; (2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property . . . ; (3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses . . . which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval . . . ; (4) License applications . . . ; and (5) Information revealing the identity of child victims of sexual assault who are under age eighteen." Rev. Code Wash. (ARCW) § 42.56.240(6).

#### 49. West Virginia

Under the West Virginia Freedom of Information Act, with certain exceptions, "[e]very person has a right to inspect or copy any public record of a public body in this State." W. Va. Code § 29B-1-3. "Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement" are generally exempt from disclosure. W. Va. Code § 29B-1-4(a)(4).

#### 50. Wisconsin

Under Wisconsin's Public Records Act (Wis. Stat. §§ 19.31-19.39), with certain exceptions, "any requester has a right to inspect any record." Wis. Stat. § 19.35(1)(a). "Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure." Wis. Stat. § 19.36(2).

Police blotters are subject to inspection in every case. *Newspapers Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

Investigatory records generally are subject to the common law balancing test. *Appleton Post-Crescent v. Janssen*, 149 Wis. 2d 294, 441 N.W.2d 255 (Ct. App. 1989). *Journal/Sentinel Inc. v. Agerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Ct. App. 1988). Thus, for

example, factual information contained in reports of firearms discharges by police officers is subject to inspection, but police supervisors evaluative comments about the discharges are not. *State ex rel. Journal/Sentinel Inc. v. Arreola*, 207 Wis. 2d 496, 513-19, 558 N.W.2d 670 (Ct. App. 1996). Investigatory records in the hands of the district attorney are immune from public inspection. *State ex rel. Richard v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991). Juvenile investigatory records are not open to inspection except for news gatherers who wish to obtain news without revealing the identity of the child. Wis. Stat. § 48.396(1).

When an investigation is closed and no prosecution or disciplinary action is either ongoing or contemplated, there is no risk that releasing a police report will interfere with an enforcement proceeding or jeopardize anyone's right to a fair trial. *Linzmeier v. Forcey*, 2002 WI 84 ¶ 39, 254 Wis. 2d 306, 331, 646 N.W.2d 811, 821.

## 51. Wyoming

Under the Wyoming Public Records Act (Wyo. Stat. § 16-4-201, et. seq.), "[a]ll public records shall be open for inspection by any person at reasonable times, except as provided in this act or as otherwise provided by law." Wyo. Stat. § 16-4-202(a).

Public officials may deny access to "records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes." Wyo. Stat. § 16-4-203(b)(i).

However, *Sheridan Newspapers v. City of Sheridan*, 660 P.2d 785, held that access to police records may not be routinely denied. In *Sheridan Newspapers*, the police department had a policy of denying access to its "rolling log" and case reports. The court held that the blanket denial of access to these records was improper. *Id.* Access could be denied only on a case-by-case basis when the custodian determined that a particular record included sensitive investigatory material or material compiled for the purpose of prosecution. *Id.* A public interest balancing test must therefore be applied before denying access. *Id.*

## IV. Sources

1. State Annotated Codes (Westlaw and Lexis, 2008)
2. 50 State Statutory Survey on Freedom of Information Acts (Westlaw 2008)
3. University of Florida Marion Brechner Citizen Access Project (<http://www.citizenaccess.org/>)
4. Freedom of Information Center (<http://nfoic.org/foi-center/state-foi-laws.html>)
5. The Reporters Committee for Freedom of the Press, Open Government Guide (<http://www.rcfp.org/ogg/index.php>)
6. Florida's Government in the Sunshine Manual (<http://myfloridalegal.com/sun.nsf/manual/1BB05D142D8E4724852566F3006C7A1A>)

**To: Members of the Rules and Open Government Committee**  
**From: Bert Robinson, Sunshine Reform Task Force**  
**Re: The Balancing Test**

**Summary:** The California Public Records Act includes a "balancing test" which allows governments to withhold any otherwise public record by arguing that the public interest is best served by non-disclosure. "Sunshine Law" reformers often cite the balancing test as the biggest flaw in the act, because it is so broad, and so open to abuse. The two primary Sunshine Laws that the Sunshine Reform Task Force used as models, San Francisco and Milpitas, expressly eliminated the balancing test and the related "deliberative process privilege" – apparently to no ill effect. The Task Force recommends that San Jose follow suit.

San Jose city officials suggested to us, as they will suggest to you, that the balancing test is used to protect many legitimate interests. In response, Task Force members talked to officials in San Jose about their experiences, and to their counterparts in San Francisco and Milpitas about life without the balancing test. We then crafted a series of specific exemptions to address the concerns we uncovered – concerns such as safety, security and personal privacy – making it easy to protect these important interests. Thus, our recommended approach is more conservative than the Milpitas or San Francisco laws.

In one area, however, we sharply disagree with city staff. The staff argues that the balancing test is necessary to protect the inner workings of San Jose city government – the "deliberative processes" that leads to policy formulation. It is our view that the public has a strong interest in those processes, and that secrecy can lead to mischief. Consider one example. Recently, the federal Environmental Protection Agency rejected California's request that it be allowed to regulate greenhouse gas emissions from automobiles. The Agency's head said California's approach would actually harm the environment. Later, documents were leaked that revealed quite the opposite: In internal deliberations, agency scientists backed California's proposals as a good approach. Ultimately, the public interest in understanding these deliberative processes was high.

**Background:** The California Legislature added the clause that has become known as the balancing test to the CPRA. It is also known as Government Code section 6255 (a), and it reads as follows. The portion that institutes the balancing test is in italics:

- (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under 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 disclosure of the record.*

The clause is in essence a catch-all, included because of a belief that the specific exemptions in the act would not encompass every record that ought not be disclosed. Over time, this clause has been used to protect records that, for instance, might compromise the safety and security of local residents – and those uses have, in general, not been controversial. Controversy has ensued from other uses, especially withholding

deemed necessary to protect the "deliberative processes" of government officials. The "deliberative process privilege," as it has become known, stems primarily from a 1991 Supreme Court decision regarding a media request for the appointment calendars of Gov. George Deukmejian. The court rejected the request, saying it was loathe to "expose the decision-making process in such a way as to discourage candid discussion."

The contemplation of the balancing test is that public officials will carefully weigh the benefits of disclosure against the benefits of withholding on a case-by-case basis. It should be rare in practice that the public interest is best served by non-disclosure.

**The problem:** As suggested above, the fear about 6255 is that it can be invoked at any time, on any record, leading to suspicion that political interests in non-disclosure may at times overwhelm the public interest. Because only the agency has possession of an undisclosed record, it is not possible for the public to second-guess the agency's invocation of the balancing test, short of going to court. The balancing test also adds an air of unpredictability to public disclosure, since the judgment call involved may be seen differently by different individuals. One city attorney may come down on the side of non-disclosure where another would not.

**The approaches:** In order to form its recommendation, task force members asked City Attorney Rick Doyle to describe the city's use of the balancing test. The members also asked officials in other cities with sunshine laws for input, posing the following question: "What interests in non-disclosure that the city would like to protect are difficult to protect without a balancing test?" From these inquiries, the subcommittee devised a list of specific exemptions to add to San Jose's Sunshine Law.

To summarize, our approach is adopt the Milpitas-SF language that commits the city not to use the balancing test or the deliberative process privilege to withhold records. But we would couple that language with four specific exemptions that encompass legitimate interests. The legal language is part of your packet, but broadly they are:

- a.) **Personal information provided by private citizens.** This exemption encompasses situations where private individuals, through an interaction with the city, have provided personal information to the city with no expectation that the information would become public.
- b.) **Identities of public employees who provide information in internal investigations.** This is an issue that arose during the recent release of the investigation into Auditor Jerry Silva, where the names of employees who complained were redacted to protect the confidentiality of their interactions with the investigator.
- c.) **Security/safety.** This exemption allows the city to keep private information that might compromise public safety or security if released.
- d.) **Memos addressing closed meeting issues.** This exemption makes explicit what is implied in the Brown Act – that material dealing with a closed session issue (a memo outlining the Mayor's goals for union negotiations, for example) can be withheld.

The Balancing Test.

The Task Force has recommended the elimination of the balancing test incorporated in the Public Records Act. In its place the Task Force has suggested a number of specific exceptions that would justify non-disclosure of records maintained by the City of San Jose ("City"). The purpose of the Task Force's proposal is twofold: (1) to protect information that truly needs protection; and, (2) to eliminate a discretionary loophole that government has too often exploited to keep information secret.

Other municipalities—San Francisco, Contra Costa and Milpitas, for example—have eliminated the balancing test and have not encountered any problems stemming from its absence. Indeed, Robert Livengood, then the Vice Mayor and now the Mayor of Milpitas told the Task Force that the balancing test was a "*blank check*" that was not consistent with that city's transparency objectives.

The City frequently asserts the balancing test. For example, it was used to reject Public Records Act requests for:<sup>1</sup>

- A draft traffic impact analysis on proposed revisions to residential and commercial development rules for North San Jose, even though portions of the draft analysis were quoted in a report submitted to the Council.
- A list of panelists who participated in interviewing candidates for Aviation Director.
- Records of telephone calls and telephone messages received by members of the City Council.
- E-mails exchanged between City employees and organizers of the 2006 San Jose Grand Prix event.

Staff opposes elimination of the balancing test. It has offered several doomsday scenarios to support its position. Although Staff might wish it otherwise, each of these scenarios demonstrates how well-crafted the Task Force's proposal is, as each is accounted for:

- Staff argues that information about public facilities could put public safety in jeopardy. (See Staff Comments, page 16). However, Section 5.1.2.070 (B)(3) specifically exempts information that would put persons or property at risk.
- Staff argues that, without the balancing test, the identity of undercover police officers would have to be disclosed. (See Staff Comments, page 16.) Again, 5.1.2.070(B)(3) specifically protects information related to "essential public services." Moreover, Section 5.1.1.020 prevents access to law enforcement information that would impede the successful completion of an investigation of jeopardize the safety of any person.
- Staff argues that, without the balancing test, unsubstantiated allegations, information or opinion about an "accused employee" would become available to the public or that employee's right to a fair trial might be jeopardized. (See Staff Comments, page 17.) Section 5.1.2.040 governs what personnel information may be released to the public,

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<sup>1</sup> These examples were provided to the Task Force on February 6, 2008 by the *San Jose Mercury News*.

including the type of information pertaining to the "misconduct of City Officials." Unsubstantiated allegations are not subject to disclosure.

- Staff argues that, without the balancing test, "[p]eace officer personnel records, including disciplinary actions" would have to be disclosed in violation of state law. (See Staff Comments, page 17.) Section 5.1.2.070(B) specifically exempts from the Open Government ordinance's mandate protections afforded by "state and federal law." Thus, if police personnel records are protected by state law, that law is not trumped by the Sunshine ordinance.
- Finally, Staff argues that the deliberative process privilege would be eliminated. (See Staff Comments, pages 16-17). This is true. And, this is a good thing.

The deliberative process "privilege" has been grafted on the Public Records Act by judicial interpretation of the balancing test. The Legislature itself never considered it to be a privilege important enough to codify. Thus, the deliberative process "privilege" has been the subject of a great deal of criticism because it has been extended beyond the need to protect the legislative or executive thought process. For example, the calendars of public officials have been shielded from public scrutiny via assertion of deliberative process. Yet, there appears to be unanimous agreement at the Council level that public access to calendars performs a valuable function; indeed, that access is currently being provided.

Staff has not offered a single example of how the objective decision-making process would be jeopardized

Every example Staff cited in support of the need of a balancing test is without merit. Far from providing a catch-all to protect legitimately sensitive information, the balancing test has historically been used to thwart access to information of importance to the public.

11/24/08

**To: Members of the Rules Committee**  
**From: Bert Robinson, Sunshine Reform Task Force**

The California Public Records act does not provide much clarity regarding the speed with which public agencies should respond to records requests. The city's public records protocol, with its reliance on the vague word "promptly," is little better. Most sunshine laws make an effort to give citizens a more specific expectation of when their request will be met. The Sunshine Reform task force recommends that San Jose follow suit.

Specifically, we recommend that the city commit to respond to most requests no later than the next business day. In practice, the city usually does this now. But citizens don't know to expect that – and at times city officials furnish vague guidance that leads to frustration rather than simple responsiveness. In the worst cases, citizens may wait days for information that could be provided more promptly. The city's commitment to a clearer policy could help avoid such circumstances.

**Background:** The California Public Records act states that public records should be available for inspection during the office hours of the government agency. It includes only one mention of a time frame for responsiveness. If a copy of a record is requested, the agency is supposed to determine within 10 days whether the records requested are disclosable and then provide a date for disclosure. By implication, the 10-day clock applies only when there is a question about the public nature of the record. But it is not unusual for agencies to use the 10-day limit as the time frame to provide any information. That is far longer than necessary in most cases – and not the level of responsiveness the public deserves.

**Other Sunshine laws:** Recognizing this problem, the Sunshine laws that the Sunshine Reform Task Force reviewed as models lay out more specific guidelines for responsiveness. In no cases are these guidelines absolute. Instead, they apply to "simple, routine or otherwise readily answerable" requests (in the words of the Milpitas ordinance; others are similar).

Milpitas, Contra Costa County and San Francisco suggest that such requests can be answered by the end of the next business day. Oakland lays out a time frame of three business days. Benicia chooses five days.

**The Task Force's approach:** After consultations with San Jose city staff, the Task Force decided that a one-business day turnaround was appropriate. However, the Task Force was concerned about one issue that sometimes makes responsiveness difficult: When public records requests fall into the hands of an official who does not regularly deal with them, it sometimes takes time for the requests to find their way to the correct place. The Task Force suggests that requests made to an official who does not normally handle them should be forwarded to a responsible official by the end of the business day on which the request is made.

CALIFORNIANS

RULES COMMITTEE: 12-10-08

ITEM: I2e

November 19, 2008

Mayor Chuck Reed and Members  
Rules and Open Government Committee  
City of San Jose

RE: Government Code Section 6255

Dear Mayor Reed and Members,

It's my understanding that the Committee intends to consider at today's meeting whether or not to abrogate, in its proposed Open Government ordinance, the assertion of the balancing or "catchall" exemption in Government Code Section 6255.

I would encourage you to do so, for Section 6255 is far more useful as a barrier to legitimate public inquiry than to harmful disclosure of truly sensitive information. For a city or other agency to purport to offer the community "reform" of needless secrecy practices while retaining this wild card license ("We can't find a law that makes this information confidential, but we think it should be, so you'll have to sue us, and we bet you won't") would be nothing short of a fraud. Abrogating Section 6255 is not just another element of democratically responsive and accountable open government; it is its keystone.

Section 6255 may have been a prudent safety net when the California Public Records Act was adopted 40 years ago, with little more than a dozen specific exemptions from disclosure. But there are now more than 30 such express authorizations for withholding, plus countless secrecy statutes outside the CPRA which are recognized as exemptions (see Government Code Sections 6254 (k) and 6276-6276.48).

When actually challenged in court and on appeal, Section 6255 is more often than not found an inadequate basis for withholding information. The appellate courts have found the public interest in nondisclosure to be overriding in almost twice as many instances as not, typically because the information sought shed light on how important government programs and policies were operating.

But agencies that value Section 6255 well understand that legal challenges are vanishingly rare, and with good reason. The law allows them simply to recite that the public interest in nondisclosure trumps, without explaining why unless and until they are hailed into court. But even if they give a reason, they can be confident that litigation is the only real test of their rationale, and that all but the most determined and financially capable information seekers will simply walk away. Section 6255 has long since become a ready tactic for frustrating enforcement of the CPRA at will.

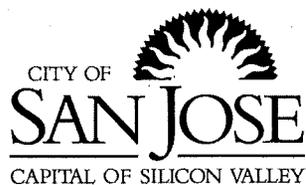
Accordingly, Section 6255 abrogation was a key element in my draft of the original sunshine ordinance in San Francisco the early 1990s. It has been in effect there almost 15 years, with no untoward releases of sensitive information resulting, as anyone on the supervising Sunshine Ordinance Task Force (or, for that matter, the City Attorney's Office) can tell you.

Your efforts to adopt more accommodating public information policy than strictly required by state law are unlikely to gain much respect from the public if you insist on retaining the Section 6255 exit from open government, and I urge you not to do so.

Cordially,



Terry Francke  
General Counsel



Rules Committee: 01/21/09

Item: I2f

## *Memorandum*

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**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** LEE PRICE, MMC  
CITY CLERK

**SUBJECT:** POLICE RECORDS  
CORRESPONDENCE

**DATE:** 01/15/09

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The Sunshine Reform Task Force considered numerous correspondence from the public regarding Police Records on February 24, 2007. The correspondence was previously distributed to the Rules and Open Government Committee and posted on the City's website October 14, 2008. The correspondence may be accessed at the following link:

<http://www.sanjoseca.gov/clerk/TaskForce/SRTF/Handouts/Handout022407.asp>

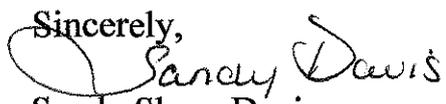
October 16, 2008

Dear Mayor Reed, City Council and the Sunshine Task Force,

Thank you for the opportunity to weigh in on the final Task Force recommendations and provide additional feedback. We did take the opportunity to express our concerns at the October 14<sup>th</sup> Rules and Open Government Committee meeting at City Hall and now wish to formalize those thoughts in writing.

As an agency we appreciate that our concerns were heard about victims of domestic and sexual violence being potentially susceptible to further danger if records were made public. Making exemptions as the Task Force did on such crimes certainly goes part way in allaying concerns over the records "reform" but doesn't address it completely. We worry over the perception versus reality aspect of victims knowing that their records would be protected. Would they know? Would they remember? Would they understand? The risk simply seems too great that victims may just remember that police records are now public domain and choose therefore, to not report. Sexual assault already is the single most underreported crime in America and the Sunshine Reform has the potential of driving that number down even further.

We strive to be a community without victims but the Sunshine Reform may simply give the appearance of that when our victims don't come forward. We, therefore, do not support the final Task Force recommendations.

Sincerely,  
  
Sandy Shore Davis  
Director, Rape Crisis Center  
YWCA of Silicon Valley

*cc: Antonio  
Public  
Record*

*Tom Monheim*

# California POLICE CHIEFS

Association Inc.



P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008  
E-mail: [lmcgill@californiapolicechiefs.org](mailto:lmcgill@californiapolicechiefs.org) • Website: [californiapolicechiefs.org](http://californiapolicechiefs.org)

RECEIVED  
OCT 7 2:01 PM '08  
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Fresno
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Pasadena
- 2<sup>nd</sup> Vice President  
SUSAN MANHEIMER  
San Mateo
- 3<sup>rd</sup> Vice President  
ROY WASDEN  
Modesto
- Immediate Past President  
RICHARD WORD  
Vacaville
- Director at Large  
SCOTT SEAMAN  
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- PAUL WALTERS  
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- Region 7  
TOM WHITESIDE  
Selma

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- TECHNOLOGY  
RICHARD BULL, Ripon

\*\*\*\*\*  
**EXECUTIVE DIRECTOR**  
Leslie McGill, CAE

**PROGRAM COORDINATOR**  
Melissa Reisinger

**GOVERNMENT RELATIONS  
MANAGER**  
John Lovell

**LEGAL COUNSEL**  
Marty Mayer

October 8, 2008

The Honorable Chuck Reed  
Mayor of San Jose  
San Jose City Hall  
200 E. Santa Clara St., 18<sup>th</sup> Floor  
San Jose, CA 95113

RE: Sunshine Reform Task Force (SRTF)

Dear Mayor Reed and Members of the San Jose City Council:

I am writing to express the serious concerns of the members of the California Police Chiefs Association regarding the release of public records and associated Sunshine Reform Task Force (SRTF) recommendations. As these recommendations are scheduled for discussion on October 14, 2008, I felt it important to voice our opposition quickly and without equivocation.

The current guidelines contained in the State statute (CPRA §6254 (f) and § 6255) provide for general exemptions to disclosure based on the discretion of a law enforcement agency. These statutes were enacted to ensure public safeguards and to help prevent the politicizing of legitimate law enforcement functions. We are concerned with the unintended and detrimental consequences that will most assuredly result from the release of law enforcement information, should the recommendations of the SRTF be approved.

I firmly believe in agency transparency and accountability and would not tolerate attempts to hide information or to deceive the public. I also believe that trust comprises a critical component of law enforcement's ability to be effective. The language proposed by the SRTF, however, could lead to the release of any and all information pertaining to any ongoing police investigations. We are concerned that during the investigation of the next high-profile case in San Jose this sharing of information will have a severe negative impact on the investigation. This is far too great a cost. The release of identities or other information contained in police reports, or within investigations, would adversely impact victims, witnesses and suspects of reported crimes, irretrievably damage investigations, and critically hinder the effectiveness of law enforcement agencies and personnel. Worse still is that information shared too broadly during a critical investigation will almost surely leak out, thus jeopardizing the very safety of those whom we are trying to protect from criminal harm.

Cal Chiefs Letter – SRTF

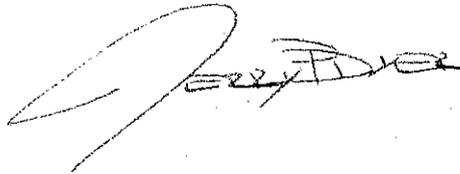
Page 2 of 2

October 8, 2008

While we must certainly strike a balance between transparency and confidentiality, the current SRTF recommendations will place the city of San Jose and its residents in jeopardy by removing the ability of law enforcement to protect individual privacy and to employ appropriate and effective investigative techniques.

We urge you to support the San Jose Police Department's position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry P. Dyer". The signature is stylized with a large, sweeping initial "J" and "P".

Jerry P. Dyer  
President, California Police Chiefs Association

JPD/dm



RECEIVED  
2008 NOV -7 PM 2:01  
CITY MANAGER'S OFFICE

October 14, 2008

The Honorable Chuck Reed  
Mayor of San Jose  
San Jose City Hall  
200 East Santa Clara Street  
San Jose, California 95113

Dear Mayor Reed and Members of the San Jose City Council:

The purpose of this correspondence is to express the concerns of Support Network for Battered Women regarding the release of public records and associated recommendations made by the Sunshine Reform Task Force (SRTF) scheduled for discussion today, October 14, 2008.

The current guidelines contained in the State statute (CPRA §6254 (f) and § 6255) provide for general exemptions to disclosure based on the discretion of a law enforcement agency. We are concerned with the unintended and unrecoverable consequences that could result from the release of law enforcement information, should the recommendations of the SRTF be approved. Release of certain information from police reports could impact victims, witnesses and suspects of reported crimes.

The language proposed by the SRTF could lead to all contents within a police investigation being releasable. We believe this action, if approved, will also impact all law enforcement agencies who work with members of the SJPd to make our cities safer places to live.

The SJPd currently complies with release of information pertaining to complaints (calls for service) and investigations conducted by SJPd. The SRTF recommendations will place the City and its residents at risk and in jeopardy, by taking away the ability of law enforcement to protect individual privacy rights and investigative techniques.

We urge you to support the San Jose Police Department's position on this very critical issue to all law enforcement agencies in California.

Sincerely,

A handwritten signature in cursive script that reads 'Chata Alfaro'.

Chata Alfaro  
Executive Director



*Santa Clara County*  
**Police Chiefs' Association**

October 10, 2008

RECEIVED  
2008 NOV -7 PM 2:01  
CITY MANAGER'S OFFICE

Mayor Chuck Reed  
San Jose City Hall  
200 East Santa Clara Street, 18<sup>th</sup> Floor  
San Jose, CA 95113

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HIGHWAY PATROL

CAMPBELL  
POLICE DEPARTMENT

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LOS ALTOS  
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LOS GATOS/  
MONTE SERENO  
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MILPITAS  
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MORGAN HILL  
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MOUNTAIN VIEW  
POLICE DEPARTMENT

PALO ALTO  
POLICE DEPARTMENT

SAN JOSE  
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SAN JOSE  
STATE UNIVERSITY  
POLICE DEPARTMENT

SANTA CLARA COUNTY  
DISTRICT ATTORNEY

SANTA CLARA  
POLICE DEPARTMENT

SUNNYVALE  
DEPARTMENT OF  
PUBLIC SAFETY

Dear Mayor Reed and Members of the San Jose City Council:

The purpose of this correspondence is to express the concerns of members of the Santa Clara County Police Chiefs' Association regarding the release of public records and associated recommendations proposed by the Sunshine Reform Task Force (SRTF) and scheduled for discussion on October 14, 2008.

The current guidelines contained in the California Public Records Act by State statute (Government Code §6254 (f) and §6255) provide for general exemptions to disclosure based on the discretion of a law enforcement agency. The Chiefs' Association believes those guidelines are both fair and proper. Moreover, the Association is concerned with the unintended and unrecoverable consequences that could result from the release of law enforcement information, should the recommendations of the SRTF be approved. Release of certain information from police reports could place some victims and witnesses in danger and prevent victims and witnesses of crimes from cooperating with authorities. Additionally, release of critical information could interfere with the prosecution of suspects of reported crimes.

The language proposed by the SRTF could lead to the release of all contents within a police investigation. We believe this action, if approved, will impact all law enforcement agencies who work with members of the San Jose Police Department (SJPD) to make our cities safer places to live.

The SJPD currently complies with release of information pertaining to complaints (calls for service) and investigations conducted by SJPD. The SRTF recommendations will place the City and its residents at risk and in jeopardy, by taking away the ability of law enforcement to protect individual privacy rights and critical investigative techniques.

We urge you to support the San Jose Police Department's position on this critical issue and ask that you support the current method of release which is fair, proper and lawful.

Sincerely,

Chief Bruce C. Cumming  
Morgan Hill Police Department  
President, Santa Clara County Police Chiefs' Association