CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Public Records Subcommittee, Sunshine Reform Task Force

FROM: RICHARD DOYLE
City Attorney

SUBJECT: **City Attorney's Response To Referral Dated October 1, 2007 From Public Records Subcommittee**

DATE: October 10, 2007

BACKGROUND

On September 17, 2007, the Public Records Subcommittee of the Sunshine Reform Task Force discussed the "balancing test," including the deliberative process privilege, which is set out in the California Public Records Act at Government Code Section 6255. At the next meeting, on October 1, 2007, the Subcommittee asked the City Attorney's Office to return on October 15, 2007 with information about the City's use of the balancing test in response to requests made under the California Public Records Act.

ANALYSIS

The City uses the balancing test in Section 6255 when public records seek information protected by either (1) the deliberative process/legislative privilege; or (2) the right of privacy of third parties.[1] Under Section 6255, the City is authorized to justify the withholding of a particular record only by a showing to a court that the interest served by not disclosing the record clearly outweighs the public's interest in disclosure. As such, it is rarely asserted by the City.

Records considered to be part of the deliberative process/legislative privilege include phone logs, elected officials' notes, information contained in individual council files that was not provided to the entire council, and deliberative communications between staff. The purpose of protecting the deliberations of government officials is to encourage "the free-flow of ideas and frank discussion of legal or policy matters." (*L.H. v. Schwarzenegger* (2007) 2007 WL 2009807 (E.D. Cal.).)

Examples of records considered to be protected by individuals' right of privacy include home addresses and phone numbers of complainants who have complained about

[1] Privacy rights of City employees are generally protected from disclosure by the exemption provided in Government Code Section 6254(c): Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Municipal Code or other violations (e.g. airport noise) and home addresses and phone numbers of applicants for pet licenses.

CONCLUSION

The City uses the Section 6255 balancing test in limited circumstances to encourage the frank discussion of legal or policy matters and to protect third parties who have a reasonable expectation of privacy in the information they provide to the City.

RICHARD DOYLE
City Attorney