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COUNTY EMPLOYEES MUST KNOW HOW TO RESPOND TO PUBLIC RECORD REQUESTS

Inconsistent Compliance with State Law Limits Access to Public Records

SUMMARY

An investigation by the Contra Costa County Grand Jury shows spotty compliance with the 1968 California Public Records Act.

The grand jury found that despite the existence of a county policy intended to clarify each department's legal obligations and individual employee's responses to record requests, access to records is often discouraged, or in some cases, denied altogether.

While some county departments and employees investigated responded appropriately to requests for public records, even providing convenient forms for the purpose, others responded with a variety of road blocks.

Some employees claimed no knowledge of the state law or county policy intended to guarantee openness in government. Others responded with questions clearly intended to discourage requestors. Questions included, "Are you an attorney?" "Who are you with?" And, "Why do you want it?" Still other employees claimed their workload interfered with complying with lawful requests.

The grand jury has made several recommendations intended to ensure that the county places an emphasis on the public's right to access records. The county will achieve this important goal by making sure that staff members respond in a consistent, appropriate, and timely manner to requests for access to, and copies of, public records.

The complete report is available through the Contra Costa County Grand Jury web site: www.cc-courts.org/grandjury.

CONTRA COSTA COUNTY GRAND JURY REPORT 0807

COUNTY EMPLOYEES MUST KNOW HOW TO RESPOND TO PUBLIC RECORD REQUESTS

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TO: Contra Costa County Board of Supervisors

BACKGROUND

The California Public Records Act has received a great deal of attention in the past few months. One reason was a decision by the California Supreme Court granting access to police officer payroll records. The importance of the Public Records Act to our system of government was underscored by the court's decision, which required disclosure of the records over the objections of police officers based on their privacy claims. In the wake of the court's decision, the Grand Jury decided to determine how well Contra Costa County agencies respond to Public Records Act requests.

At the outset, the Grand Jury recognized that it had limited time and resources to conduct its investigation and could not visit, even once, every county office where records are maintained. The wide variety of records maintained by numerous county offices made a complete investigation impractical. Consequently, the Grand Jury's investigation was based on a limited sample of office visits and record requests; therefore, the reported responses by county staff members are anecdotal.

Grand Jurors visited 12 county offices and made a total of 17 separate record requests. Requestors did not identify themselves as Grand Jurors at the time they made their visits.

FINDINGS

1. The California Public Records Act (PRA), Government Code Section 6250, was enacted in 1968 by the state legislature. At that time, the legislature declared, *"that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."*
2. The PRA has been amended from time to time, and the courts have interpreted and applied its provisions in many published appellate court opinions. In a recent opinion, the California Supreme Court described the importance of access to

public records as follows: “*Openness in government is essential to the functioning of a democracy.*” International Federation v. Superior Court, 64 Cal.Rptr.3d 693, 697. (2007)

3. The PRA provides that the public shall have access to all public records except for selected records that are specifically exempt from disclosure. Exempt records include personnel files, medical records, and many types of records that are part of ongoing criminal investigations.
4. Contra Costa County (County) and its various departments and functional organizations are subject to the PRA and must comply with its terms.
5. Grand Jurors, who did not identify themselves as such, visited 12 County offices and asked to inspect or to secure copies of records that were known, or were likely, to be kept in those offices. Grand Jurors made a total of 17 separate record requests. Grand Jurors did not request records that were exempt from disclosure under the PRA. Requests were always made to the person who was the first point of contact at each office, usually a clerk or receptionist.
6. Grand Jurors found that, in some instances, County departments and their staff members responded appropriately to requests for access to or copies of public records.
7. Grand Jurors experienced other instances when the clerk or receptionist expressed no knowledge of the PRA, or the County’s duty to provide access to records. On one occasion, a Grand Juror was sent to another office, in a different building, that did not have the requested records. On several other occasions, first point of contact employees posed questions such as: “Why do you want it?” “Are you an attorney?” And, “Who are you with?” Other employees made statements such as: “I’m swamped right now,” “I’m very busy,” and, “We are an impacted office.”
8. On several occasions, Grand Juror requests for records were referred to a more senior clerk or office manager who was able to comply with the request. In one instance, the Deputy Director of Animal Services promptly met with the Grand Juror who made the request and the records were produced for inspection. Not all County offices visited had senior staff members available to handle requests.
9. The County’s Animal Services Department was not always responsive to PRA requests. One Grand Juror made a written request for copies of records on wild animals picked up in 2007, including information as to whether any had tested positive for rabies, and paid the requested \$1.00 copying fee. The request was made at the front desk, on a busy day, and the records had not been received four months after the request. No explanation or refund has been offered.
10. On December 18, 2003, the County Administrator issued Administrative Bulletin 120.4, entitled, “Public Access to County Records.” The preamble states, “*The purpose of this bulletin is to inform County departments about their legal responsibility under the California Public Records Act...with regard to requests for inspection of or copies of County records.*” Knowledge of the bulletin’s

existence, and compliance with the policies and procedures detailed therein, is inconsistent from one County office to another.

11. County Administrative Bulletin 120.4 contains information organized under the following major headings:

- I. Confidential documents and documents not required to be disclosed
- II. Confidential legal documents
- III. Employee information disclosure
- IV. Access to public records

Sections I through III deal with exceptions to the law requiring disclosure; i.e., the reasons public access to records may be denied. Only section IV outlines how the public is to be afforded its rights under the PRA.

12. California Government Code Section 6253.1 states that the public agency shall assist the member of the public to make a focused and effective request that reasonably describes an identifiable record or records by making certain specified actions to the extent they are reasonable under the circumstances. County Administrative Bulletin 120.4 is silent on this duty.

13. County Administrative Bulletin 120.4 includes a policy that requests for public records 'should be made in writing.' Grand Jurors found that four of the offices visited, Environmental Health, the Animal Services and Building Inspection departments, and the Assessor required written requests, and had forms available for that purpose.

14. A Grand Juror asked representatives of two County law offices to permit inspection of any written policies related to the e-mail transmission of confidential documents. The District Attorney's office produced County Administrative Bulletin 120.4. The Public Defender's office advised that no policy existed.

15. Some County records are only accessible by computer. The PRA also applies to such records. In one instance, a Grand Juror asked the General Services Department to inspect maintenance records on County automobiles, specifically a hybrid model. An employee in the automotive maintenance office informed the Grand Juror that all the records were computerized. After purportedly conferring with a superior, the employee informed the Grand Juror that the records could not be viewed because no computer terminal was available for use by the public, and that only County employees had access to the database.

CONCLUSIONS

The scope of the Grand Jury's investigation with regard to public record access was limited. However, the Grand Jury believes the problems identified are neither isolated nor unique and that further investigation would identify similar problems in other County offices.

The employees that were contacted during this investigation exhibited an inconsistent knowledge of the PRA and the County's obligations under the PRA. Some employees responded appropriately, others did not. Some staff members exhibited suspicion regarding the motives for public record requests. These responses appeared intended to discourage requests. On one occasion, an employee erroneously claimed that non-County employees are not permitted to view public information on a County computer screen.

Employee workload is not an acceptable excuse for the failure to comply with the PRA. Workload should not be cited to suggest that the request cannot or will not be honored.

The following recommendations, if adopted by the Board of Supervisors and implemented by County staff, will ensure that the public has timely and convenient access to public records as mandated by state law. The recommendations will not impose an unreasonable burden on the County with regard to financial or human resources.

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that:

1. Within six months of this report, County Administrative Bulletin 120.4 be reviewed and revised as necessary to comply with legislative changes and court decisions. The revised bulletin also should include:
 - a. A requirement that each department's written policy with regard to public **record** requests be conspicuously posted or otherwise made available at each County office.
 - b. A standard form for use in all County offices for requests to inspect or obtain copies of public records.
 - c. A policy and procedure to allow public access to records that are accessible only by computer.
 - d. The public's rights under the PRA should be emphasized rather than the exceptions to the law. Section IV of County Bulletin 120.4 should appear as section I. The County's duty to assist members of the public should also be described.

2. Within six months of this report, all County departments be required to have written policies and procedures, based on revised Administrative Bulletin 120.4, intended to ensure consistent, timely, and lawful responses to requests for public records.
3. Within six months of this report, all employees that interact with the public at County offices where records are maintained receive training as to the County's responsibilities, including County and department procedures, to comply with the California Public Records Act.

REQUIRED RESPONSES

Findings

Contra Costa County Board of Supervisors: 1, 2, 3, 4, 10, 11, 12, and 13.

Recommendations

Contra Costa County Board of Supervisors: 1 through 3