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CLIENT ALERT MEMORANDUM

To: *All Police Chiefs & Sheriffs*

From: *Martin J. Mayer and Michael R. Capizzi*

PUBLIC RECORDS ACT DEMAND

This will serve to provide a suggested response to the requests to examine documents pursuant to the California Public Records Act (CPRA) as set forth in emails of early last week. We have been provided with a list of items that in recent days have been requested of numerous law enforcement agencies throughout the state. We will number each requested item and discuss whether or not it is an item for which the CPRA requires disclosure.

1. Form 700. (Disclose)

Assuming this refers to the Fair Political Practices Commission, California Form 700, this is without question a document that must be disclosed. The form itself prominently states at the center-top of the cover page, "A *Public Document*." We recommend that a request for Form 700 be considered

a request for the FPPC form unless it specifically identifies a different Form 700.

2. Crime information for all burglaries, armed robberies and sexual assaults occurring November 1 through November 15 and any related arrest information for these reported crimes. (Disclose)

The information must be provided under CPRA. Government Code section 6254(f) sets forth a general exemption from public disclosure of complaints to, investigations by or investigatory files maintained by law enforcement agencies. There are, however, two exceptions to the exemption that are applicable to the request for information.

This does not mean that the inquiring party is entitled to a copy of an arrest report, crime report or investigatory

file. Section 6254(f)(1) and (2) only require the release of information.

The last paragraph of section 6254(f) immediately before subsection 1 provides, "Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation." (Emphasis added.) Prior to disclosing any information under the authority of sections 6254(f)(1) or (2) it must be evaluated to determine if its release is consistent with the "endangerment" test.

One item that must be disclosed is information related to an arrest. See section 6254(f)(1). The other item that must be disclosed is information related to the time, substance, and location of all complaints or requests for assistance received by a law enforcement agency; the time and nature of the response including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. See section 6254(f)(2).

3. Most recent record of asset forfeiture fund disbursements.
(Disclose)

This is a document that is described in Health and Safety Code section 11495. It is not a document prepared by a law enforcement agency. Rather, it is prepared by the city treasurer or county auditor. Asset forfeiture funds are to be deposited to an account maintained by the appropriate city or county official who then disburses them to the law enforcement agency upon the agency's request. The treasurer or auditor is required to maintain a record of disbursements which shall be open to public inspection subject to the privilege of official information (Evidence Code §1040) and identity of informer (Evidence Code §1041).

If a copy of the disbursement record is obtained from the disbursing treasurer or auditor and is then maintained by the law enforcement agency requesting the disbursement, it should first be examined to assure that it does not identify an informant and that it does not reveal information acquired in confidence by a public employee in the course of duty. The likelihood of either of these privileges having applicability and thus justifying exemption from disclosure is highly unlikely. In the event a copy of the disbursement record is not maintained by the law enforcement agency, the person inquiring should be referred to the treasurer or auditor as the case may be.

4. Most recent record of summary of officer discipline statistics.
(Disclose)

As provided in Penal Code section 832.7(c) any department or agency that employs peace or custodial officers *may* disseminate data regarding the number, type, or disposition of complaints made against its officers if the information is in a form that does not identify the individuals involved. The current CPRA demand does not request that statistical records be compiled, it asks for the most recent record of summary of officer discipline statistics. If there is no such record maintained, there is nothing that need be provided.

5. Officer salary schedule.
(Disclose)

Salary schedules with no reference to identifiable employees are public records and must be disclosed. They are not exempt. The job classification, job description and salary range are readily available in the entity's human resources or personnel departments, are approved in conjunction with the budget each year by the governing body of the public entity, are widely publicized in recruiting efforts and have no basis for confidentiality.

6. Individual officer compensation records. **(Do not disclose)**

These records are exempt from disclosure as the result of statutory and case law. Government Code section 6254(c) exempts from disclosure "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted

invasion of personal privacy." Specifically applicable to peace officers, Penal Code section 832.7(a) provides that peace officer or custodial officer personnel records and records maintained by a state or local agency pursuant to section 832.5 or information obtained from such records are confidential. Penal Code section 832.8 defines personnel records.

The question of whether peace officer compensation records are part of an officer's personnel record was addressed in *City of Los Angeles v. Superior Court* (2003) 111 Cal. App.4th 883, 890-892 where the court held that a peace officer's payroll records are included within the definition of "personnel records" by virtue of Penal Code section 832.8(f); that is, a payroll record is ". . . information the disclosure of which would constitute an unwarranted invasion of personal privacy."

The court in *Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal. App. 4th 1500 addressed the application of Government Code section 6254.8 which requires disclosure of all employment contracts. The court concluded that public employment, both civil service and non-civil service, is held by statute, not by contract, and consequently section 6254.8 had no application to public employees. The court also concluded that public employees had a legally protected right of privacy in their personnel files and their expectation of privacy was reasonable. Additionally, with respect to peace officers it was necessary to comply with Penal Code section 832.7 including notice

under Evidence Code sections 1043 and 1046 (Pitchess motion) prior to disclosure of information concerning salaries.

Beware, however, that the Court of Appeal for the First Appellate District filed an opinion in April 2005 that rejected the reasoning and/or applicability of the above two cited appellate cases and concluded that an Oakland ordinance and the CPRA required disclosure of highly paid (those earning \$100,000 or more) Oakland police officers. The opinion was vacated, may not be cited and is not precedent as a result of the California Supreme Court's grant of a hearing in July 2005. Six of the Court's seven justices voted to hear the case. At this point the case before the Supreme Court has been fully briefed and is awaiting the scheduling of oral argument.

7. Officer Workers Compensation Claims.
(Do not disclose)

The workers compensation claim form to be filled out by the employee, DWC 1, is exempt under Penal Code sections 832.7(a) and 832.8 as discussed in paragraph 5 above. The portion of the claim form to be filled out by the officer includes home address, address and description where the injury happened, description of the injury and part of the body affected and social security number. This information falls within the description of personal data, home address, medical history, and other information the disclosure of which would constitute an unwarranted invasion of personal privacy, not the least of which is the social security number. The court's

general discussion of Penal Code section 832.7(a) in *City of Los Angeles v. Superior Court*, supra, would further support the exemption from disclosure.

The employee claim form is to be distinguished from the employer's report of a claim, i.e., injury. Additional support for exemption can be found in the specific exemption from disclosure given to the form for an employer's report of an occupational injury, Form DLSR 5020, that is required to be filed with the state. Form 5020 is required by Labor Code section 6409.1 and is given express exemption from public disclosure by Labor Code section 6412. Section 6412 is in turn recognized by Government Code sections 6275 and 6276.48 as providing an exemption to CPRA.

8. Officer second job requests.
(Do not disclose)

It is our opinion that such requests are exempt. Penal Code sections 83.5, 832.7(a), 832.8 and *City of Los Angeles v. Superior Court*, as discussed in Paragraph 5 above, all support exemption from CPRA. Such requests are generally physically maintained in an officers personnel file or maintained in a file containing personnel data from which they are retrieved by the officer's name. More specifically, the "officer second job request" must be considered personal data and employment history which are exempt from disclosure.

9. The most recent death in custody report sent to the Department of Justice.
(Disclose)

The death in custody report is not exempt and must be disclosed. Government Code section 12525 requires that any state or local law enforcement or custodial agency must report an "in custody" death to the Attorney General's Office within ten (10) days of occurrence and that such reports are public records and are open to public inspection. It does not permit disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report. Ideally, the inquiring party should be directed to the agency with whom the report is filed. However, a copy will undoubtedly be retained by the submitting agency and there is no reason to not provide it, absent confidential medical information, to the requesting party.

10. The complete employment contract of the department's highest ranking peace officer.
(Disclose)

The employment contract is not exempt and must be disclosed.

Government Code section 6254.8 provides, "Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255."

11. Media Relations/Public Information Policy/Policies.
(Disclose)

These items are not exempt and must be disclosed.

12. Fees charged for copies of crime reports provided to crime victims or their representatives for insurance or other compensation purposes. **(Disclose)**

These items are not exempt and must be disclosed.

As always, we urge that you confer with your department's legal counsel for advice and guidance on this as well as any other legal question. Should you wish to discuss this matter in greater detail, please feel free to contact us at 714- 446-1400 or e-mail: Martin J. Mayer, mjm@jones-mayer.com and Michael R. Capizzi, mrc@jones-mayer.com.