

Top 10 reasons why law enforcement information should be open to every person

By Terry Francke, General Counsel, Californians Aware

1. Law and order are top civic priorities. As can be seen in Iraq and other troubled areas much closer to home — even in our own communities — if citizens do not feel safe where they live, work, play or study, other public services and social linkages are fundamentally undermined.

2. Law enforcement gets a large share of local tax revenues. As noted by the state's Legislative Analyst in her 2004 report, "One recent study examining state and local expenditures nationwide shows that California has the third highest ranking in the nation with regard to per capita expenditures for police protection. This suggests that California's local governments place a high priority on law enforcement."¹ The latest data from the State Controller's Office (fiscal year 2003-04) show that police services represented 17 percent of total city expenditures — a share greater than any other function except total public utilities, which was 20 percent.² At the county level for the same period, sheriff's police and jail operations again accounted for 17 percent of total expenditures, exceeded only by welfare payments at 22 percent.³

3. Law enforcement resource demands are increasing. How many times do we hear of proposed local tax increases to put more officers on the street or increase salaries to keep departments' recruiting competitive?

4. Police agencies are given extraordinary power. To meet the priorities and expectations of the community, police agencies are given a unique authority for surveillance, investigation, search, seizure, detention and arrest. They are the one unit of government that is in effect licensed to invade civil liberties — within bounds.

5. Police agencies operate in extreme secrecy. Their investigative activities pursuing anything from a broken taillight to a murder are documented in records they never need — and almost never do — share with the public,⁴ even when the risk of harm from such disclosure is long past.⁵ They have even recently been authorized to work with district attorneys to keep certain information in crime reports filed in court beyond the reach of the public.⁶

6. Peace officers are given extraordinary power. Executing the state's authority to intrude and coerce, they are the only government agents whose responsibilities confer — again within bounds — license to do what for others could be criminally prosecuted as stalking, breaking and entering, assault, battery, or even homicide.

7. Peace officer misconduct is given extreme secrecy. Unlike the rule for other public employees, whose confirmed and disciplined misconduct is a matter of public record,⁷ any and all information in a peace officer's personnel file — including but not limited to records of

¹ http://www.lao.ca.gov/analysis_2004/crim_justice/cj_04_cc_tanf_anl04.htm

² <http://www.sco.ca.gov/ard/local/locprep/cities/reports/0304cities.pdf>

³ <http://www.sco.ca.gov/ard/local/locprep/counties/reports/0304counties.pdf>

⁴ *Haynie v. Superior Court (County of Los Angeles)*, 26 Cal.4th 1061 (2001)

⁵ *Williams v. Superior Court (Freedom Newspapers, Inc.)*, 5 Cal.4th 337 (1993)

⁶ Penal Code Section 964

⁷ *American Federation of State etc. Employees v. Regents of University of California*, 80 Cal.App.3d 913 (1978)

confirmed and disciplined misconduct — is confidential and accessible only by a special motion in a civil or criminal proceeding. The confidentiality even persists to include the records of a normally open civil service hearing in which the officer challenges the discipline.⁸

8. The news media have no exclusive right to police information. Despite the general secrecy noted so far, certain basic facts about crimes, incidents and arrests remain on the record;⁹ otherwise the media would have no source of news about them. But the law makes these facts available to the general public — not just the news media. This point seems lost on those law enforcement agencies that have so little experience with direct inquiries from citizens that they resist them as illegitimate or even suspect.

9. The news media cannot provide the public with all significant police information. Few if any newspapers or broadcasters have the resources to convey the day's or week's full complement of facts about local crimes, incidents and arrests. Editors understandably assume that most in the community want to know mainly about murders and violent crimes, although even they may go under-reported in larger urban areas. But most details about most police events are never brought to public attention because the media cannot do so.

10. People often need — and are increasingly inclined — to find out for themselves. Incidents observed on the street, patrol cars flashing next door at midnight, rumors about a co-worker's arrest, children's tales about a disturbance at school — such events may prompt a news story with satisfactory details, but then again may not. Concerned or even just curious persons, increasingly encouraged by the Internet to check out matters of interest for themselves, may need and want to discover information that has escaped the news eye of the media. Some law enforcement agencies are providing impressive amounts of crime information on the Internet, which is all to the good but may actually increase curiosity about specifics. Both the law and the realities suggest that people who show up to seek the facts for themselves should be provided with all information that is available to reporters — whether or not any reporter has happened to ask for it. And, consistent with the law, inquiries should be permitted to be anonymous — no questions asked. If information is so sensitive that its release could be lead to some kind of specifiable harm, than it need not be made public to anyone in any event.

Californians Aware, a nonprofit organization fostering open government and free expression, has just published a survey faulting the public information practices of most local law enforcement agencies. See <http://www.calaware.org>.

⁸ *Copley Press, Inc. v. Superior Court of San Diego County*, 39 Cal.4th 1272 (2006)

⁹ Government Code Section 6254, subdivision (f), paragraphs (1) and (2)