

CONSENT CALENDAR

March 20, 2007

To: Honorable Mayor and
Members of the City Council

From: Councilmember Dona Spring

Subject: Access to Berkeley Police Department Information - Revised

RECOMMENDATION: That Council thank the Police Chief for improving public access to police reports to the public and request the City Manager provide a plan to give public access to Berkeley's Police Department information, including police reports compliant with state law.

BACKGROUND: members of the public in Berkeley have been frustrated for years about their inability to access crime reports especially those that occur in their neighborhoods. This has been one of the major obstacles to neighborhood crime prevention groups to participate effectively in Community Involved Policing. The City Manager's report is requested to include information about what state law mandates in terms of public access to police documents and information. (Please see the attached.)

FINANCIAL IMPLICATIONS:

CONTACT PERSON: Councilmember Dona Spring 981-7140

Audit: Cops Deny Records Access--Survey Gives Median Average Score Of 30 Out Of 100 To Bay Area Departments

Thomas Peele and Matt Krupnick, MediaNews/Oakland Tribune, 1/12/2007

California law gives anyone the right to walk into a police department and inspect a wide variety of information, from crime and arrest reports to statistics on officer-misconduct complaints.

But a statewide audit of such access released today shows a wide gap between the law and the reality of what happens when people ask to see public information at California police stations.

Police often violated laws that mandate open access to public records and delayed for weeks the release of ordinary reports, intimidating people who asked for them and researching their backgrounds, according to the audit of more than 200 departments and California Highway Patrol offices, including 63 in the Bay Area.

Written requests for records were sometimes ignored and some departments even refused to accept them.

More than 60 journalists across the state -- including the Alameda Times-Star and six other MediaNews newspapers in the Bay Area and KGO-TV -- participated in the audit, which was conducted Dec. 4 in 34 of California's 58 counties.

The effort was coordinated by Californians Aware, a Sacramento-based group that advocates transparent government and records access. The group aims to educate government workers and the public about information that every person -- not just public officials or journalists -- is entitled to see.

To gauge the response an average citizen might face in making a public

records requests, journalists participating in the survey asked police for information without identifying themselves as working for news organizations.

Auditors first asked verbally to look at the local police chief's statement of economic interest, a form that all high government officials are required by law to fill out, disclosing their financial holdings. They then asked to see crime and arrest documentation for armed robberies, burglaries and sexual assaults covering a two-week period in November.

The auditors also gave the departments a written Public Records Act request asking to inspect documents that should be public, such as the police chief's employment contract, records of how the proceeds of assets seized from criminals are spent, reports on the deaths of people in the department's custody and the forms officers must submit if they take second jobs.

But, "the common experience was for a person to go in and be forced to identify themselves and their purpose and then walk away with nothing," said Terry Francke, Californians Aware's general counsel.

So many departments' responses were so "absurdly wrong," Francke said, that taxpayers should have legitimate questions about the administration of police agencies.

One auditor was ordered

to give an officer her Social Security number so her record could be checked for arrest warrants. Another was told he could see records only if county supervisors voted to allow it.

Several auditors reported officers and record clerks yelling or laughing at them and being told they weren't going to be allowed to see anything.

Francke said police departments were chosen to be audited for openness because, like any other public agency, they need intense citizen scrutiny over

spending and policy. Adding to that need, he said, is the critical mission of law enforcement and its power to place people in custody, make urgent decisions about emergencies and even, in extreme circumstances, take people's lives.

"We don't notice that our freedom is run on a system of being able to find out what the government, on all levels, is doing," he said.

Departments were graded on a scale of zero to 100 based on the records provided, the timeliness of the information released and the way the requester was treated.

The statewide median grade was 40. The median grade was 30 among the agencies in the nine Bay Area counties, where scores ranged from a low of 5 for the East Palo Alto Police Department to a high of 94 for the Dixon Police in Solano County, the highest grade in the state.

The lowest statewide grade was a zero, given to police in the Los Angeles suburb of Pico Rivera, where the auditor reported that the records clerk said that people "can't just walk in here and make these kind of requests."

California Highway Patrol offices averaged a score of 29, sheriff's departments averaged 39 and police departments averaged 44. Only three departments statewide -- or 1.4 percent -- had scores of 90 or higher.

CHP spokeswoman Fran Clader said the agency needs to take "appropriate action to improve our customer service" based on the responses auditors received at stations. She defended the agency's handling of written requests, which were all forwarded to the office of its general counsel in Sacramento.

The CHP requested a 14-day extension to Dec. 28 to provide access to the records, but that deadline was missed. Clader said documents were being mailed to auditors this week.

Francke said the CHP scores were especially troubling because agency lawyers attended a Californians Aware training session on the Public Records Act last year.

The audit shows that members of the public "have a much tougher time" than journalists in obtaining information from police, said Tom Newton, general counsel of the California Newspaper Publishers Association. The Public Records Act clearly "requires agencies to help the public" obtain records, Newton said. But that didn't happen in most cases.

"It's these kinds of occurrences that create a huge distance between government agencies and the people that are supposed to be served by them," Newton said.

By cutting off the public from information to which it is legally entitled, police are cutting themselves off from the type of community cooperation that can make law enforcement more effective and the public safer, said Mark Schlosberg, police-practices policy director for the American Civil Liberties Union of Northern California.

One of the more troubling aspects of the audit is that agencies fared badly while being asked for just "very basic information," Schlosberg said.

"You have to create a balance between the department and the community," he said. The audit shows "the opposite (relationship) of what police should want to foster with the public."

Some police chiefs vowed to improve access.

"Collectively, I think law enforcement has gone through some tough times. The only way to regain the public's trust is by being open," said Pleasanton Police Chief Tim Neal.

Neal, whose department received a score of 30, decried the persistent

secrecy that characterizes many law enforcement agencies. "I really believe most of what we do could be done on a picnic table in a public park," he said.

Neal said he has tried to instill more openness in his department and plans to instruct his staff on records laws compliance and openness at a meeting Monday.

The audit results show that openness is far from the norm.

Among the findings:

- At the Sacramento County Sheriff's Office the person asking for records was asked to provide her Social Security number so she could be checked for pending arrest warrants before records were provided. The law prohibits officials from requiring the identity of people inspecting public records.

- A records clerk at the Napa County Sheriff's Office told a requester he couldn't inspect arrest records and other documents unless the county supervisors voted to allow it. No special action is needed to make such records public.

- The clerk in charge of records at the Benicia Police Department told the requester that arrested people had to "sign off" on the release of information about them and referred the requester to a public library to look up arrest and crime information in the back issues of newspapers. People arrested have no right to keep that information secret.

- A clerk at the San Mateo Police Department said each arrest and crime record would cost \$50 to look up on the department's computer. State law allows charges only for making photocopies.

- Police at the Bay Area's three largest departments -- San Francisco, Oakland and San Jose -- failed to release any requested records. Oakland and

San Jose wouldn't accept written requests.

- The Los Gatos, American Canyon, Berkeley, Redwood City and San Mateo police were among Bay Area departments that refused to accept written requests for records.

- The Fremont, Santa Clara, Pleasanton, St. Helena and San Leandro departments were among those that accepted a written request for records and then failed to answer it. State law requires agencies to respond within 10 days.

When confronted with these lapses, police chiefs offered a variety of responses.

In San Mateo, auditor Quynh Tran, a Contra Costa Times reporter, stated that when she requested crime statistics she was told that identification would be required, she would be charged for the request and she was asked about her reason for the inquiry. When she tried to give the clerk her written request, the clerk wouldn't take it, Tran wrote in her report. The clerk told Tran she could not help her with the written request, indicating that a public information officer could assist reporters' requests for information, according to the report.

Only, San Mateo Police Chief Susan Manheimer insists that the auditor was never offered a written request.

"I think it's pretty amazing that my public records supervisor would be accused of not taking a report that wasn't offered," she said. "So, I don't put much credence in this."

"We screwed up," said Fremont police Chief Craig Steckler. A part-time clerk accepted the auditor's written request and it wasn't forwarded to the right people, he said, adding that he has instructed the records manager to "make sure it doesn't happen again."

The majority of police administrators contacted about the results said they were disappointed in their departments' failures. Most pledged to revamp procedures to prevent future problems.

In some cases, even departments that earned high scores behaved questionably the day of the audit. In El Cerrito, for example, records supervisor Loralee Palfini laughed and shook her head as she read the written request and then assured the requester she would be able to track down his identity even without his last name.

Agencies were scored in part on their willingness to give information, and also on whether they improperly cited state laws that allow some information to be kept confidential, or erroneously claimed they were not required to give out information.

In Berkeley, where police records clerks refused to accept a written request, Mayor Tom Bates said "It is totally unacceptable behavior. I have never heard of anything like this."

Oakland, Benicia, San Francisco and Contra Costa County all have better-government ordinances that require greater transparency than the state Public Records Act. Police in the three cities all received scores of 32 or lower. The Contra Costa County Sheriff's Department received a 51.

In Oakland, an auditor waited 45 minutes but was unable to get anyone at police headquarters to accept a written request for records or even tell him who to ask for crime and arrest records.

"That is unacceptable," said Mark Morodomi, supervising attorney of the city's Open Government Program. "We need to know where the roadblocks are."

Oakland Police spokesman Roland Holmgren said the city complied with

complex requests for public records, and it was unfortunate that the department is being downgraded based on one incident.

"This isn't the type of service we want to provide," Holmgren said. "It's a problem, we recognize that, and we are sitting down at the table and evaluating our policies and procedures so things like this don't happen again."

Alameda and Piedmont didn't fare much better.

In Alameda, the auditor was required to divulge who she was and why she wanted the records before she was given access to the employee who handles such requests. The auditor was told it would cost \$15 "upfront" to research crime records.

Alameda Police Capt. Jim Brock said his agency encourages the public to make inquiries, but obviously there is a need for more training among the public service staff.

"We've got it squared away now," Brock said. "It was an unfortunate mistake, but something we've already addressed, and something we'll keep an eyeball on."

In Piedmont, the requester felt physically intimidated by a police captain and was told she "had no right to see" the police chief's Statement of Economic Interests, a report filed annually that itself states it is a public document.

"I think we might have a breakdown of communication here," said Piedmont Police Chief Lisa Ravazza. "If there are things we need to modify and adjust, we're all open to suggestions."

East Palo Alto police Chief Ron Davis said he was dismayed about receiving the lowest grade in the Bay Area, a score of 5.

"Whether it's one day or ongoing, it absolutely concerns me," he said. "It

sounds like we have room for much improvement."

In Newark, which scored a 78 largely based on what Californians Aware described as a very helpful response from the city attorney, Police Chief Ray Samuels objected to the way the audit was performed.

"There was a better way to test open government than a complex document that required significant staff time to put together," he said.

Samuels said he looked up information about the auditor on the Internet because he was curious who she was after hearing that other departments received similar information requests.

The results of the audit did not surprise San Bernardino County Sheriff Gary Penrod, president of the California State Sheriffs' Association. His agency received a score of 73.

Most departments are going to take it as a learning experience and put some policies in place," Penrod said.

Livermore Police Chief Steve Krull, president of the California Police Chiefs Association, said the departments should release "lawful public information in a short period of time."

But, Krull said, "that probably isn't a walk-in, walk-out situation. It may take some time to compile the data." His department received a score of 40.

The auditor who visited that department was told by a records clerk that crime and arrest information was available on the department's Web site. Krull said he was fine with providing information to the public in that way.

However, because of a problem with an Internet server, Krull said the information couldn't be accessed by computer on the day the clerk referred the auditor to the Web site.

Staff writers Cecily Burt and Angela Woodall and MediaNews writer Leslie Griffy contributed to this story.

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