Date: March 22, 2011

Item No. 12 & 13
File No. 11003

# SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Matt Smith against the District Attorney's Office**
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**Completed by:** Chris Rustom **Date:** March 17, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CITY ATTORNEY

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# MEMORANDUM
# PRIVILEGED AND CONFIDENTIAL

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet
Deputy City Attorney

DATE: March 4, 2011

RE: Complaint 11003: *Matt Smith v. District Attorney's Office*

## Background

Complainant Matt Smith alleges that the District Attorneys' Office ("DA") violated the Ordinance by failing to provide "Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years" in response to his April 19, 2010 public records request.

## Complaint

On February 15, 2011, Complainant filed a complaint with the Task Force alleging public records violations under Ordinance section 67.26. It appears that the same complaint was earlier made to the Task Force on June 21 and July 16, 2010, but it is unclear what happened to those earlier complaints.

## Discussion and Analysis

The DA is a policy body and a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Department.

The California Court of Appeals, however, has held that the exact type of investigative files sought be complainant are not subject to disclosure under the Sunshine Ordinance because that law is pre-empted by Penal Code section 25303. Section 25303 prohibits a county Board of Supervisors from "obstruct[ing] the investigative and prosecutorial function of the district attorney of a county." *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1056-1057.[1] The *Rivero* court held that requiring a DA to disclose criminal investigative files would violate Section 25303 and thus the Ordinance must give way to the superior state law. In the face of this state law pre-emption, the Task Force lacks jurisdiction to hear a complaint of a violation of the Ordinance.

[1] See also *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1065; *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169 , 104 Cal.App.4th 175, both of which uphold the principle that the investigative exemption of the Public Records Act survives the conclusion of the investigation itself.

CITY AND COUNTY OF SAN FRANCISCO

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# MEMORANDUM

*March 17, 2011*

*MATT SMITH v. SAN FRANCISCO DISTRICT ATTORNEY (11003)*

## COMPLAINT

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Matt Smith alleges that the District Attorneys' Office ("DA") violated the Ordinance by failing to provide "Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years" in response to his April 19, 2010 public records request.

**COMPLAINANT FILES COMPLAINT:**

On February 15, 2011, Smith filed a complaint with the Task Force alleging public records violations under Ordinance section 67.26. It appears that the same complaint was earlier made to the Task Force on June 21 and July 16, 2010, but it is unclear from the record before me what happened to those earlier complaints.

**JURISDICTION**

The DA is a policy body and a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Department.

The California Court of Appeals, however, has held that the exact type of investigative files sought be complainant are not subject to disclosure under the Sunshine Ordinance because that law is pre-empted by Penal Code section 25303. Section 25303 prohibits a county Board of Supervisors from "obstruct[ing] the investigative and prosecutorial function of the district attorney of a county." *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1056-1057. The *Rivero* court held that requiring a DA to disclose criminal investigative files would violate Section 25303 and thus the Ordinance must give way to the superior state law. In the face of this state law pre-emption, I have advised that the Task Force lacks jurisdiction to hear a complaint of a violation of the Ordinance.

The Complaint Committee found jurisdiction to exist at its meeting on this complaint.

**Memorandum**



**APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:**

- Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.
- Section 67.26 deals with withholding of records.
- Section 67.27 deals with written justification for withholding of records.

**Section 6250 et seq. of the Cal. Gov't Code (Public Records Act)**

- Section 6254(f) deals with records of a criminal investigation that are exempt from disclosure

**Section 23000 et seq. of the Cal. Gov't Code (Governments of Counties)**

- Section 25303 deals with supervisory powers and responsibilities of a county Board of Supervisors, and limits on those powers.

**APPLICABLE CASE LAW:**

- ***Rivero v. Superior Court*** (1997) 54 Cal.App.4th 1048, 1056-1057 (Sunshine Ordinance provisions requiring a DA to disclose criminal investigative files violate Calif. Gov't. Code section 25303, and interfere with the state functions of the DA's office under the California Constitution. Thus, the Ordinance must give way to the superior state law.)
- ***Haynie v. Superior Court*** (2001) 26 Cal.4th 1061, 1065 (the exemption from disclosure under the Public Records Act for documents related to a criminal investigation survives the conclusion of the investigation itself).
- ***Rackauckas v. Superior Court*** (2002) 104 Cal.App.4th 169, 175 (the exemption from disclosure under the Public Records Act for documents related to a criminal investigation survives the conclusion of the investigation itself).
- ***Williams v. Superior Court*** (1993) 5 Cal.4th 337, 355 (California Supreme Court held that the exemption from disclosure under the Public Records Act for documents related to a criminal investigation survives the conclusion of the investigation itself).

**ISSUES TO BE DETERMINED**

**Uncontested Facts:** On April 19, 2010, complainant requested the following records from DA Chief Administrator Paul Henderson by email: "all records associated with investigation(s) into allegations of sexual abuse of Father Greg Ingels. Additionally, I wish to review records received by the [DA] from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests."

**Memorandum**



On April 21, 2010, Paul Henderson responded by email on behalf of the DA that the records requested were a part of the DA's investigative files and thus were exempt from disclosure under the Public Records Act or the Sunshine Ordinance. Mr. Henderson further responded that all DA investigative records are maintained as confidential, even after the investigation has been concluded. Mr. Henderson concluded by citing to decisions of the California Court of Appeals and California Supreme Court holding that the Sunshine Ordinance cannot require a DA to turn over investigative files and that the exemption in question survives the termination of the investigation itself. Based on this explanation, the DA declined to produce any of the requested records.

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Do the provisions of the Sunshine Ordinance apply to investigative records of a DA's office, or does Gov't Code section 25303 preempt it with regard to such records?
- If the Sunshine Ordinance applies to such records, did the DA's response to the records request comply with the requirement that withholding by minimized?
- If the Sunshine Ordinance applies to such records, did the DA comply with the requirement that withholding of records be justified in writing by reference to a specific exemption of the PRA?
- Did the DA's response comply with the requirements of PRA section 6253(a) that any reasonably segregable portion of a record be provided after deleting exempt portions of the record? Or are all portions of investigative records exempt from disclosure?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

**Memorandum**

DATE: March 17, 2011
PAGE: 4
RE: Smith v. DA: *Complaint 11003*

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED**

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**
(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
. . .

**SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**
No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**
Any withholding of information shall be justified, in writing, as follows:
(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**Memorandum**

DATE: March 17, 2011
PAGE: 5
RE: Smith v. DA: *Complaint 11003*

**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**

**SECTION 6253**
(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. ***Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law***.
(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

> (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
> (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
> (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
> (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) **Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records**. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

**SECTION 6254**
(f) ***Records of complaints to, or investigations conducted by***, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and ***any state or local police agency, or any investigatory or security files compiled by***

***any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes***. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

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:
(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, 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. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim

is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.
(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

**GOV'T. CODE SECTION 25303**

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. ***The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county***.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

*26 Cal. 4th 1061, *; 31 P.3d 760, **;*
*112 Cal. Rptr. 2d 80, ***; 2001 Cal. LEXIS 6478*

ELGIN HAYNIE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; COUNTY OF LOS ANGELES, Real Party in Interest.

No. S089115.

SUPREME COURT OF CALIFORNIA

26 Cal. 4th 1061; 31 P.3d 760; 112 Cal. Rptr. 2d 80; 2001 Cal. LEXIS 6478; 2001 Cal. Daily Op. Service 8543; 2001 Daily Journal DAR 10541

October 1, 2001, Decided

**PRIOR HISTORY:** Superior Court of Los Angeles County. Super. Ct. No. BS060368. Rodney E. Nelson, Judge. Court of Appeal of California, Second Appellate District, Division Four. B137707.

**DISPOSITION:** The judgment of the Court of Appeal is reversed, and the cause is remanded to that court with directions to deny the peremptory writ and discharge the alternative writ.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** After the superior court denied defendant's request to order the Los Angeles County Sheriff's Department to produce investigative records about his detention by sheriff's deputies, he petitioned for writ of mandate to compel production of the records. The Court of Appeal of California, Second Appellate District, Division Four issued a peremptory writ of mandate. The real party in interest, the County of Los Angeles, petitioned for review.

**OVERVIEW:** Defendant was driving a blue van with three passengers when he was stopped by a deputy sheriff who was acting on a citizen's report of three armed teenagers getting into a blue van. Although defendant was handcuffed, and his passengers questioned, no charges were ultimately filed against any of them. Defendant submitted a demand for public records to the sheriff's department for any writings concerning the incident pursuant to California Public Records Act (CPRA), Cal. Gov't Code § 6250 et seq. The supreme court, reviewing the appellate court's mandate to the trial court to disclose three categories of records and to require the sheriff's department to provide a list of potentially responsive documents as an initial response to defendant's CPRA request, held that records relating to defendant's stop were exempt from disclosure by Cal. Gov't Code § 6254(f) and that preparing an inventory of potentially responsive records was not mandated by the CPRA. The supreme court held that § 6254(f) was not limited to records of investigations where the likelihood of enforcement had ripened into something concrete and definite.

**OUTCOME:** The court reversed the appellate court, and remanded the case to that court with directions to deny the peremptory writ.

**CORE TERMS:** disclosure, exemption, exempt, public record, deputy, recording, investigatory, responsive, withheld, concrete, definite, inspection, public agency, enforcement proceedings, law enforcement agencies, investigations conducted, passengers, van, disclose, law enforcement, statutory exemption, supervisor, detention, compiled, routine, ecords, tape, county sheriff's, local police agency, criminal conduct

**LEXISNEXIS(R) HEADNOTES**

Administrative Law > Governmental Information > Freedom of Information > General Overview

*HN1* The premise of the California Public Records Act (CPRA), Cal. Gov't Code § 6250 et seq. is that access to information concerning the conduct of the People's business is a fundamental

and necessary right of every person in California. Cal. Gov't Code § 6250. To implement that right, the act declares that public records are open to inspection. Cal. Gov't Code § 6253. At the same time, the act recognizes that certain records should not, for reasons of privacy, safety, and efficient governmental operation, be made public. Cal. Gov't Code § 6254, in the course of 26 separate subdivisions, sets forth many of those exceptions.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN2 The California Public Records Act, Cal. Gov't Code § 6250 et seq., provides that every person has a right to inspect any public record, except as hereafter provided. Cal. Gov't Code § 6253(a). Hence, all public records are subject to disclosure unless the legislature has expressly provided to the contrary.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Governments > State & Territorial Governments > Licenses

HN3 Cal. Gov't Code § 6254(f) authorizes a public agency to withhold records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the attorney general and the department of justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. In lieu of disclosing these records, the California Public Records Act, Cal. Gov't Code § 6250 et seq., requires the agency to disclose certain information derived from them.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN4 The concrete and definite qualification to the exemption in section Cal. Gov't Code § 6254 (f) relates only to information which is not itself exempt from compelled disclosure, but claims exemption only as part of an investigatory file. Information independently exempt, such as intelligence information is not subject to the requirement that it relate to a concrete and definite prospect of enforcement proceedings in order to be exempt from disclosure.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Criminal Law & Procedure > Criminal Offenses > Weapons > General Overview

HN5 In exempting records of complaints to, or investigations conducted by law enforcement agencies, Cal. Gov't Code § 6254(f) does not distinguish between investigations to determine if a crime has been or is about to be committed and those that are undertaken once criminal conduct is apparent.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN6 The records of investigation exempted under Cal. Gov't Code § 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Criminal Law & Procedure > Criminal Offenses > Weapons > General Overview

HN7 Cal. Gov't Code § 6254(f)(2) directs law enforcement agencies to make public, subject to the restrictions imposed by Cal. Penal Code § 841.5, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, 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 factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN8 Cal. Gov't Code § 6254(f)(2) specifies the information--not the records--that must be provided, such as the substance of complaints and the actual circumstances surrounding the crime or incident. In enacting this provision, the legislature required the disclosure of

information derived from the records while, in most cases, preserving the exemption for the records themselves.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN9 Cal. Gov't Code § 6255 states that if records within the ambit of the California Public Records Act request are withheld based on a statutory exemption, the agency must disclose that fact.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Administrative Law > Governmental Information > Recordkeeping & Reporting

HN10 The law mandates that public records be open to inspection at all times during the office hours of the state or local agency Cal. Gov't Code § 6253(a), recognizes that every person has a right to inspect any public records not exempted by the California Public Records Act, Cal. Gov't Code § 6250 et seq., and obliges the public agency to provide copies of its nonexempt records at the expense of the person requesting copies. Cal. Gov't Code § 6253(b). In so doing, the legislature has endeavored both to maximize public access to agency records and minimize the burden and expense that opening the records to inspection and copying imposes on public agencies. In other circumstances, where the legislature has intended for a responding party to enumerate and describe each document being withheld, it has done so with great specificity.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN11 See Cal. Gov't Code § 6255(a).

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN12 Cal. Gov't Code § 6255(a) has been referred to as a catch-all exemption. It outlines the circumstances under which an agency may withhold a record: by demonstrating that the record falls within a statutory exemption or that the public interest in nondisclosure clearly outweighs the public interest in disclosure. When an agency, in compliance with Cal. Gov't Code § 6255, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN13 Cal. Gov't Code § 6255 does not require the agency to describe each of the documents falling within the statutory exemption.

Administrative Law > Governmental Information > Freedom of Information > Disclosure Requirements > Public Inspection

HN14 The California Public Records Act (CPRA), Cal. Gov't Code § 6250 et seq., does not, like the Freedom of Information Act, require the maintenance of an index of records available for public inspection.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN15 Nothing in the California Public Records Act (CPRA), Cal. Gov't Code § 6250 et seq., itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated by the CPRA.

**SUMMARY:**

**CALIFORNIA OFFICIAL REPORTS SUMMARY**

An individual who was stopped in his vehicle by a deputy sheriff requested, pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.), that the county sheriff's department produce records relevant to his detention. The sheriff's department refused to provide the records, claiming the exemption of Gov. Code, § 6254, subd. (f) (exemption for records of investigations

conducted by a local police agency), and did not identify any records withheld. The trial court denied the individual's petition requesting that the sheriff's department be ordered to produce the records. (Superior Court of Los Angeles County, No. BS060368, Rodney E. Nelson, Judge.) The Court of Appeal, Second Dist., Div. Fourt, No. B137707, ordered issuance of a writ of mandate, directed disclosure of the records, and ordered the county to create a log of documents exempt from disclosure.

The Supreme Court reversed the judgment of the Court of Appeal and remanded the cause to that court with directions. The court held that the Court of Appeal misconstrued the exemption for records of investigations under Gov. Code, § 6254, subd. (f), and erred in ordering that the records be disclosed. The exemption under Gov. Code, § 6254, subd. (f), authorizes a public agency to withhold records of investigations conducted by a local police agency. Contrary to the conclusion of the Court of appeal, there is no requirement that such records may be withheld from disclosure only when the prospect of enforcement proceedings is concrete and definite. In this case, the records related to an investigation whether there was a violation of law, and thus they were exempt from disclosure by Gov. Code, § 6254, subd. (f). The court further held that the Court of Appeal erred in ruling that the county was obligated to provide the individual with a description of all responsive records, regardless of whether those records were exempt from disclosure. Gov. Code, § 6255, does not require the agency to describe each of the documents falling within the statutory exemption. (Opinion by Baxter, J., with George, C.J., Kennard, Werdegar, Chin, Brown, JJ., and Hull, J., * concurring.)

* Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**HEADNOTES**

**CALIFORNIA OFFICIAL REPORTS HEADNOTES**
Classified to California Digest of Official Reports

CA(1a) CA(1a) **(1a) (1b) Records and Recording Laws § 14.2--Inspection of Public Records--Exemptions--Investigations by Law Enforcement Agencies.** --In proceedings in which an individual who was stopped in his vehicle by a deputy sheriff requested, pursuant to the California Public Records Act ( Gov. Code, § 6250 et seq.), that the county sheriff's department produce records relevant to his detention, the Court of Appeal misconstrued the exemption for records of investigations under Gov. Code, § 6254, subd. (f), and erred in ordering that the records be disclosed. The exemption under Gov. Code, § 6254, subd. (f), authorizes a public agency to withhold records of investigations conducted by a local police agency. Contrary to the conclusion of the Court of Appeal, there is no requirement that such records may be withheld from disclosure only when the prospect of enforcement proceedings is concrete and definite. The records of investigation exempted under Gov. Code, § 6254, subd. (f), encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. In this case, the investigation that included the decision to stop the individual and the stop itself was for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission. Thus, records relating to that investigation were exempt from disclosure by Gov. Code, § 6254, subd. (f). Nor was the individual entitled under Gov. Code, § 6254, subd. (f)(2), to a tape recording of the citizen report that promoted his detention, since that provision specifies the information, not the records, that must be provided.

[See 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 278 et seq.]

CA(2) **(2) Records and Recording Laws § 12--Inspection of Public Records--California Public Records Act--Scope of Disclosure.** --Under the California Public Records Act ( Gov. Code, § 6250 et seq.), every person has a right to inspect any public record, except as provided by the statute. Hence, all public records are subject to disclosure unless the Legislature has expressly provided to the

contrary.

CA(3)[↓] **(3) Records and Recording Laws § 14.2--Inspection of Public Records--Exemption--Investigations Conducted by Law Enforcement Agency--Obligation to Provide Description of Records.** --In proceedings in which an individual who was stopped in his vehicle by a deputy sheriff requested, pursuant to the California Public Records Act ( Gov. Code, § 6250 et seq.), that the county sheriff's department produce records relevant to his detention, the court of Appeal erred in ruling that the county was obligated to provide the individual with a description of all responsive records, regardless of whether those records were exempt from disclosure. The county relied on the exemption for investigations by law enforcement agencies ( Gov. Code, § 6254, subd. (f)), and Gov. Code, § 6255, states that if records within the ambit of a request are withheld based on a statutory exemption, the agency must disclose that fact. When an agency, in compliance with Gov. Code, § 6255, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld. However, Gov. Code, § 6255, does not require the agency to go further and describe each of the documents falling within the statutory exemption.

**COUNSEL:** Adam Axelrad, Robert Mann, Donald W. Cook; Litt and Associates and Barrett S. Litt for Petitioner.

Daniel P. Tokaji, Alan Schlosser and Jordan C. Budd for ACLU Foundation of Southern California, ACLU Foundation of Northern California and ACLU Foundation of Imperial & San Diego Counties as Amici Curiae on behalf of Petitioner.

Quinn Emanuel Urquhart Oliver & Hedges and Timothy L. Alger for California Newspaper Publishers Association as Amicus Curiae on behalf of Petitioner.

No appearance for Respondent.

Manning & Marder, Kass, Ellrod, Ramirez and Steven J. Renick for Real Party in Interest.

**JUDGES:** Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, Chin, Brown, JJ., and Hull, J., * concurring.

* Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**OPINION BY:** BAXTER

**OPINION**

**[*1064] [***81] [**761] BAXTER, J.**

HN1[↑] The premise of the California Public Records Act ( Gov. Code, § 6250 et seq.; hereafter CPRA) [1] is that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) To implement that right, the act declares that "[p]ublic records are open to inspection." (§ 6253.) At the same time, the act recognizes that certain records should not, for reasons of privacy, safety, and efficient governmental operation, be made public. Section 6254, in the course of 26 separate subdivisions, sets forth many of those exceptions. In this case, we are asked to construe subdivision (f) of section 6254 (section 6254(f)) and apply that construction to certain records of a law enforcement agency.

**FOOTNOTES**

1 All statutory references are to the Government Code unless otherwise noted.

The trial court denied petitioner Elgin Haynie's request that the Los Angeles County Sheriff's

Department be ordered to produce records Haynie considered relevant to an incident in which he was detained by sheriff's deputies. The records in question concern a citizen's call to report a possible crime and the department's response thereto. After the court denied Haynie's request, he filed a petition for writ of mandate in the Court of Appeal seeking to compel production of the records. The Court of Appeal found that "the prospect of enforcement proceedings [was] not concrete and definite when the records **[***82]** were prepared" and ordered issuance of a peremptory writ of mandate directing the superior court to determine whether the requested records exist and, if so, to order their disclosure.

We granted review, on the petition of real party in interest County of Los Angeles (County), to consider the Court of Appeal's construction of section 6254(f) as it applies to materials the County claims are exempt as "[r]ecords of . . . investigations" conducted by a law enforcement agency. We also address the County's claim that the Court of Appeal exceeded its authority in holding that public agencies responding to CPRA requests must, as part of their initial response, provide lists of all potentially responsive records in their possession, including records exempt from disclosure under section 6254.

We conclude that the Court of Appeal erred in directing disclosure of the records in question and in ordering the County to create a log of documents exempt from disclosure and therefore reverse the judgment granting the petition for writ of mandate.

**[*1065] [**762]** I. BACKGROUND

The allegations of the petition for writ of mandate and supporting exhibits reflect the following, the truth of which has not been established: Haynie, who is a 42-year-old Black male, was driving a blue Ford van with three teenage Latina passengers when he was stopped by Los Angeles County Deputy Sheriff David Mertens around 4:00 p.m. on July 1, 1999. Minutes earlier, a citizen had reported three teenage Asian males getting into a blue Ford van with what she believed were pistols or squirt guns. Haynie was handcuffed, he and the three passengers were questioned, and the van was searched. Eventually, Deputy Mertens released Haynie and the three passengers. No charges were filed against them. Haynie, however, claims he was injured during the course of the questioning and was hospitalized for several days.

On July 12, 1999, Haynie presented a tort claim to the County under Government Code section 910 and filed a citizen's complaint with the Los Angeles County Sheriff's Department under Penal Code section 832.5. That same day, he submitted a "Demand for Public Records" to the Sheriff's Department for "any writings" concerning the July 1, 1999 incident. The letter identified the deputies involved and requested (but was not limited to) any crime reports, arrest reports, evidence reports, use-of-force reports, canine reports, officer-involved-shooting reports, follow-up reports, handwritten notes, supervisors' reports, notes or reports of interviews of witnesses, and tape recordings (including recordings of radio calls leading up to the incident, recordings containing any information forming the basis for Haynie's detention, and recordings of any communications between the deputies and Haynie or anyone else present at the time of the incident). The letter also recited Haynie's understanding that a supervisor (probably Deputy Jensen) had interviewed several witnesses and had taken notes of the interviews; that a deputy (probably Mertens) had tape-recorded his conversation with Haynie; and that a broadcast describing the suspects and their vehicle had been tape-recorded.

The sheriff's department refused to provide any records, claiming the exemption of section 6254(f), and did not identify any records withheld. The department instead disclosed certain information in this "summary of the event":

"On July 1, 1999, at approximately 1650 hours, Deputy Mertens received a call **[***83]** from a neighbor who saw several males carrying guns enter an older **[*1066]** model dark blue Ford van and travel down the road. The deputy spotted a vehicle matching that description five minutes later and he decided to conduct an investigation of the van. Elgin Haynie was later identified as the drive [*sic*] of the van along with three females [*sic*] passengers.

"Prior to the stop of the van, the deputy noticed furtive movements on the part of the driver and the passengers. When contacted by the deputy, Mr. Haynie became argumentative and had to be handcuffed. After a brief conversation with the three passengers and Mr. Haynie it was determined that they were not related to the previous call and were released.

"The deputy left the location, but returned within moments only to find Mr. Haynie attempting to inflict

injury to his wrists by striking the pavement. The deputy subsequently requested paramedics and a field supervisor.

"Photographs were taken of Mr. Haynie at the scene and no injuries were noted. Mr. Haynie told the supervisor he had no complaint of pain, and the paramedics did not note any injury, either."

Haynie next filed a "Verified Petition for Order Compelling Disclosure of Public Records and Materials" under section 6258 and a "Motion for Order Compelling Disclosure of Public Records and Materials and for Award of Statutory Attorney's Fees and Costs." The County asserted in response that it had fully complied with the CPRA by providing information in summary form; that the records pertaining to Haynie's pending litigation were exempt from disclosure under section 6254, subdivision (b); and that the records of the investigation that included Haynie's detention **[**763]** were exempt from disclosure under section 6254(f). The response was accompanied by a declaration of counsel stating that Haynie had filed a legal claim relating to this incident with the Los Angeles County Board of Supervisors on July 13, 1999; that no crime report, arrest report, evidence report, use-of-force report, canine report, officer-involved-shooting report, or follow-up report existed; and that documents generated as a result of the citizen's complaint filed by Haynie's attorney *did* exist but were privileged and could not be disclosed prior to a hearing on a *Pitchess* [2] motion. No *Pitchess* motion had yet been filed, however.

**FOOTNOTES**

2 *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531 [113 Cal. Rptr. 897, 522 P.2d 305].

At a hearing to consider the petition and the County's opposition thereto, the trial court expressed a tentative belief that the CPRA "is not a prelitigation discovery statute[;] . . . . that this case is governed by 6254(f) under which the county has only the obligation to provide certain information, and not documents, and that the county has done so . . . ." After argument the **[*1067]** court ruled orally from the bench: "[T]he matter is governed by 6254(f) and by princip[le] in that this is not a prelitigation discovery statute."

The Court of Appeal issued an alternative writ and, after further briefing and argument, issued a peremptory writ of mandate directing the superior court to vacate its denial order and reconsider the petition and motion as to three categories of records, the existence of which the County has never affirmatively asserted or denied: (1) recordings of any radio broadcast that the deputies heard prior to the stop that was relevant to their decision to stop Haynie; (2) any tape recording of Haynie's conversations with the deputies during the stop; and (3) any statements obtained from the passengers in Haynie's **[***84]** vehicle during the stop. [3] Relying on statements in *Williams v. Superior Court* (1993) 5 Cal. 4th 337, 356 [19 Cal. Rptr. 2d 882, 852 P.2d 377] (*Williams*) and *Uribe v. Howie* (1971) 19 Cal. App. 3d 194 [96 Cal. Rptr. 493] (*Uribe*), the Court of Appeal held that the exemption for records of investigations applies only when the prospect of enforcement proceedings is concrete and definite. Concluding that no such prospect existed for those records "created before or during the stop," the court directed the trial court to "determine whether the records in question exist and, if so, order their disclosure." [4] The court also instructed the County to determine whether any responsive records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records."

**FOOTNOTES**

3 We observe that Haynie's request for the first two categories of records may be moot in whole or in part in that he has since received, through discovery in his federal action, *Haynie v. County of Los Angeles* (C.D.Cal., No. CV 00-3935), a transcript of the recording of the conversation during the stop and a tape of the citizen's complaint.

4 The Court of Appeal did reject Haynie's claim as to a fourth category of records: the tape-recorded statement he had made after filing a citizen's complaint about the deputies. The Court of Appeal, again relying on *Uribe*, reasoned that substantial evidence supported the finding that the record in question was created "when the prospect of enforcement proceedings arising from this complaint [was] concrete and definite." Haynie argued in the alternative that he was entitled to a

copy of his statement under Penal Code section 832.7, subdivision (b), which provides that "a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed." The Court of Appeal, noting that Haynie had failed to present this argument to the trial court, declined to address it. Haynie does not renew the argument in this court, and we express no views on it.

CA(1a) **(1a)** The County contends that the Court of Appeal misconstrued the exemption for records of investigations under section 6254(f) and is without authority to require an agency, as part of its initial response to a CPRA request, to create lists of all potentially responsive documents, including documents statutorily exempt from disclosure. We agree.

**[*1068]** II

CA(2) **(2)** HN2 The CPRA provides that "every person has a right to inspect any public record, except as hereafter provided." (§ 6253, subd. (a).) Hence, "all public records are subject to disclosure unless the Legislature has expressly provided to the contrary." **[**764]** (*Williams*, *supra*, 5 Cal. 4th at p. 346, 19 Cal. Rptr. 2d 882, 852 P.2d 377.)

CA(1b) **(1b)** The Legislature has assembled a diverse collection of exemptions from disclosure in section 6254. The County relies on HN3 subdivision (f), which in pertinent part authorizes a public agency to withhold "[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes . . . ." In lieu of disclosing these records, the CPRA requires the agency to disclose certain information derived from them. (*Williams*, *supra*, 5 Cal. 4th at p. 353.)

The County contends that the materials Haynie seeks are "[r]ecords of . . . investigations conducted by . . . [a] local police agency" and are thus exempt from **[***85]** disclosure under section 6254(f). Haynie, like the Court of Appeal, believes that such records may be withheld from disclosure only when the prospect of enforcement proceedings is "concrete and definite" under *Uribe*, *supra*, 19 Cal. App. 3d at page 212. To resolve this dispute, it may be helpful to review *Uribe* in some detail.

*Uribe*, unlike the present case, involved the construction of section 6254(f)'s exemption for "investigatory . . . *files* compiled by any . . . local agency for correctional, law enforcement, or licensing purposes . . . ." (Italics added.) The plaintiff, a farm worker who suffered from health problems attributed to pesticides, requested access to mandatory reports filed by farmers who had sprayed pesticides in the area. The county agricultural commissioner argued that the reports were part of investigatory files compiled for law enforcement and licensing purposes and thus exempt under section 6254(f). The Court of Appeal rejected the commissioner's claim, finding that "this was not the primary purpose [for which] they were compiled" and there was no indication "that any of the reports were being put to such a purpose at the time of trial." (*Uribe*, *supra*, 19 Cal. App. 3d at p. 213.)

*Uribe* then held, as we have previously observed, "that the exemption for 'files' applies 'only when the prospect of enforcement proceedings is concrete and definite. [Citation.] It is not enough that an agency label its file **[*1069]** "investigatory" and suggest that enforcement proceedings may be initiated at some unspecified future date or were previously considered. . . . [P] . . . To say that the exemption created by subdivision (f) is applicable to any document which a public agency might, under any circumstances, use in the course of [an investigation] would be to create a virtual *carte blanche* for the denial of public access to public records. The exception would thus swallow the rule.' (*Uribe*, *supra*, 19 Cal. App. 3d at pp. 212-213, citing *Bristol-Myers Company v. F.T.C.* (D.C. Cir. 1970) 424 F.2d 935, 939 [138 App.D.C. 22].)" (*Williams*, *supra*, 5 Cal. 4th at pp. 355-356.) Based on subsequent decisions, which had followed *Uribe's* holding "on this point," we said in *Williams* that "it now appears to be well established that 'information in public files [becomes] exempt as "investigatory" material only when the prospect of enforcement proceedings [becomes] concrete and definite.' " (*Id.* at p. 356.) Such a qualification is necessary to prevent an agency from attempting to "shield a record from public disclosure, *regardless of its nature*, simply by placing it in a file labelled 'investigatory.' " (*Id.* at p. 355, italics added.)

However, neither this court nor any court Haynie has identified has extended this qualification to section 6254(f)'s exemption for "[r]ecords of . . . investigations . . . ." The case law, in fact, is to the contrary. In *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal. 3d 440 [186 Cal. Rptr. 235, 651 P.2d 822] (ACLU), for example, we explained that HN4 the "concrete and definite" qualification to the exemption in section 6254(f) "relates only to information which is not itself exempt from compelled disclosure, **[**765]** but claims exemption only as part of an investigatory file. Information independently exempt, such as 'intelligence information' in the present case, is not subject to the requirement that it relate to a concrete and definite prospect of enforcement proceedings." (*ACLU*, *supra*, at p. 449, fn. 10.) In *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645 [117 Cal. Rptr. 106] (*Black* **[***86]** *Panther Party*), the Court of Appeal explained that in *Uribe*, "the record in question was not a complaint but a routine report in a public file. It could gain exemption not because of its content but because of the use to which it was put, that is, when and if it became part of an investigatory file. Here, by their very content, the documents are independently entitled to exemption as 'records of complaints'; their exemption is not dependent upon the creation of an investigatory file." (*Black Panther Party*, *supra*, at p. 654.)

What is true for records of complaints (*Black Panther Party*) and intelligence information (*ACLU*) is true as well for records of investigations. The latter, no less than the former, are exempt on their face, whether or not they are ever included in an investigatory file. Indeed, we alluded to this in *Williams*, when we noted that "a document in the file may have extraordinary significance to the investigation even though it does not on its face **[*1070]** purport to be an investigatory record *and, thus, have an independent claim to exempt status*." (*Williams*, *supra*, 5 Cal. 4th at p. 356, italics added.) Limiting the section 6254(f) exemption only to records of investigations where the likelihood of enforcement has ripened into something concrete and definite would expose to the public the very sensitive investigative stages of determining whether a crime has been committed or who has committed it. [5]

**FOOTNOTES**

[5] Given our conclusion that *Uribe* does not apply to the exemption for records of investigations under section 6254(f), we express no views as to the correctness of the Court of Appeal's determination that the records here did not satisfy *Uribe*'s "concrete and definite" standard.

Haynie then argues that if no concrete and definite prospects of enforcement need be shown to exempt records of investigations from disclosure, then "records of investigations" should be defined so as to exclude investigations that are merely "routine" or "everyday police activity," such as his traffic stop. *Williams*, he points out, involved a "long-term" investigation into the potential criminal conduct of law enforcement officers, and *City of Hemet v. Superior Court* (1995) 37 Cal. App. 4th 1411 [44 Cal. Rptr. 2d 532] involved a "lengthy" investigation of a police sergeant's conduct. Haynie's proposed limitation finds no support in the statute. Moreover, he offers no principled basis for determining which investigations are sufficiently lengthy or important to be accorded the status of "investigations" within the meaning of section 6254(f)--nor any way to predict, at the outset, what might result in a lengthy or important investigation. One "third-rate burglary attempt," for example, ultimately toppled a president. [6]

**FOOTNOTES**

[6] The Court of Appeal, in ordering disclosure, reasoned that the citizen report of several men with guns entering a vehicle did not "necessarily" describe a crime and that the stop itself was a "routine police inquiry" based on mere suspicion of criminal conduct. These factors are of no significance under the statute. HN5 In exempting "[r]ecords of complaints to, or investigations conducted by" law enforcement agencies, section 6254(f) does not distinguish between investigations to determine if a crime has been or is about to be committed and those that are undertaken once criminal conduct is apparent.

Haynie's concession that records of a murder investigation would be exempt further illustrates the impossibility of making such a distinction. Law enforcement officers may not know whether a crime has

been committed until an investigation of a complaint is undertaken. An investigation may be inconclusive either as to the cause of death or the circumstances in which the **[***87]** death occurred. A fire may be suspicious, but after investigation be found to have an accidental or natural origin. In this case we have no reason to believe that the deputies who stopped Haynie were not investigating a report of what they believed might be criminal conduct. (See, e.g., Pen. Code, § 12031.)

The interpretation offered by Haynie would also impair "routine" investigations. **[**766]** Complainants and other witnesses whose identities were disclosed **[*1071]** might disappear or refuse to cooperate. Suspects, who would be alerted to the investigation, might flee or threaten witnesses. Citizens would be reluctant to report suspicious activity. Evidence might be destroyed.

To avoid these evils, Haynie suggests that the exemption could apply to everyday police work if disclosure "would endanger a witness or anyone else, or if it would endanger the successful completion of *any* investigation." The County's failure to articulate a specific need to withhold the records here, he reasons, means they should be disclosed. This is not the first time, however, that we have been asked to graft a requirement of need onto the statute. We were presented with and unanimously rejected it in *Williams*: "Under the proposed test, documents would be exempt from disclosure only if '(1) they directly pertain to specific, concrete and definite investigations of possible violations of the criminal law; or (2) their disclosure would impair the ability of law enforcement agencies to conduct criminal investigations by disclosing confidential informants, threatening the safety of police agents, victims, or witnesses, or revealing investigative techniques.' The adoption of such a test, which includes the substance of three of the [federal Freedom of Information Act (FOIA)] criteria (see 5 U.S.C. § 552(b)(7)(D), (E) & (F)), is subject to the same objection as the proposal to incorporate the FOIA criteria wholesale: the Legislature has carefully limited the exemption for law enforcement investigatory records by requiring the disclosure of specific information from such records. It is not our task to rewrite the statute." (*Williams*, *supra*, 5 Cal. 4th at p. 354.)

Yet, by including "routine" and "everyday" within the ambit of "investigations" in section 6254(f), we do not mean to shield everything law enforcement officers do from disclosure. (Cf. *ACLU*, *supra*, 32 Cal. 3d at p. 449.) Often, officers make inquiries of citizens for purposes related to crime prevention and public safety that are unrelated to either civil or criminal investigations. HN6 The records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency. Here, the investigation that included the decision to stop Haynie and the stop itself was for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission. Records relating to that investigation are exempt from disclosure by section 6254(f). The Court of Appeal erred in ordering them to be disclosed.

Haynie argues, in the alternative, that he is entitled to any tape recording of the citizen report and any other recording under HN7 section 6254(f)(2), which **[*1072]** directs law enforcement agencies to make public, "[s]ubject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the **[***88]** agency and the time and nature of the response thereto, 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 factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." He argues that the "substance" of the citizen's call is the content of the call as reflected in the recording of the call and that the "factual circumstances" surrounding the stop are what happened during the stop as reflected in the recording of the stop. Inasmuch as subdivision (f)(2) requires that the information be provided "to the extent" it was recorded, the recording itself must be disclosed.

Section 6254(f)(2) is not amenable to the construction Haynie suggests. HN8 This section specifies the information--not the records--that must be provided, such as the "substance" of complaints and the "factual circumstances surrounding the crime or incident." In enacting this provision, the Legislature "required the disclosure of *information* **[**767]** *derived from the records* while, in most cases, preserving the exemption for the records themselves." (*Williams*, *supra*, 5 Cal. 4th at p. 353; *City of Santa Rosa v. Press Democrat* (1986) 187 Cal. App. 3d 1315, 1321 [232 Cal. Rptr. 445]; *Furnishing*

*Copies of Arrest or Complaint Reports*, 65 Ops.Cal.Atty.Gen. 563 (1982).) The Legislature's effort to provide access to selected information from law enforcement investigatory records would have been a wasted one if, as Haynie proposes, the recordings themselves were subject to disclosure.

III

CA(3)**(3)** The Court of Appeal also ruled that, upon receiving Haynie's Demand for Public Records, the County was obligated to determine whether the records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records." In this court, the County does not dispute its obligation to determine whether requested records exist and whether exemptions apply to those records nor does it deny its duty to disclose nonexempt records that it has found. The County objects only to the ruling of the Court of Appeal that it should have provided Haynie with an enumeration or description of all responsive records, regardless of whether those records were exempt from disclosure.

HN9Section 6255 states that if records within the ambit of the request are withheld based on a statutory exemption, the agency must disclose that fact. **[*1073]** Heretofore, however, the agency, in its initial response to a request for inspection of records, has not been required to create an inventory of the records responsive to the request or those for which it claims an exemption. Such a list has been ordered only when a petition to compel disclosure has been filed, the agency claims the records are protected by an exemption, and the records are being transmitted to the court for in camera review to evaluate the claim. After the petition had been filed in *Williams*, for example, the superior court ordered the Sheriff of San Bernardino County to lodge under seal the records for which an exemption was claimed and provide the petitioner with an index of the records being lodged. (*Williams*, *supra*, 5 Cal. 4th at p. 344.) In *State Bd. of Equalization v. Superior Court* (1992) 10 Cal. App. 4th 1177 [13 Cal. Rptr. 2d 342], the board complained that the burden of complying with the petitioner's CPRA request far exceeded the benefits. The Court of Appeal approved the solution of the superior court, **[***89]** which was to direct the board to prepare a list of responsive documents to permit the petitioner to refine its request to exclude unwanted documents. ( *Id.* at pp. 1183-1184, 1191-1192.)

The County does not challenge here the ability of a court to direct an agency, once the petition has been filed, to prepare a list of responsive records and provide it to the requesting party. Rather, it contends that requiring the preparation of a list of all potentially responsive records as part of the agency's initial response to a request for inspection goes beyond any responsibility imposed on public agencies by the CPRA, the case law construing and applying the act, or sound public policy.

This requirement, the County argues, expands the scope of the CPRA far beyond its original purpose of simply making records available for inspection. HN10The law mandates that public records be "open to inspection at all times during the office hours of the state or local agency" (§ 6253, subd. (a)), recognizes that "every person has a right to inspect any public record" not exempted by the act (*ibid.*), and obliges the public agency to provide copies of its nonexempt records at the expense of the person requesting copies. (§ 6253, subd. (b).) In so doing, the Legislature has endeavored both to maximize public access to agency records and minimize the burden and expense that opening the records to inspection and copying imposes on public agencies. In other circumstances, where the Legislature has intended for a responding party to enumerate and describe each document being withheld, it has done so with great specificity. (E.g., Code Civ. Proc., § 2031, subd. (g)(3).) Although the CPRA describes its procedures and exceptions "in exceptionally careful detail" (*Williams*, *supra*, **[**768]** 5 Cal. 4th at p. 361, 19 Cal. Rptr. 2d 882, 852 P.2d 377), it contains no equivalent provision describing an agency's duty to create a log of documents exempt from disclosure.

**[*1074]** Haynie suggests that such a requirement may be inferred from HN11section 6255, subdivision (a), which provides: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." HN12We have previously referred to this provision as "a catch-all exemption." (*Williams*, *supra*, 5 Cal. 4th at p. 347, fn. 9.) It outlines the circumstances under which an agency may withhold a record: by demonstrating that the record falls within a statutory exemption or that the public interest in nondisclosure clearly outweighs the public interest in disclosure. When an agency, in compliance with section 6255, articulates one or more of these

exemptions, it will necessarily reveal the general nature of the documents withheld. For example, an agency that invokes subdivision (j) of section 6254 has revealed that the withheld documents are library circulation records. Here, the County's invocation of section 6254(f) revealed that the withheld documents were records of an investigation. HN13 What section 6255 does not require, however, is for the agency to go further and *describe* each of the documents falling within the statutory exemption. The Legislature, which has carefully detailed the components of the agency's denial of a CPRA request, even to the point of requiring the agency to "set forth the names and titles or positions of each person responsible for the denial" (§ 6253, subd. (d)), is fully capable of requiring agencies to include a log of withheld documents. Given this detailed scheme, it would be inappropriate for us to enlarge **[***90]** the agency's burden under the guise of interpreting the statute.

The case law, as stated, has never approved or even mentioned a public agency's obligation to create a list and description of documents withheld at the prepetition stage. Indeed, the Court of Appeal in *State Bd. of Equalization v. Superior Court*, while affirming the superior court's order directing the preparation of a list after a petition had been filed, noted that HN14 "the Public Records Act does not, like the FOIA, require the maintenance of an index of records available for public inspection . . . ." ( *State Bd. of Equalization v. Superior Court*, *supra*, 10 Cal. App. 4th at p. 1193.)

The burdens and risks of such a requirement appear substantial. Requiring a public agency to provide a list of all records in its possession that may be responsive to a CPRA request has the potential for imposing significant costs on the agency. A single request may involve thousands of pages of materials. (E.g., *State Bd. of Equalization v. Superior Court*, *supra*, 10 Cal. App. 4th at p. 1183, fn. 6.) To require each public agency to catalog the responsive documents for *each* of the requests it receives--even when the agency could legitimately claim that all responsive documents are exempt **[*1075]** from disclosure--would be burdensome and of scant public benefit. (Cf. *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1345 [283 Cal. Rptr. 893, 813 P.2d 240] [request for copies of the Governor's appointment schedules, calendars, notebooks, and any other documents listing the Governor's daily activities over a five-year period].) In addition, where (as here) the documents are generated as part of a criminal investigation, a list of documents withheld may also reveal information ordinarily deemed exempt from disclosure, such as how far the investigation had progressed, whether witnesses had been contacted, and whether forensic tests had been conducted. Moreover, the log itself may launch satellite litigation over the adequacy of its descriptions of the documents exempt from disclosure.

We have no doubt that an agency may elect to create such a list, with or without requiring reimbursement for its costs, but we find HN15 nothing in the act itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated **[**769]** by the CPRA. We therefore conclude that the Court of Appeal erred in holding that such inventories or lists must be created as a matter of course as part of the agency's initial response to CPRA requests.

IV

The judgment of the Court of Appeal is reversed, and the cause is remanded to that court with directions to deny the peremptory writ and discharge the alternative writ.

George, C. J., Kennard, J., Werdegar, J., Chin, J., Brown, J., and Hull, J., * concurred.

**FOOTNOTES**

* Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*54 Cal. App. 4th 1048, *; 63 Cal. Rptr. 2d 213, **;*
*1997 Cal. App. LEXIS 338, ***; 97 Cal. Daily Op. Service 3165*

FRANCISCO JOSE RIVERO, Petitioner, v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; ARLO SMITH as District Attorney, etc., et al., Real Parties in Interest.

No. A075959.

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION THREE

**54 Cal. App. 4th 1048**; 63 Cal. Rptr. 2d 213; 1997 Cal. App. LEXIS 338; 97 Cal. Daily Op. Service 3165; 97 Daily Journal DAR 5527

April 30, 1997, Decided

**SUBSEQUENT HISTORY: [***1]** Rehearing denied May 21, 1997. Review Denied July 23, 1997, Reported at: 1997 Cal. LEXIS 4546.

**PRIOR HISTORY:** Superior Court of the City and County of San Francisco, No. 973715, William J. Cahill, Judge.

**DISPOSITION:** The order to show cause is discharged, and the petition for a peremptory writ of mandate is denied.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Petitioner individual sought a peremptory writ of mandate to direct respondent trial court (California), to order real party in interest district attorney to release a closed criminal investigative file pursuant to the California Public Records Act, Cal. Gov't Code § 6250 et seq. (1968), and pursuant to a city ordinance.

**OVERVIEW:** Petitioner individual requested a closed criminal investigative file from real party in interest district attorney under the California Public Records Act (CPRA), Cal. Gov't Code § 6250 et seq. (1968) and a city ordinance. When the real party in interest denied petitioner's request, petitioner instituted an action under the CPRA and the local ordinance for the release of the file. Respondent trial court granted summary judgment to the real party in interest because the file was exempt from disclosure. Petitioner then sought a peremptory writ of mandate. The appellate court found that the CPRA exempted the disclosure of investigatory files. Although the local ordinance required the release of public information from the real party in interest, the compelled disclosure of closed criminal investigation files contravened Cal. Gov't Code § 25303. The appellate court denied petitioner's request for a peremptory writ of mandate because neither the CPRA nor the city ordinance compelled the disclosure of the real party in interest's criminal investigation files and § 25303 prevented a municipality from obstructing the investigatory and prosecutorial functions of a district attorney.

**OUTCOME:** The appellate court denied petitioner's request for a peremptory writ of mandate for the release of a closed criminal investigation file because neither the California Public Records Act nor the city ordinance compelled disclosure by real party in interest district attorney of criminal investigation files and the city board of supervisors were statutorily prevented from obstructing the investigatory functions of the real party in interest.

**CORE TERMS:** ordinance, district attorney's, disclosure, board of supervisor's, attorney's office, exempt, municipal affairs, investigatory, state laws, curiae, amici, public records, prosecutorial, charter, exemption, sunshine, criminal investigation, statewide, interfere, obstruct, criminal law, local governments, compelled disclosure, summary judgment, investigative, obstruction, inspection, administer, law enforcement, local agencies

**LEXISNEXIS(R) HEADNOTES**

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN1 See the California Public Records Act, Cal. Gov't Code § 6253(a) (1968).

Administrative Law > Governmental Information > Personal Information > General Overview

HN2 The California Public Records Act, Cal. Gov't Code § 6254(c), (f) (1968), provides various exemptions, including personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy and certain investigatory and security files.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Insurance Law > Industry Regulation > Insurance Company Operations > Representatives > General Overview

HN3 The California Public Records Act, Cal. Gov't Code § 6254(f) (1968) provides that records of, complaints to, or investigations conducted by the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes shall be exempt from disclosure, except that certain information must be disclosed to victims, insurance companies, and persons harmed by certain crimes. Cal. Gov't Code § 6254(f)(1), (2) (1968) provides, however, for disclosure to the public of certain information about arrests and about citizens' complaints and requests for assistance. The disclosure exemption extends indefinitely, even after an investigation is closed.

Administrative Law > Governmental Information > Freedom of Information > General Overview

HN4 The California Public Records Act (CPRA), Cal. Gov't Code § 6253.1 (1968), permits a state or local agency, except as otherwise prohibited by law, to adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in the CPRA.

Governments > Legislation > Types of Statutes
Governments > Local Governments > Charters
Governments > State & Territorial Governments > Relations With Governments

HN5 Home rule charter cities have autonomy with respect to all municipal affairs and are subject to general state laws as to matters of statewide concern only if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation.

Governments > Local Governments > Home Rule
Governments > State & Territorial Governments > Relations With Governments

HN6 In the event of conflict between the regulations of state and of local governments, or if the state legislation discloses an intent to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority as between general state laws on the one hand and the local regulations on the other.

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN7 A ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason.

Governments > Local Governments > Duties & Powers
Legal Ethics > Prosecutorial Conduct

HN8 Cal. Gov't Code § 25303, provides that the board of supervisors will supervise the official conduct of county officers, affirms prosecutorial independence, and states that the board shall not obstruct the investigative and prosecutorial function of the district attorney of a county.

Governments > Local Governments > Police Power

HN9 Investigation and prosecution of state criminal law are statewide concerns, not municipal affairs.

**SUMMARY:**

**CALIFORNIA OFFICIAL REPORTS SUMMARY**

The trial court granted summary judgment in favor of a district attorney in an action by a former police officer seeking disclosure of closed investigation files concerning a local official. (Superior Court of the City and County of San Francisco, No. 973715, William J. Cahill, Judge.)

The Court of Appeal denied the former officer's petition for a writ of mandate. The court held that neither the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), nor the county's sunshine ordinance compelled disclosure of the district attorney's closed criminal investigation files. Gov. Code, § 25303, prevents a county board of supervisors from obstructing the investigatory and prosecutorial functions of a district attorney, and compelled disclosure of closed criminal investigation files would obstruct the investigatory function of the district attorney's office, thus contravening section Gov. Code, § 25303. Very few activities performed by public officials are more important to the public and to the individuals most directly involved than the full and proper investigation of criminal complaints. Every effort must be made to ensure that investigators can gather all evidence that is available and legally obtainable. Without the assurance of continuing confidentiality, potential witnesses could easily be dissuaded from coming forward. Even if they knew that sensitive information would not automatically be turned over, publicity-shy witnesses would still have reason to be wary. Although the county was autonomous with respect to all municipal affairs, the investigation and prosecution of state criminal law are statewide concerns, not municipal affairs, and conflicting local ordinances must yield. Gov. Code, § 6253.1, which allows local agencies to permit greater access to records than offered by the CPRA, did not compel a different conclusion; it does not authorize a local board of supervisors to violate Gov. Code, § 23503. Similarly, the fact that the district attorney could voluntarily disclose records of his investigations did not mean that the board of supervisors could compel him to do so. (Opinion by Corrigan, J., with Phelan, P. J., and Parrilli, J., concurring.)

**HEADNOTES**

**CALIFORNIA OFFICIAL REPORTS HEADNOTES**
Classified to California Digest of Official Reports

*CA(1)* **(1) Municipalities § 15--Legislative Control--Home Rule Cities.** --Home rule charter cities have autonomy with respect to all municipal affairs and are subject to general state laws as to matters of statewide concern only if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation. Local governments (whether chartered or not) do not lack the power, nor are they forbidden by the Constitution, to legislate upon matters that are not of a local nature, nor is the Legislature forbidden to legislate with respect to the local municipal affairs of a home rule municipality. Instead, in the event of conflict between the regulations of state and of local governments, or if the state legislation discloses an intent to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority as between general state laws on the one hand and the local regulations on the other.

*CA(2)* **(2) District and Municipal Attorneys § 1--Application of Sunshine Ordinance to District Attorney.** --A city's sunshine ordinance governing access to public information under the control of city "departments" was applicable to the district attorney's office. The ordinance used the word "department" generically to refer to any office, agency, department, or other work unit conducting the business of local government, without regard to whether the office might be called a "department" by the city charter or other legal documents. Further, the board of supervisor's reference to itself as a department suggested that "department" is a generic term that covers the district attorney's office as well.

*CA(3)* **(3) Records and Recording Laws § 14.2--Inspection of Public Records--District Attorney's Closed Criminal Investigation Files.** --Neither the California Public Records Act (CPRA)

(Gov. Code, § 6250 et seq.) nor a county's sunshine ordinance compelled disclosure of a district attorney's closed criminal investigation files. Gov. Code, § 25303, prevents a county board of supervisors from obstructing the investigatory and prosecutorial functions of a district attorney, and the compelled disclosure would obstruct the investigatory function, thus contravening Gov. Code, § 25303. Very few activities performed by public officials are more important to the public and to the individuals most directly involved than the full and proper investigation of criminal complaints. Every effort must be made to ensure that investigators can gather all evidence that is available and legally obtainable. Without the assurance of continuing confidentiality, potential witnesses could easily be dissuaded from coming forward. Even if they knew that sensitive information would not automatically be turned over, publicity-shy witnesses would still have reason to be wary. Although the county was autonomous with respect to all municipal affairs, the investigation and prosecution of state criminal law are statewide concerns, not municipal affairs, and conflicting local ordinances must yield. Gov. Code, § 6253.1, which allows local agencies to permit greater access to records than offered by the CPRA, did not compel a different conclusion; it does not authorize a local board of supervisors to violate Gov. Code, § 23503. Similarly, the fact that the district attorney could voluntarily disclose records of his investigations did not mean that the board of supervisors could compel him to do so.

[See 2 Witkin, Cal. Evidence (3d ed. 1986) § 1256.]

**COUNSEL:** Randall B. Aiman-Smith for Petitioner.

Thomas R. Burke, Davis Wright Tremaine and Elizabeth Pritzker as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Louise H. Renne, City Attorney, Patrick J. Mahoney and Hajime Tada, Deputy City Attorneys, for Real Parties in Interest.

**JUDGES:** Opinion by Corrigan, J., with Phelan, P. J., and Parrilli, J., concurring.

**OPINION BY:** CORRIGAN

**OPINION**

**[*1050] [**214] CORRIGAN, J.**

Here we hold that neither the California Public Records Act (CPRA) ( Gov. Code, § 6250 et seq.) [1] nor the San Francisco Sunshine **[**215]** Ordinance (Ordinance) (S.F. Admin. Code, ch. 67) compels disclosure of district attorney criminal investigation files. Section 25303 prevents a county board of supervisors from obstructing the investigatory and prosecutorial **[*1051]** functions of a district attorney. Applying the ordinance as petitioner here urges **[***2]** would constitute such an obstruction.

**FOOTNOTES**

1 Except as otherwise indicated, all statutory references are to the Government Code. Although the California Supreme Court has used both PRA and CPRA in its references to the act (compare *Powers v. City of Richmond* (1995) 10 Cal. 4th 85, 89 [40 Cal. Rptr. 2d 839, 893 P.2d 1160] [PRA] and *CBS, Inc. v. Block* (1986) 42 Cal. 3d 646, 649 [230 Cal. Rptr. 362, 725 P.2d 470] [PRA] with *Williams v. Superior Court* (1993) 5 Cal. 4th 337, 341 [19 Cal. Rptr. 2d 882, 852 P.2d 377] [CPRA]), we use CPRA because the official short title of the chapter covering inspection of public records is the California Public Records Act. (§ 6251.)

*FACTS AND PROCEDURAL HISTORY*

In 1994, San Francisco District Attorney Arlo Smith received information leading to the investigation of a local official for failing to account properly for public funds. The district attorney's office maintained a confidential file of its investigation, which ended with a decision "not to **[***3]** prosecute for lack of

evidence of any criminal wrongdoing." According to the deputy in charge, the office "closed its file on the matter."

On October 18, 1995, Francisco Jose Rivero, a former police officer who had instigated the investigation, presented a written request for the complete investigation file. Rivero cited the CPRA and the Ordinance. He referred to a deputy city attorney's statement in federal court that a complete investigation had been conducted and no wrongdoing had been found.

Smith answered Rivero promptly, conceding that the investigation was closed but denying the request. He asserted that investigation files were exempt from disclosure and that the exemption continued after the investigation ended. He noted Rivero's federal court action against the city and suggested that the request was related to that civil action. He left open the possibility that he would comply with a more limited request.

On November 2, 1995, Rivero filed a complaint against Smith in superior court under the CPRA and the Ordinance for release of the investigation file. Smith answered and moved for summary judgment on the ground the file was exempt from disclosure. The court granted **[***4]** summary judgment, and this petition followed. We granted a request by the California First Amendment Coalition; the Society of Professional Journalists, Northern California Chapter; and the First Amendment Project to file a brief amici curiae in support of Rivero.

*CPRA*

"CPRA, adopted in 1968 (Stats. 1968, ch. 1473, § 39, pp. 2945-2948), acknowledges the tension between privacy and disclosure: 'In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.' ( Gov. Code, § 6250.) HN1 CPRA provides that '[p]ublic records are open to inspection at all times during the office hours of the state or local **[*1052]** agency and every person has a right to inspect any public record, except as hereafter provided. . . .' ( Gov. Code, § 6253, subd. (a).) HN2 CPRA then provides various exemptions, including '[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy . . .' ( Gov. Code, § 6254, subd. (c)), [and] certain investigatory and **[***5]** security files ( Gov. Code, § 6254, subd. (f); . . .) . . . ." ( *City of Richmond v. Superior Court* (1995) 32 Cal. App. 4th 1430, 1433 [38 Cal. Rptr. 2d 632].)

HN3 Section 6254, subdivision (f) provides that "[r]ecords of complaints to, or investigations conducted by . . . the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes . . ." shall be exempt from disclosure, except that certain information must be disclosed to victims, insurance companies, and **[**216]** persons harmed by certain crimes. Subdivision (f)(1) and (2) provides, however, for disclosure to the public of certain information about arrests and about citizens' complaints and requests for assistance. The disclosure exemption extends indefinitely, even after an investigation is closed. (See *Williams v. Superior Court, supra*, 5 Cal. 4th at pp. 355-362.)

HN4 The CPRA also permits a state or local agency "[e]xcept as otherwise prohibited by law" **[***6]** to "adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in" the CPRA. (§ 6253.1.)

*SAN FRANCISCO'S SUNSHINE ORDINANCE*

The Ordinance is presented in four articles, the first of which states the legislative findings and purpose of the Ordinance. The second article governs public access to meetings, the third authorizes access to governmental information, and the fourth provides for a task force and designates responsibility for implementing the Ordinance.

The findings and purpose are stated broadly: ". . . [P] (a) Government's duty is to serve the public, reaching its decisions in full view of the public. [P] (b) Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance will assure that their deliberations are conducted before the people and that City operations are open to the people's

review. [P] (c) . . . Violations of open government principles occur at all levels, from local advisory boards to the **[*1053]** highest reaches of the State hierarchy. [P] . . . [P] (e) The people of San Francisco want an open society. They do not **[***7]** give their public servants the right to decide what they should know. The public's right to know is as fundamental as its right to vote. To act on truth, the people must be free to learn the truth. [P] (f) The sun must shine on all the workings of government so the people may put their institutions right when they go wrong. . . ." (S.F. Admin. Code, § 67.1.)

Article II, covering public access to meetings, is not involved here. Article III provides for release of documentary public information for inspection and copying. Section 67.24, the provision in issue, provides that "Notwithstanding the department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information: [P] . . . [P] (d) **Law Enforcement Information**. No records pertaining to any investigation, arrest or other law enforcement activity shall be exempt from disclosure under Government Code Section 6254, Subdivision (f) beyond the point where the prospect of any enforcement action has been terminated by either a court or a prosecutor. When such a point has been reached, related records of law enforcement **[***8]** activity shall be accessible, except that individual items of information in the following categories may be withheld: [names of witnesses, private information unrelated to the investigation, etc.]." Thus, unlike the CPRA, the Ordinance does not provide a temporally unlimited exemption for law enforcement files.

Article IV calls for the board of supervisors to appoint a task force to help implement the Ordinance (S.F. Admin. Code, § 67.30) and establishes responsibility for implementing it: "The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of boards and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this Chapter for departments under their respective control . . ." (S.F. Admin. Code, § 67.31).

*LOCAL CONTROL OVER MUNICIPAL AFFAIRS*

CA(1)(1) HN5 Home rule charter cities, such as San Francisco (see *Rossi v. Brown* (1995) 9 Cal. 4th 688, 697, fn. 3 [38 Cal. Rptr. 2d 363, 889 P.2d 557]; *Pac.* **[***9]** *Tel. & Tel. Co. v. City & County of S.F.* (1959) 51 Cal. 2d 766, 769 [336 P.2d 514]), have "autonomy with respect to all municipal affairs" and are subject to general state laws as to matters of statewide concern only "if it is the **[*1054]** intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation . . . ." **[**217]** ( *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61-62 [81 Cal. Rptr. 465, 460 P.2d 137].) "As is made clear in the leading case of *Pipoly v. Benson* [(1942) 20 Cal. 2d 366, 369-370 (125 P.2d 482, 147 A.L.R. 515)], local governments (whether chartered or not) do not lack the power, nor are they forbidden by the Constitution, to legislate upon matters which are not of a local nature, nor is the Legislature forbidden to legislate with respect to the local municipal affairs of a home rule municipality. Instead, HN6 in the event of conflict between the regulations of state and of local governments, or if the state legislation discloses an intent to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority as between general state laws on the one hand and the local regulations **[***10]** on the other. [Citations.]" (*Id.* at p. 62.)

*THE SUPERIOR COURT'S ANALYSIS*

The superior court issued a six-page statement of decision granting summary judgment in which it agreed with Smith's position that the Ordinance was never intended and did not apply to the district attorney, who was "a state officer when conducting criminal investigations . . . ." The court conceded that, for many purposes, the district attorney was a county officer under the control of the county board of supervisors. However, county control did not extend to the district attorney's enforcement of state criminal law. The records created during these state investigations were state records exempt from disclosure even after the investigation was closed. The court explained its reasons for rejecting Rivero's counterarguments.

We conclude the trial court reached the correct result, although we are not persuaded by all its reasoning. "No rule of decision is better or more firmly established by authority . . . than that HN7 a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason." ( *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329 [48 **[***11]** P. 117].)

*APPLYING THE SUNSHINE ORDINANCE*

CA(2)↑**(2)** We consider first whether the board of supervisors passed an ordinance that applies to the district attorney's office. Smith contends the Ordinance applies only to city and county departments, and the district attorney's office is not a department of San Francisco government. He refers to the San Francisco Charter, which describes various departments (e.g., building inspection, elections, fire, human resources, juvenile probation, and police) but does not refer to the district attorney's office as a department. **[*1055]** Smith insists that the district attorney is a state officer under the California Constitution and is not covered by the Ordinance.

Rivero does not address the meaning of "department," but argues that the Ordinance's purpose and scope are broad, covering "government," "public servants," and "institutions." Rivero notes that the Ordinance does not state "except the district attorney."

Amici curiae point out that section 24000, subdivision (a) makes the district attorney a county officer. Other sections provide that compensation of county officers is set by the county board of supervisors (§ 25300) and that expenses **[***12]** of the district attorney's office are generally the county's responsibility (§ 29601).

We conclude the Ordinance was passed with the intent that it apply to the district attorney's office. Article III of the Ordinance, covering access to "Public Information," compels city "departments" to provide access to various public records. The article opens by defining "[d]epartment," to mean "a department of the City and County of San Francisco." (S.F. Admin. Code, § 67.20, subd. (a).) This explanation begs the question of what constitutes a "department" of San Francisco government. However, after examining the use of "department" throughout article III, we conclude that the Ordinance uses it generically to refer to any office, agency, department, or other work unit conducting the business of local government, without regard to whether the office might be called a "department" by the city charter or other legal documents. [2]

**FOOTNOTES**

[2] See, e.g., San Francisco Administrative Code sections 67.21, subdivision (b) (". . . information . . . shall be made available . . . in any form . . . which is available to the *department*, its officers or employees . . . . Nothing . . . shall require a *department* to program or reprogram a computer . . . ."); 67.22, subdivision (a) ("Every *department* head shall designate a person . . . knowledgeable about the affairs of the *department* . . . . If a *department* has multiple bureaus . . . ."); 67.24 ("Notwithstanding the *department's* legal discretion to withhold certain information . . . the following policies shall govern specific types of documents and information: [P] (a)(1) . . . no preliminary draft or *department* memorandum shall be exempt . . . . [P] . . . [P] (b)(1) No pre-litigation claim . . . received or created by a *department* . . . shall be exempt . . . . [P] (2) . . . all communications between the *department* and the adverse party shall be subject to disclosure . . . . [P] (c) None of the following shall be exempt . . . . [P] . . . [P] (5) Any memorandum of understanding between the City or *department* and a recognized employee organization. [P] (d) No records pertaining to any investigation . . . shall be exempt . . . beyond the point where the prospect of any enforcement action has been terminated . . . . The subdivision shall not exempt . . . any record of a concluded . . . enforcement action by an officer or *department* responsible for regulatory protection of the public health, safety or welfare."); 67.28, subdivision (d) ("A *department* may establish and charge a higher fee than the one cent presumptive fee [for copying] . . . ."); 67.29 ("Each *department* may cooperate with any voluntary effort . . . to compile a master index to the types of records it maintains . . . ."). (Italics added, section headings omitted.)

**[***13]** **[*1056]** **[**218]** Our conclusion is bolstered by article IV's wording in establishing the Sunshine Ordinance Task Force and designating responsibility for administering the Ordinance. The task force is to "advise the Board of Supervisors and provide information to other City departments" on ways to implement the Ordinance. (S.F. Admin. Code, § 67.30, subd. (c).) The word "other" shows that the board of supervisors considered itself a department for purposes of the Ordinance. The board does not have the title "department" and is not called a department by the city charter. The board's reference to itself as a department suggests that "department" is a generic term that covers the district attorney's office as well.

San Francisco Administrative Code section 67.31, which implements the Ordinance throughout city government, confirms that the Ordinance applies to offices not designated as departments by the city charter. That section compels the mayor to administer and implement the Ordinance for "departments under his or her control" and for "departments under the control of boards and commissions appointed by [him or her]." Elected officers (which would include the district attorney) **[***14]** administer and implement the Ordinance for "departments" under their control. The Ordinance cannot be read in the restrictive way Smith and the trial court have read it. By its terms, it applies to the district attorney's office.

*OBSTRUCTION OF STATE ACTION AND DISCLOSURE OF STATE RECORDS*

Our analysis of the Ordinance does not end here, however. The next issue is whether the Ordinance applies to all district attorney records, including those related to investigations of criminal allegations. Smith contends that other statutes and constitutional provisions demonstrate that the board of supervisors is precluded from passing laws that impinge on criminal investigations by the district attorney. He directs our attention to Penal Code section 684, section 25303, and article V, section 13 of the California Constitution.

Penal Code section 684 provides that criminal actions are to be prosecuted in the name of the People of the State of California. According to Smith, this makes the district attorney an officer of the state. Article V, section 13 of the California Constitution provides that "[t]he Attorney General shall have direct supervision over every district attorney . . . **[***15]** in all matters pertaining to the duties of their respective offices . . . ." HN8 Section 25303, while providing that the board of supervisors will supervise the official conduct of county officers, affirms prosecutorial independence and states that the board shall **[*1057]** not "obstruct the investigative and prosecutorial function of the district attorney of a county." Smith argues that forcing disclosure of a closed investigation file would interfere with the district attorney in the same way as would disclosing an open file, because the threat of disclosure might affect the district attorney's decision to begin an investigation. The trial court did not address directly the issue of obstructing investigations.

Rivero concedes that the district attorney is a "state actor" when prosecuting a crime **[**219]** and that the board of supervisors may not obstruct a district attorney's investigatory and prosecutorial functions. He contends, however, that the Ordinance does not interfere with investigations, because it operates only after the investigation is closed. Rivero also suggests that the district attorney is not a state actor when merely retaining files. Rivero disputes Smith's claim that **[***16]** investigations will be chilled. According to Rivero, the district attorney's ability under the Ordinance to protect such matters as investigative techniques and informants' names nullifies any chilling that inspecting the files might otherwise cause.

Amici curiae object to the court granting summary judgment without any proof that San Francisco Administrative Code section 67.24, subdivision (d) actually obstructs or interferes with the district attorney's investigatory and prosecutorial functions. They also argue that the court erred in ruling that the district attorney's investigation files are "state records" at any stage of the investigation. Amici curiae offer *Dibb v. County of San Diego* (1994) 8 Cal. 4th 1200 [36 Cal. Rptr. 2d 55, 884 P.2d 1003] (*Dibb*) as an example of the California Supreme Court approving potentially greater interference with state law prosecutions.

In *Dibb*, the Supreme Court upheld a county charter amendment creating a citizen review board with authority to investigate public complaints against the county sheriff and probation departments. The review board was given broad power to subpoena witnesses and documents. (8 Cal. 4th at p. 1204.) **[***17]** The *Dibb* court answered concerns about state law preemption by assuming that the review board would comply with section 25303 by not obstructing the investigative functions of the sheriff or the district attorney. (*Dibb*, *supra*, at pp. 1209-1210.)

Amici curiae cite *Dibb* to show that full subpoena power does not obstruct or interfere with the district attorney's investigative and prosecutorial functions. Thus, amici curiae contend that the lesser power offered by San Francisco Administrative Code section 67.24, subdivision (d), to examine closed investigation files, cannot possibly interfere with the district attorney. Amici curiae read too much from *Dibb*. The court did not approve full **[*1058]** subpoena power or define "obstruction" for purposes of section 25303. As amplified in the concurring opinion, the court merely *assumed* "until the contrary is demonstrated, that the Board will exercise its subpoena powers in ways that avoid any such obstruction or interference." (See *Dibb*, *supra*, 8 Cal. 4th at p. 1219 (conc. opn. of Kennard, J.).)

Amici curiae's position that summary judgment was premature because Smith did not prove obstruction of his investigative **[***18]** or prosecutorial function also fails. The propriety of locally compelled disclosure of a district attorney's closed investigation files is a question of policy and of law. It is not to be decided differently in each county based on evidence about a particular district attorney's office or the factual nuances of individual cases. [3]

**FOOTNOTES**

[3] As we will explain below, potential witnesses and citizens providing information anonymously must have assurances about the confidentiality of their reports. Ad hoc decisions by the various superior courts cannot provide such assurances to potential witnesses.

The superior court cited *Williams v. Superior Court*, *supra*, 5 Cal. 4th at pages 355-357, for the proposition that the district attorney's investigation files were state records not subject to locally compelled disclosure. Amici curiae correctly note that the *Williams* court, which held that the CPRA applied to closed investigation files, did not describe the files as state records and did not consider whether **[***19]** such files were subject to local disclosure ordinances.

Whether to describe the district attorney as a state actor or a local actor and whether to characterize the district attorney's closed files as state records or local records beg the central question before us. The more fundamental and dispositive legal question is one of first impression. CA(3)**(3)** Does compelled disclosure of closed criminal investigation files obstruct the investigatory function of the district attorney's office, thus **[**220]** contravening section 25303? We conclude it does.

Very few activities performed by public officials are more important to the public and to the individuals most directly involved than the full and proper investigation of criminal complaints. Every effort must be made to ensure that investigators can gather all evidence that is available and legally obtainable. Without the assurance of continuing confidentiality, potential witnesses could easily be dissuaded from coming forward. Even if they knew that sensitive information would not automatically be turned over, publicity-shy witnesses would still have reason to be wary.

It is not a complete answer that publicity-shy witnesses may already be deterred **[***20]** from coming forward by the prospect of being subpoenaed for a **[*1059]** criminal trial. Sometimes anonymous sources, well known to the targets of investigations, provide important information. That information, though not usable itself, may help focus the inquiry and lead to the acquisition of admissible evidence. These sources' anonymity would be compromised and their willingness to provide information hindered if the subjects could easily review investigation files.

We acknowledge a footnote in *Williams* that suggests the public may have no interest in preventing disclosure of a prosecutors' closed investigation files. After concluding that the CPRA in its then current form protected closed investigation files, the *Williams* court offered advice to the Legislature: "In our view, the matter does appear to deserve legislative attention. Although there are good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended [citation], those reasons lose force with the passage of time. Public policy does not demand that stale records be kept secret when their disclosure can harm no one, and the public good would seem to require **[***21]** a procedure by which a court may declare that the exemption for such records has expired." ( *Williams v. Superior Court*, *supra*, 5 Cal. 4th at pp. 361-362, fn. 13.)

We observe, however, that the Legislature has amended section 6254 more than once since the *Williams* decision, but has not revised the statute to permit disclosure of closed investigation files. We will not do what the Legislature has declined to do.

*CONFLICT WITH STATE LAW*

Next we consider whether San Francisco may override section 23503 by adopting a municipal ordinance that interferes with the district attorney's state criminal law investigations. San Francisco is autonomous with respect to all municipal affairs. As to matters of statewide concern, however, it is subject to overriding general state laws. ( *Bishop v. City of San Jose*, *supra*, 1 Cal. 3d at pp. 61-63.) HN9 Investigation and prosecution of state criminal law are statewide concerns, not municipal affairs. (See

*In re Lane* (1962) 58 Cal. 2d 99, 106, 111-112 [22 Cal. Rptr. 857, 372 P.2d 897] (conc. opn. of Gibson, J.).) [4] Conflicting local ordinances, such as San Francisco Administrative Code section 67.24, subdivision (d), must **[***22]** yield.

**FOOTNOTES**

4 Rivero may be correct that the subject matter of this particular investigation, possible theft of county funds, is in many ways a municipal affair. However, prosecution for the violation of state law is nevertheless a statewide concern and disclosure of Smith's investigation files in this case could have a wide impact on enforcement of state criminal law, inhibiting future investigations of all kinds.

Section 6253.1, which allows local agencies to permit greater access to records than offered by the CPRA, does not compel a different conclusion. It **[*1060]** does not authorize a local board of supervisors to violate section 23503. Similarly, the fact that Smith could voluntarily disclose records of his investigations (see *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 941-942 [143 Cal. Rptr. 255]) does not mean that the board of supervisors may compel him to do so.

*IN CAMERA REVIEW FOR EXEMPTION FROM SECTION 6254, SUBDIVISION (F)*

Rivero's final claim is that **[***23]** Smith improperly failed to produce even that information subject to release under section 6254, subdivision **[**221]** (f), such as names and addresses of persons involved and of witnesses, a description of the property involved, and the date, time and location of each incident complained about. He argues that the trial court should have inspected the file in camera and determined whether Smith's request for blanket exemption from disclosure was justified.

Here, Rivero sought disclosure of the complete file. No more narrow request was articulated. The holder of the file is not obliged to redraft the request to comply with section 6254, subdivision (f) or to offer the entire file to the court for in camera review and extraction of those records not exempt from disclosure. (See *City of Richmond v. Superior Court*, *supra*, 32 Cal. App. 4th at pp. 1440-1441.)

*DISPOSITION*

The order to show cause is discharged, and the petition for a peremptory writ of mandate is denied.

Phelan, P. J., and Parrilli, J., concurred.

A petition for a rehearing was denied May 21, 1997, and petitioner's application for review by the Supreme Court was denied July 23, 1997.

<complaints@sfgov.org>
02/15/2011 09:06 AM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:District Attorney's Office
CONTACTED:Erica Derryck
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:67.26
DESCRIPTION:I have requested records from the office of District Attorney Kamala Harris consisting of Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years. Her deputies have responded to this request by stating that all the information I requested was withheld to protect the identity of victims. (See attached)
HEARING:Yes
PRE-HEARING:No
DATE:2/14/2011
NAME:Matt Smith
ADDRESS:185 Berry St. Suite 380
CITY:San Francisco
ZIP:
PHONE:536-814
CONTACT_EMAIL:Matthew.smith@sfweekly.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

Matt Smith
SF Weekly
185 Berry St. Suite 3800
Matthew.smith@sfweekly.com
DIRECT DESK LINE: 415-536-8143
FAX 415-777-1839

JULY 16, 2010

DEAR SUNSHINE ORDINANCE TASK FORCE,

*I AM WRITING TO RE-ITERATE A COMPLAINT I SENT THROUGH THE TASK FORCE FS ELECTRONIC COMPLAINT FORM JUNE 21, 2010. I HAVE NOT REVISED THAT COMPLAINT, AND DO NOT WISH TO RE-START THE CLOCK ON MY JUNE 21 COMPLAINT. HOWEVER, I HAVE NOT HEARD BACK FROM THE TASK FORCE SINCE THEN, AND AM SENDING NOW A PHYSICAL VERSION OF THE COMPLAINT IN CASE MY INITIAL COMPLAINT WAS SOMEHOW LOST.*

*THE FOLLOWING IS AN EXPLANATION OF WHAT I BELIEVE TO BE VIOLATIONS OF SAN FRANCISCO SUNSHINE ORDINANCE SEC. 67.26 BY THE OFFICE OF SAN FRANCISCO DISTRICT ATTORNEY KAMALA HARRIS, THROUGH ACTIONS OF HER DEPUTIES PAUL HENDERSON AND ELLIOT S. BECKELMAN, AND HER SPOKESWOMAN ERICA DERRYCK.*

I have requested records from the office of District Attorney Kamala Harris consisting of Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years.
Her deputies have responded to this request by stating that all the information I requested was withheld to protect the identity of victims.

The San Francisco Sunshine Ordinance provides clear instructions for public officials in a situation such as this, where the withholding of some truly private information may be required. The instructions are not blanket concealment.
Rather, the heading for SEC. 67.26 of the ordinance is titled: "WITHHOLDING KEPT TO A MINIMUM." The section says private information "shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding."

**Therefore, I believe that the task force should find that the San Francisco District Attorney's office has violated the letter and spirit of the ordinance.**

A summary of my attempts to obtain public information from the District Attorney's office follows:

On April 19, 2010, just as controversy was heating up over the Vatican's role in the global sex abuse scandal, I made a public records request for materials that can be summarized as: records received in 2002 by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. The contents of these records are of great public interest because experts on Catholic Clergy abuse believe they contain information key to understanding the church hierarchy's role covering up abuse.

On April 21 I received a response from Deputy District Attorney Paul Henderson stating the following: "The documents you have requested are included in District Attorney investigation files. District Attorney investigation files cannot be disclosed in response to a records request. District Attorney investigation files are not subject to the California Public Records Act or the San Francisco Administrative Code. All District Attorney records are maintained confidential, even after an investigation has concluded."

I shared Henderson's arguments with California Newspaper Publishers Association legal counsel Jim Ewert. "That's flatly untrue," Ewert said. The District Attorney's office "can release them if they want to. But they have decided not to."

Harris' predecessor Terence Hallinan, who forced the Archdiocese to turn over the records in 2002, and who pursued cases against priests before his office was barred from proceeding by expired statutes of limitations, told me he saw no reason to keep the files secret: "Obviously, those things should be made public," he told me.

I wrote to Harris' office citing Ewert's analysis, and also mentioned Hallinan's statement.
Harris' spokeswoman, Erica Derryck, changed course from the offices previous false statement that Harris' files enjoy a blanket exemption from public records law.

Darrick said Harris' office would retrieve and review the files to determine whether there were any I could view. Derryck memorialized her promise to do this in a letter to me and SF Weekly's managing editor Will Harper. Following half a dozen phone conversations and as many e-mail exchanges, Derryck said she would contact me on May 24 to report on files I might be able to view. Not hearing from her, I called her again, almost seven weeks after my initial request. She said she was still working on it. I heard nothing more.

On June 2, we published a column about my attempts to view these records.
It can be found here:
http://www.sfweekly.com/2010-06-02/news/a-secrecy-fetish/

The column suggested Harris had a policy that can be summarized as: "When in doubt, keep secrets."

In the comments section of the web version of the column, deputy district attorney Elliot S. Beckelman wrote a note saying that it was under his advice that the records be concealed.
He acknowledged in the note that "The investigation of the Archdiocese ended years ago."
This means that there is no possibility that release of the records would compromise an investigation, prosecution or other act of law enforcement.
This fact is important, because law enforcement exemptions from public records requirements generally hang on the idea that law enforcement activities or objectives might be undermined by the release of records. In stating investigations closed long ago, Beckelman made a point of noting there exists no such assertion here.

Rather, Mr. Beckelman said the records were concealed due to "the need to protect the privacy of the victims."

Given that it is commonplace and routine in the public-records arena to redact information that could compromise privacy, Mr. Beckelman seems to be saying that the District Attorney's office simply does not want to expend the time, effort and expense involved in redacting private victims' information from the archdiocese files.
As such, Beckelman and Harris are in direct of violation of SEC. 67.26. of the San Francisco Sunshine Ordinance, which reads as follows:

"Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request."

I urge the Sunshine Task Force to demand that Harris office commence the work of redacting victims information and other legitimately private portions from the Archdiocese files, and subsequently make them available to me.

Kindly,

Matt Smith

CITY AND COUNTY OF SAN FRANCISCO

KAMALA D. HARRIS
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Paul Henderson
Chief of Administration

DIRECT DIAL: (415) 553-1845
E-MAIL: Paul.Henderson@sfgov.org

February 28, 2011



Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

*Re: Complaint Number 11003*

To the members of the Sunshine Ordinance Task Force:

On February 17, 2011, the San Francisco District Attorney's Office (SFDA) received notice of the above-referenced complaint. This letter serves as a response to these allegations.

On April 19, 2010, the Complainant requested "all records associated with the investigation(s) into allegations of sexual abuse of Father Greg Ingels. Additonally, I wish to review records received by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. In particular, I wish to review documents received during and around 2002 obtained from the Archdiocese of San Francisco pertaining to church records relevant to allegations of sexual abuse. Please do not interpret my request for records obtained in 2002 from the Archdiocese as in any way limiting my request for records pertaining to Ingles, or other Archdiocese records relating to sex abuse allegations in possession of the District Attorney's office."

On April 21, 2010, the Respondent provided the attached response, declining to provide the requested records and explaining the basis for this position.

The District Attorney's position is grounded in the California Public Records Act and supported by *Rivero v. Superior Court,* (1997) 54 Cal. App. 4th 1048, in which the court explicitly held that neither the California Public Records nor the San Francisco Sunshine Ordinance compels disclosure of district attorney investigation files. In reaching this conclusion, the Court found that investigation and prosecution of state criminal laws are statewide concerns, not municipal affairs; accordingly, conflicting local ordinances – and specifically the Sunshine Ordinance – must yield to state law.

Accordingly, the District Attorney's Office requests that the Sunshine Ordinance Task Force deny Petitioner's request based on a lack of jurisdiction.

If you have any questions or concerns please feel free to contact me directly. My contact information is provided above.

Very truly yours,

PAUL HENDERSON
Chief of Administration

Paul Henderson/DA/SFGOV
Sent by: Katherine Miller

04/21/2010 05:25 PM

To matthew.smith@sfweekly.com

cc Katherine Miller/DA/SFGOV@SFGOV, Brian Buckelew/DA/SFGOV@SFGOV

bcc

Subject Response to 04/19/10 Public Record Request

April 21, 2010

VIA EMAIL

Matt Smith
SF Weekly
Matthew.smith@sfweekly.com

RE: 04/19/10 Public Record Request

Dear Mr. Smith:

This letter is in reply to your public record request, delivered via electronic mail on April 19, 2010. You requested the following:

*I wish to review all records associated with investigation(s) into allegations of sexual abuse of Father Greg Ingels. Additionally, I wish to review records received by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. In particular, I wish to review documents received during and around 2002 obtained from the Archdiocese of San Francisco pertaining to church records relevant to allegations of sexual abuse. Please do not interpret my request for records obtained in 2002 from the Archdiocese as in any way limiting my request for records pertaining to Ingles, or other Archdiocese records relating to sex abuse allegations in possession of the District Attorney's office.*

The documents you have requested are included in District Attorney investigation files. District Attorney investigation files cannot be disclosed in response to a records request. District Attorney investigation files are not subject to the California Public Records Act or the San Francisco Administrative Code. All District Attorney records are maintained confidential, even after an investigation has concluded. Government Code section 6254(f) recognizes this by exempting from disclosure "Records of complaints to, or investigations conducted by....any state or local police agency...." The same material is also considered to be "official information" which is privileged pursuant to Evidence Code section 1040 (and therefore exempt from disclosure pursuant to Government Code section 6254(k)), and that the public interest served by not disclosing such records outweighs the public interest served by disclosure of the records. (Government Code section 6255(a).) Proposition 59, to which you refer in your request, "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records." (Proposition 59, as codified in the California Constitution, Article I, Section 3(b)(5)).

The reasoning for this position is further set forth at *Rivero v. Superior Court* (1997) 54 Cal. App. 4th 1048; *Williams v. Superior Court* (1993) 5 Cal. 4th 337 and California Government Code §25303. Briefly, compelled disclosure would obstruct the investigatory and prosecutorial function of the District Attorney and have a chilling effect on potential witnesses in other matters if they knew sensitive information would be subject to public review, at any time.

Accordingly, the District Attorney cannot disclose the information responsive to your request.

Sincerely,

Paul Henderson
Chief of Administration
San Francisco District Attorney's Office
850 Bryant Street
San Francisco, CA 94103
paul.henderson@sfgov.org



Katherine Miller/DA/SFGOV

**Brian Buckelew/DA/SFGOV**
04/21/2010 02:57 PM

To Katherine Miller/DA/SFGOV@SFGOV
cc
Subject Fw: Journalist's Request for Public Records

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Brian J. Buckelew
Assistant District Attorney
Director of Legal Affairs and Public Information
Office of the District Attorney
City and County of San Francisco
850 Bryant Street, Room 322
San Francisco, CA 94103

Phone: 415.553.1383
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---- Forwarded by Brian Buckelew/DA/SFGOV on 04/21/2010 02:57 PM ----

**"Matthew Smith" <Matthew.Smith@sfweekly.com>**

To <brian.buckelew@sfgov.org>