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April 22, 2014

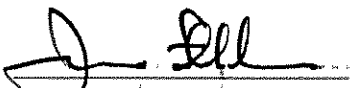
Sharon and Steven Wolff  
3 Painter Street  
Rio Dell, CA 95562

Dear Mr. and Mrs. Wolff;

This letter is in response to your California Public Records Act Request (CPRA) dated April 12, 2014 concerning an Administrative Investigative Report prepared for the Rio Dell Police Department by Stokes & Associates.

We asked the City Attorney to review the propriety of releasing the report you requested, which relates to an internal investigation of alleged excessive force by a law enforcement officer. Please find a copy of the opinion enclosed, basically denying the request due to the prohibition to disclose internal investigative reports.

Sincerely,

  
Jim Stretch, City Manager

Attachment: City Attorney letter dated April 17, 2014 from Russ Gans, Mitchell, Brisso, Delaney & Vrieze, LLP.

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CITY OF RIO DELL

April 17, 2014

APR 22 2014

RECEIVED

City of Rio Dell  
Jim Stretch, City Manager  
675 Wildwood Avenue  
Rio Dell, CA 95562

Dear Mr. Stretch:

This letter shall provide legal guidance concerning the California Public Records Act ("CPRA") request by Sharon and Steven Wolff, dated April 12, 2014, for the "Administrative Investigation" report prepared for the police department by Stokes & Associates. As you have explained, the report relates to an internal investigation requested by the City of Rio Dell Police Department in response to a citizen complaint concerning alleged excessive force by a police officer or officers. The law prohibits the disclosure of the report and therefore the request should be denied.

While the CPRA broadly protects the people's right to access information concerning the people's business, the right is not absolute. (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282.) The CPRA exempts from disclosure certain types of information. (See generally Gov. Code, § 6254.) Pertinent to the present request is the following CPRA exemption:

Except as provided in Sections 6254.7 [concerning air pollution] and 6254.13 [concerning state-wide testing programs], nothing in this chapter shall be construed to require disclosure of records that are any of the following:

...

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(Gov. Code, § 6254.) The above-quoted provision incorporates into the CPRA other state and federal provisions that prohibit or exempt from disclosure certain types of information.

Penal Code sections 832.7 and 832.8 make confidential and therefore not subject to disclosure “peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records.” (Pen. Code, § 832.7(a).) “Section 832.5 does not specify the mechanisms local agencies must adopt for investigating citizen complaints as long as the complaints and records are kept confidential and maintained for five years.” (*Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 397.) Personnel records include, “Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.” (Pen. Code, § 832.8(e).)

The above-cited Penal Code sections are incorporated into the CPRA by Government Code section 6254(k). (Gov. Code, § 6276.34; see also *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1286; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1428-1429; *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430.)

The “administrative investigation” report requested by Sharon and Steven Wolff is clearly made confidential and not subject to disclosure by Penal Code sections 832.7 and 832.8. The investigative report concerns the on-duty conduct of police officers employed by the Rio Dell Police Department and was requested by the department following a citizen complaint as part of its administrative investigation protocol.

*City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430 is illustrative. In *City of Richmond*, the San Francisco Bay Guardian newspaper filed a CPRA request for citizen complaints of excessive force by police officers employed by the City of Richmond. The request also sought, among other items, investigative reports generated as result of the excessive force complaints. The court denied the CPRA request, explaining:

[Penal Code section 832.7] imposes confidentiality upon peace officer personnel records and records of investigations of citizens’ complaints, with strict procedures for appropriate disclosure in civil and criminal cases and limited exceptions under which a department “*may* disseminate data regarding the number, type, or disposition of complaints made against its officers if that information is in a form which does not identify the individuals involved.”

(*Id.* at 1440 quoting Penal Code section 832.7, subd. (c) (emphasis added).)

As further support for the confidentiality of investigatory reports, a published opinion from the Office of the Attorney General concludes, "The disclosure of peace officer personnel records in violation of penal Code section 832.7 may constitute a *crime* under the provisions of Government Code section 1222." (82 Ops.Cal.Atty.Gen. 246 (1999) (emphasis added).)

A second CPRA provision exempts the requested records from disclosure. Government Code section 6254(c) provides:

Except as provided in Sections 6254.7 [concerning air pollution] and 6254.13 [concerning state-wide testing programs], nothing in this chapter shall be construed to require disclosure of records that are any of the following:

- ✱ (c) Personnel, medical, or similar files, the disclosure of which would constitute an ✱ unwarranted invasion of personal privacy.

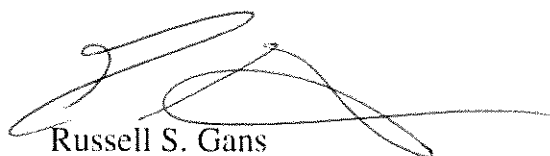
✱ As is clearly established by Penal Code section 832.8, the requested report is part of the involved officer's "personnel file". The disclosure of the report would constitute an unwarranted invasion of the personal privacy of the officer(s) especially where, as here, the confidential (see Penal Code section 832.7 and *Coley, supra*) administrative review is ongoing.

✱ In summary, Penal Code sections 832.7 and 832.8 as incorporated into the CPRA by Government Code sections 6254(k) and 6276.34 prohibit the disclosure of the requested administrative investigation report. Further, subdivision (c) of section 6254 also exempts the requested report from disclosure. The CPRA request should therefore be denied.

Should you choose to do so, this letter may be forwarded to the requesting parties as the City's official response to the request.

Very truly yours,

MITCHELL, BRISSO, DELANEY & VRIEZE, LLP



Russell S. Gans