



CITY OF
CHULA VISTA

OFFICE OF THE CITY ATTORNEY

February 22, 2008

By U.S. Mail and Electronic Mail

thacerro@yahoo.com

Theresa Acerro
chulavistaissues.org
P.O. Box 8697
Chula Vista, CA 91912

Dear Ms. Acerro:

This letter is sent to you in response to your request for public documents from the City of Chula Vista dated February 13, 2008. You requested: "data regarding the number, type, and disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against CV police officers in a form which does not identify the individuals involved from 1990-present." You made a similar request on December 28, 2007 to which I responded on January 11, 2008 by electronic mail.

A three-page document responsive to your February 13, 2008 request is attached. The attached document is a summary of complaints from 1996 through 2001. This summary was prepared for public information purposes to give an overview of the citizen complaint process. Please note that the full range of data you are seeking is not available in a public document for the following reasons.

State law mandates that peace officer personnel records in California, including complaints made against peace officers, are confidential and privileged; they cannot be disclosed pursuant to a request for public records. Penal Code section 832.7(a) states, in relevant part:

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, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

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Penal Code section 832.7(c) states, in relevant part:

Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

Please note that use of the word "may" in Penal Code section 832.7 is permissive, but not mandatory for a law enforcement agency. Further, you have requested data dating back to 1990; however, there is no statutory requirement for a law enforcement agency in California to maintain citizen complaints beyond five years. See Penal Code section 832.5 (b).

State law mandates that citizen complaints that are not sustained are still to be treated as personnel records, exempt from disclosure under the Public Records Act:

Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

Penal Code section 832.5(c).

Pursuant to the Public Records Act, you have requested a document that includes "data regarding the number, type, and disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against CV police officers in a form which does not identify the individuals involved from 1990-present." As noted, the data you seek is contained within documents that are privileged and confidential. As such, the Police Department is claiming an exemption to disclosure pursuant to the provisions of California Government Code sections 6254(k) as it incorporates the statutory privileges of Penal Code section 832.7 and Evidence Code section 1040 (official information); 6254(c)(personnel exemption), 6255 (right to privacy outweighs disclosure); and other applicable statutory and case law.

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For additional information regarding the Police Department's citizen complaint process, feel free to contact Captain Gary Wedge, the division commander for Administrative Services, which includes the Professional Standards unit. Professional Standards is tasked with investigating allegations of misconduct by Police Department personnel. I understand from Captain Wedge that he contacted you by electronic mail in January, offering to provide you with additional information on the citizen complaint process. He remains available to discuss with you general information about the complaint process. Captain Wedge can be reached at (619) 691-5218. Thank you for your interest.

Sincerely,

Joan F. Dawson for

Joan F. Dawson
Deputy City Attorney

Attachment: Power Point slides (three pages)

cc: Captain Gary Wedge, Chula Vista Police Department