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File No. R-253

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Mr. David W. Wiechert, Esq.
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Re: Your California Public Records Act Requests to Sheriff Sandra Hutchens
and the Clerk of the Board of Supervisors, both dated February 25, 2009;
Clerk of the Board Reference No. 09-103

Dear Mr. Wiechert:

This office is legal counsel for the County of Orange. We are in receipt of the above-referenced Public Records Act requests, received by the Sheriff's Department on February 26, 2009, and the Clerk of the Board, on March 2, 2009. We are writing to respond to these requests. We decline to address your characterization of the Sheriff's Department's actions at the January 13, 2009, Board meeting, but our silence should not be interpreted as agreement.

You have requested "[c]opies of video footage or any other photographic or electronic images from the January 13, 2009 OCBOS meeting from all ceiling cameras in the OCBOS Chamber for the period one hour before the meeting started until one hour after the meeting ended." This request for the security video footage from these ceiling cameras is denied. We are advised that public disclosure of the recording would compromise the security of the Board Chamber, thereby jeopardizing the safety of the Board and those who attend Board meetings. We are further advised that public disclosure of the recording may enable individuals to identify undercover officers who were present in the Board Chamber and would put these officers and their families at risk of harm. Lastly, certain portions of the recording may contain material subject to the deliberative process privilege. The video recording is exempt from public disclosure pursuant to Government Code sections 6254(f), 6254(k) and 6255, and Evidence Code section 1040. We are informed that a portion of the video recording may be viewed at <http://totalbuzz.freedomblogging.com/2009/03/05/video-shows-sheriffs-official-snooping-on-county-supervisor/13989>. We do not know who released this copy. Neither the County nor the Sheriff publicly released this copy.

You have also requested "[c]opies of video footage or any other photographic or electronic images from the January 13, 2009 OCBOS meeting from all first floor cameras in the Hall of Administration, located at 333 W. Santa Ana Blvd., Santa Ana, CA, for the period one hour before the meeting started until one hour after the meeting ended. We are

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advised that public disclosure of these security video recordings would compromise the security of the Hall of Administration. We are further advised that public disclosure of the recordings may enable individuals to identify undercover officers who were present and would put these officers and their families at risk of harm. The video recording is exempt from public disclosure pursuant to Government Code sections 6254(f), 6254(k) and 6255, and Evidence Code section 1040.

You have also requested “[c]opies of video footage or any other photographic or electronic images from the January 13, 2009 OCBOS meeting from any other source than the cameras listed in Subparagraphs 1 and 2 for the period one hour before the meeting started until one hour after the meeting ended.” The footage of the Board of Supervisors meetings, which is publicly aired over the Internet, may be viewed at www.ocgov.com. Click on “Board of Supervisors” and then click on “Board Meetings On-Demand” on the left side column. The footage from the January 13th meeting date, morning and afternoon sessions, is available to be viewed. The video footage starts shortly before the meeting begins and ends shortly after the meeting ends. Please contact the Clerk of the Board if you would like to receive a copy of this video footage.

In your letter, you also assert that the Sheriff’s Department has waived any exemptions it may have with respect to the security video footage by allowing Board of Supervisors staff to view the footage. We disagree.

Government Code section 6254.5 provides in relevant part:

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, **to any member of the public**, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. . . .

This section, however, shall not apply to disclosures:

. . .

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law. (Emphasis added.)

The Sheriff has not disclosed any of the security video footage to any members of the public. Therefore, the Sheriff has not waived any legal exemptions she has claimed with respect to the video. The Sheriff providing the security video footage for the Board members and their staff to view is not a “disclosure” under the Government Code.

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Further, even assuming there was a “disclosure” of the security video footage and we do not concede that there was, there is no authority for the proposition that any confidentiality agreement must be formalized in writing, or else the Sheriff has waived her legal exemptions. In *Rackauckus v. Superior Court*, 104 Cal. App. 4th 169, 178 (2002), our Court of Appeal held:

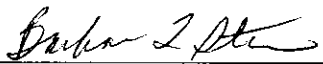
Under the CPRA, particular exemptions may be waived only where the agency has disclosed a document “to any member of the public.” (§ 6254.5.) Section 6254.5, subdivision (e) expressly provides that exemptions are not waived for interagency disclosures that are made in confidence. Based on similar concerns about the efficacy of interagency information sharing, we decided in *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1048 [113 Cal. Rptr. 2d 11], that a local police department did not waive the official information privilege by divulging privileged information to a county social services agency “with an official interest in the information.”

The Board of Supervisors has an official interest in the security of its Board Room. This official interest and the intent to keep the Board Room security video footage confidential are expressed in Rule 48 of the Board Rules of Procedure, which provides in pertinent part:

The Board of Supervisors has the power to implement and approve all security measures in the Board Room. Any changes in security procedures shall be shared with the Board in advance. All recordings from security cameras are confidential and are not public records, but copies of such recordings shall be provided to any or all Board Members at their request, absent any state law that may prohibit such distribution.

Very truly yours,

BENJAMIN P. de MAYO
COUNTY COUNSEL

By 
Barbara Larkin Stocker
Assistant County Counsel

cc: Patricia Bates, Chair of the Board of the Supervisors
Thomas G. Mauk, County Executive Officer
Sandra Hutchens, Sheriff-Coroner
Darlene Bloom, Clerk of the Board of Supervisors