

**CITY OF SAN DIEGO
ETHICS COMMISSION**

General Counsel Memorandum

DATE: April 8, 2011

TO: Chair and Members of the San Diego Ethics Commission

FROM: Christina M. Cameron, General Counsel

SUBJECT: Public Disclosure of Respondents' Identities

At its February 10, 2011 meeting, the San Diego Ethics Commission ("Commission") considered whether, as a policy matter, to disclose the identities of respondents on publicly disseminated case logs. This discussion was tabled pending a legal analysis related to the confidentiality of respondents' identities.

Briefly stated, there is no legal reason the Commission cannot adopt a policy of disclosing the identity of respondents where either: 1) the Commission has made a probable cause determination or 2) the matter has been closed and the Commission has determined to take no further action.

The Commission maintains a document which consists of a table of all matters submitted to the Commission for investigation ("Case Log"). The Case Log serves as an administrative tool for tracking the status of cases. It is not associated with any particular matter but does contain some confidential information. In order to create a document that can be released to the public, confidential information is redacted from the Case Log. The identities of complainants are always confidential and are permanently redacted. (SDMC § 26.0455(j)(4).) However, information that is not considered confidential and is provided on redacted Case Logs includes the date a complaint was received, the nature of the allegation, and the status of the case.

The Commission's current policy provides for the disclosure of a respondent's name in the publicly disseminated Case Log in the following circumstances:

- when a complaint was dismissed prior to the initiation of a formal investigation and no referral has been made to another governmental agency for investigation;
- when a stipulation has been entered; and
- after an affirmative Probable Cause determination.

In each of these situations, the Municipal Code contains explicit provisions that make the identity of the respondent publicly available.

SDMC section 26.0455(e) provides that records related to cases that were authorized for investigation shall not become public until after all of the following have occurred: the matter has been closed by the Commission; all applicable statutes of limitations have expired, including those of other governmental and law enforcement agencies that have jurisdiction over the alleged violation; and all litigation and administrative proceedings by other governmental or law enforcement agencies have reached a final conclusion.

Because the Commission's Case Log is a more general document that does not arise from a particular investigative case, different rules apply. The Commission appropriately considers the Case Log to be a public record as defined by the California Public Records Act (Cal. Gov. Code 6250 et seq.). Nevertheless, to the extent the Case Log contains confidential information, that information must be redacted before it is released to the public. (See Cal. Gov. Code § 6253(a).)

A respondent has the right to have his or her probable cause hearing conducted privately. (SDMC § 26.0431.) In addition, the Commission and its staff are prohibited from publicly commenting on pending matters before the Commission has made a probable cause determination or until the matter is closed. (SDMC § 26.0455.) For these reasons, the names of respondents in active investigative cases where there has been no probable cause determination are considered confidential. Those names are appropriately redacted from the publicly disseminated Case Log.

After either the probable cause determination or the closure of a case, there is no implied or actual confidentiality regarding a respondent's name even though the limitation on the release of investigative records may remain in effect substantially longer. Moreover, disclosing the respondents' names in closed matters would further the public's interest in transparency as well as resolving any potential legal concerns under the Public Records Act. For this reason, the Commission may adopt policy of providing the names of respondents in all matters which have been closed by the Commission.