



LEGAL DEFENSE TRUST TRAINING BULLETIN

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ATTORNEY GENERAL'S OFFICE ISSUES OPINION DECLARING VIOLATIONS OF §832.7 A CRIME

While surfing his way through the Internet in the hunt for relevant legal developments, our Field Representative Les Lang discovered ___ Ops. Cal. Atty. Gen. ___, No. 99-503 issued by Attorney General Bill Lockyer on December 22, 1999.¹

Opinions of the Attorney General ("A.G.") are not "binding" in the sense that a trial court is expected to follow the rule set forth, as would be the case with a published decision of an appellate court. However, A.G. opinions are said to be "persuasive authority" insofar as they interpret a provision of California law.

This being said, the Opinion referenced above states that a willful and unauthorized disclosure of "peace officer personnel records" may be prosecuted as a misdemeanor crime, if the disclosure is made by a public law enforcement member or a public official. These records are specifically

made "confidential" by *Penal Code* §832.7², which generally prohibits disclosure of the records in any civil or criminal proceeding, except by reference to *Evidence Code* §§1043-1045,³ which sections set forth a specific

²*Penal Code* §832.7 reads: (a) Peace officer personnel 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.

³*Evidence Code* §§1043-1045 read, in relevant part:

§1043 (a) In any case in which discovery or disclosure is sought of peace officer personnel records...the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records...

(b) The motion shall include all of the following: (1) identification of the proceeding..., the party seeking discovery or disclosure, the peace officer whose records are sought, the governmental agency which

¹The alternative cite is 1999 WL 1249547 (Cal.A.G.) Opinion No. 99-503.

procedure which must be invoked prior to the disclosure of the records. The Opinion reasons that these sections place an “official duty” upon public officers, regardless of their position, to comply with the mandatory requirements of the statutes.

Then, the Opinion focuses on *Penal Code §1222*⁴, which specifies that every willful omission to perform any official duty is prosecutable as misdemeanor. So, the Opinion concludes that a willful and

has custody.. And the time and place at which the motion for discovery or disclosure shall be heard; (2) a description of the type of records or information sought; (3) affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof...

§1045: ... (b) In determining relevance the court shall examine the information in chambers... and shall exclude from disclosure: (1) information consisting of complaints concerning conduct occurring more than five years before the event... (2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code; (3) Facts sought to be disclosed which are so remote as to make disclosure of little or no practical benefit.

⁴*Government Code §1222* reads:
Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made of the punishment of such delinquency, is punishable as a misdemeanor.

unauthorized disclosure by a public officer may be a crime under §1222.

We are not aware of any prosecution which has been initiated against a public officer, based upon a willful violation of *Penal Code §832.7*. However, every public officer who in any way handles or reviews these records should be aware of this interpretation of the law.⁵

— Stay Safe!—

Michael P. Stone, Esq.

⁵ This opinion was requested by Marsha Jones Moutre, City Attorney of the City of Santa Monica.