COUNTY OF LOS ANGELES

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May 13, 2003

TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
SUPERVISOR GLORIA MOLINA
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **Use of Criminal History Information**

At your meeting of April 8, 2003, we were asked to contact the Sheriff's Department and District Attorney's Office to determine if each department had a clear policy on the use of computerized criminal history information. The request was based on concerns raised by an April 8, 2003, *Los Angeles Times* article about settlement of a lawsuit against the City of Los Angeles alleging that a Los Angeles police officer had accessed criminal history records of celebrities to sell the information to tabloids.

Both the Sheriff's Department and Office of the District Attorney have policies specifically addressing and limiting the accessing and use of criminal history records.

We have examined the policies of both departments and find the policies to be appropriate.

The Sheriff's Manual of Policies and Procedures specifically restricts the use of computer equipment and notifies employees of the criminal sanctions related to misuse of criminal history data. The District Attorney's Personnel Policies Handbook also restricts access to and disclosure of criminal records. Both departments have informed us that they have disciplined employees for violations of these policies and that, in some cases, employees have been criminally prosecuted for such violations.

Copies of the relevant provisions of the Sheriff's "Manual of Policy and Procedures" and the District Attorney's "Personnel Policies Handbook" are enclosed for reference.

If you have any questions or comments, please contact Principal Deputy County Counsel Gordon W. Trask at (213) 974-1943.

LWP:GWT:jb

Enclosures

c: Sheriff Leroy D. Baca

Steve Cooley
District Attorney

David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

EXHIBIT "A"
SHERIFF

Los Angeles County Sheriff's Department Manual of Policy and Procedures

3-01/100.45 USE OF COMMUNICATIONS EQUIPMENT

Members shall not use County communications equipment for personal, social or unofficial purposes. This equipment includes, but is not limited to, the County's radio, telephone and computer terminal equipment.

Members shall also observe policies and procedures regarding "Release of Information to the General Public and the Media" and "Dissemination of Criminal Record Information" as detailed in the Miscellaneous Administrative Procedures chapter.

3-07/200.10 ELECTRONIC COMMUNICATIONS

The following sections of the Department's Manual of Policy and Procedures set forth the LASD policies for electronic communications including activity involving the Internet, Sheriff's Data Network, Justice Data Interface Controller (JDIC), local area networks, individual personal computers, and access to data stored in local, state, and federal computer systems. Electronic mail and faxes, which are transmitted over both the Internet and Sheriff's Data Network, are subject to all provisions of this policy. Data Systems Bureau is responsible for the administration of electronic communications via the Internet, Sheriff's Data Network, and JDIC.

3-07/210.00 PERMISSIBLE USE

The use of any Department computer resource is restricted to those activities related to Department business. Use of computers and electronic communications by employees is authorized in support of the law enforcement mission of the Department and the administrative functions that support that mission. Sheriff's Department employees and other authorized users shall adhere to this policy as well as the guidelines set forth in the County Electronic Data Communications and Internet Policies.

Employees are expected to abide by the standards of conduct delineated in other volumes, chapters and sections of the Department's Manual of Policy and Procedures as they may be applied to the use of electronic communications and use and release of information.

3-07/220.20 CALIFORNIA DEPARTMENT OF JUSTICE ADMONISHMENT

As an employee of the Los Angeles County Sheriff's Department, you may have access to confidential criminal record and/or Department of Motor Vehicles record information which is controlled by statute. Misuse of such information may adversely affect the individual's civil rights and violates the law. Penal Code Section 502 prescribes the penalties relating to computer crimes. Penal Code Sections 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be released. Penal Code Sections 11140 - 11144 and 13301 - 13305 prescribe penalties for misuse of criminal history information. Government Code Section 6200 prescribes the felony penalties for misuse of public records and CLETS information. Penal Code Sections 11142 and 13303 state:

> "Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor."

California Vehicle Code Section 1808.45 prescribes the penalties relating to misuse of Department of Motor Vehicles record information.

Any employee who is responsible for such misuse is subject to disciplinary action. Violations of this law may also result in criminal and/or civil actions.

County of Los Angeles Sheriff's Department
Policies

3-09/090.10 RELEASE OF INFORMATION TO THE GENERAL PUBLIC AND THE MEDIA

Upon request, the following information shall be released to the general public, including the media:

Arrestee information - name, current charge, occupation and physical description,

Circumstances of arrest - time and date of arrest, time and date of booking, location of arrest and factual circumstances surrounding the arrest,

Booking information - amount of bail, time and manner of release, location where individual is held and all charges (including, but not limited to, warrants, parole and probation holds),

Calls for service or requests for assistance - time, substance, location and nature of response (provided that such information regarding crimes, alleged or committed or any other incident is documented),

Victim's identification - name, age and current address. However, the identification of victims of 261, 261.5, 262, 264, 264.1, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 273a, 273d, 281, 284, 285, 286, 288, 288a or 289 PC, shall not be disclosed,

Victim and/or witness identification - name, age, telephone number and street address shall not be disclosed to any arrested person or to any person who may be defendant in the alleged offense,

Factual circumstances surrounding a crime or incident such as any injuries, weapons or property involved.

The reasonableness of any request for information shall be evaluated by the person receiving the request. Reasonable requests for information routinely developed, maintained and available during the normal course of Department operations shall be honored. Requests for information that require an inordinate amount of time or expense devoted to research, compilation or computer programming should be referred to Records and Identification Bureau. Any questions regarding the reasonableness of a request for information shall be directed to the Records and Identification Bureau Records Manager.

NOTE: Pursuant to section 5328 WIC, information shall not be disclosed to the general public, including the news media, on any 5150 action when a person is taken into custody for a 72-hour detention and when no crime was involved.

In circumstances where both a crime and 5150 are alleged, information about 5150 activity shall be confidential. Information pertaining to criminal activity may be subject to disclosure after information regarding 5150 activity is deleted. See section 3-09/090.30 for exceptions to the release of information.

Revised 02/22/99

3-09/110.00 DISSEMINATION OF CRIMINAL RECORD INFORMATION

Pursuant to Title 11, Chapter 1, of the California Code of Regulations, the procedure for disseminating criminal record information are outlined in the subsections which follow.

3-09/110.05 CRIMINAL RECORD INFORMATION

Criminal record information is defined as "records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation and release. Such information shall be restricted to that which is recorded as the result of an arrest, detention or other initiation of criminal proceedings or of any consequent proceedings related thereto."

There are three criminal record histories which shall be regulated by the following subsections. These records include:

The yellow RAP sheet produced by the Department of Justice (DOJ) from manual records,

The Automated Criminal History Transcript printed on IBM paper by the DOJ in Sacramento and mailed to criminal justice agencies,

The Automated Criminal History Summary which is obtained via JDIC from the DOJ.

Local criminal history contained in the Automated Index System shall be treated with the same security as the above.

Parolee information provided by the California Department of Corrections (CDC) pursuant to 3058.5 PC, shall be collected by Management Information Services and disseminated to all law enforcement agencies within the County.

Units with specific parolee questions should telephone the CDC at (323) 897-1001 or during non-business hours (916) 445-6713.

All inquiries regarding the control and dissemination of criminal records information shall be referred to the Records and Identification Bureau Commander.

3-09/110.10 RESPONSIBILITY

The unit commander shall act as the criminal records security officer at the unit to which he is assigned. He shall be responsible for seeing that these procedures are adhered to and shall notify all personnel under his command of the following:

Only active law enforcement officers and authorized civilian criminal justice personnel, acting within the scope of their duties, are allowed to disseminate or receive criminal records information,

Accessing a computer system for information in order to obtain money, property or services with false or fraudulent intent, representations or promises, is a felony,

Knowingly releasing criminal records information to unauthorized personnel, such as friends, acquaintances or retired law enforcement officers, is a misdemeanor.

3-09/110.15 RELEASE OF CRIMINAL RECORDS INFORMATION (RAP SHEETS)

Persons Authorized to Release Information

The unit commander shall designate which employees at his unit (sworn or civilian) are authorized to release criminal record information. He shall:

Compile and maintain an up-to-date list of authorized employees,

Supervise the dissemination of information by maintaining complete audit records.

Persons Authorized to Receive Information

Criminal record information may be released, on a need-to-know basis, only to persons or agencies authorized by court order, statute or decisional law to receive such information. The California Department of Justice (DOJ) listing of authorized agencies shall be referred to for releasing criminal record information. Persons may obtain special authorization from the courts to receive criminal record information. In such instances, the burden of establishing eligibility lies with the person requesting the information.

Information shall only be given to authorized persons or agencies over the telephone under the following circumstances:

The identity of the caller can be verified,

The information is not readily obtainable via other means or an emergent situation exists.

Pursuant to Labor Code section 432.7, personnel of this Department shall not notify a governmental agency (other than a law enforcement agency or a school) of the arrest or detention of its employee which has not resulted in a conviction (see Chapter 1 of the Case Assignment and Reporting Volume).

With respect to the arrest of a law enforcement or school employee, the procedures and guidelines established in the Case Assignment and Reporting Volume regarding arrest of such employee

EXHIBIT "B"
DISTRICT ATTORNEY

All employees, regardless of their assigned roles under the Departmental Emergency Plan, are considered part of the Los Angeles County Emergency Organization. As such, personnel may be called upon in a declared emergency to perform tasks or functions not otherwise within their job description, as directed by County Emergency Management for the protection of life and property. (County Code section 2.68.070)

7 08 00 Health and Safety Program

Employees are responsible for performing each work assignment in the safest manner possible. The success of the department's safety program depends on compliance with safety regulations. To this end, each employee is required to report to their supervisor any unsafe working conditions or actions, and each employee is encouraged to make suggestions for the improvement of safety practices. The safety program shall be fully integrated into the daily operations of the department.

7 08 01 Injury/Illness Prevention Program

The department has implemented an aggressive policy to achieve a safe, healthful workplace. As a part of this effort, all employees, regardless of position, work together to maintain health and safety standards in all areas. A manual covering the specific elements of this program is maintained by the Management Services Division and has been distributed to all facilities.

7 09 00 Smoking Policy

Smoking in all areas of county facilities not open to the sky is prohibited. Smoking is also prohibited in all county vehicles unless the driver is alone or all occupants consent to smoking in the vehicle. (County Code section 2.126)

7 10 00 Confidential and Sensitive Information - Policy

It is policy of the department that unauthorized dissemination of information of a confidential or sensitive nature is strictly prohibited, and may result in disciplinary action, including discharge and prosecution. All employees shall be required to read and acknowledge receipt of the department's "Policy Statement - Privacy, Security and Confidentiality".

Information concerning investigations or cases handled by the department must be held in confidence. Information about potential, current or past cases should not be disseminated unless authorized by law and guidelines in the Legal Policy Manual, Bureau of Investigation Policy Manual, or Family Support Operations Policy Manual. This includes release of information

verbally, by documents or other media, including but not limited to FAX, MODEM, and diskette. This policy is to be strictly enforced by supervisors and violations shall result in disciplinary action up to and including discharge, and criminal prosecution.

7 10 01 Confidential and Sensitive Information Defined

Confidential and sensitive information is defined as follows:

a. Any information contained in any record that is privileged as provided by state statute. (Government Code section 6254).

b. Any information maintained in any record that is defined by state statute as "official information", "personal information" or "confidential information", or to which access is limited by state statute. (Evidence Code section 1040; Code of Civil Procedure (CCP) section 1263.520; CCP section 1747; CCP section 204.7; Welfare and Institutions Code section 827)

7 11 00 Criminal Records - Restrictions on Disclosure

Every employee of the department must adhere strictly to office policies and applicable laws and regulations that require security of all criminal records and documents, confidentiality of all information contained in such records, documents or otherwise, and protection of the rights of privacy of all individuals who may be the subject of any such records, documents or other information. Any violation of office policy or procedure, law or regulation relating to security, confidentiality or privacy will result in disciplinary action and/or criminal prosecution.

7 11 01 Criminal Records - Regulations Governing Access

Questions about privacy, security and access to information from any county-maintained or accessible information system should be referred to a supervisor or to the Data Processing Manager in the Bureau of Management and Budget.

Data accessed from criminal information systems and any law enforcement information system is "criminal offender record information" and is to be accessed only for the purpose of carrying out official duties and responsibilities. (Penal Code sections 11075-11081, 11140-11145, and 13300-13305). It is also policy of the department to prohibit unauthorized access to DMV and TRW-type records. Employees found to be in violation of this policy shall be disciplined and may be subject to criminal prosecution.

8 00 00 DISCIPLINE

8 01 00 Employee Performance and Behavior

Failure of an employee to perform assigned duties so as to fully meet stated or implied standards of performance may constitute grounds for discipline. Discipline may include written reprimand, suspension, reduction or discharge. Such grounds may include, but are not limited to, qualitative and quantitative elements of performance, including failure to exercise sound judgment, failure to report information accurately and completely, failure to deal with the public or co-workers effectively, failure to make productive use of human, financial, material or other assigned resources. Grounds for discipline may also include any behavior or pattern of behavior that negatively affects an employee's productivity; or any behavior or condition that impairs an employee's qualifications for continued county employment. (Civil Service Rule 18.031)

The Employee Relations Division provides consultation to managers in determining the appropriateness and level of discipline, and provides advocacy for the department before the Civil Service and Employee Relations Commissions, including hearings and arbitrations.

Violations of rules and regulations which may result in disciplinary action include but are not limited to:

- Violating Personnel Policies Handbook chapter 7 00 00
- Repeated disregard for assigned working hours or repeated tardiness
- Unauthorized absence from assigned place of work
- Absences resulting in inefficiency
- Absence without notice
- Misuse of county materials and equipment
- Conflict of interest
- Business solicitation on county premises
- Breach of confidentiality
- Altering, defacing or destroying records
- Discourtesy or disrespect to the public, supervisors and/or coworkers
- Use of alcoholic beverages on county premises
- Use or possession of illegal drugs or abuse of legal or prescribed drugs
- Insubordination
- Harassment
- Theft
- Falsification of time records
- Gambling in county premises or on county time

- Use of county telephones for private business or personal purposes
- Falsification of documents
- Commission of a felony and/or a crime which reflects upon an employee's ability to perform their duties or involves a crime of moral turpitude.
- Bringing weapons to the work site without the written permission of the Chief Deputy District Attorney or designee
- Making threats of violence toward members of the public, employees or supervisors in person, by telephone or in writing
- Making threats of violence toward a county facility
- Unethical conduct by attorneys in violation of the State Bar Act, California Business and Professions Code section 6000 et seq. and the State Bar of California Rules of Professional Conduct, California Rules of Court.

8 01 01 Reprimand

A reprimand is the least serious form of formal discipline, and is utilized when an employee has committed a single act of poor judgment. A written reprimand is maintained in the employee's personnel file.

8 01 02 Suspension

An employee may be suspended by the department, without pay, for a period of up to 30 calendar days. If a suspension is due to a job-related circumstance for which management believes that immediate removal is required, such suspension may be made without notice to the employee for a period not to exceed 15 calendar days. This action shall be followed by a notice of intent to take disciplinary action. During this time, allegations against the employee will be investigated. The suspension may be extended an additional 15 calendar days.

A permanent employee who is suspended for 5 calendar days or less may file a grievance and is entitled to appeal the suspension to the Chief Administrative Officer/Director of Personnel in writing, answering, explaining or denying the charges. This must be done within 10 business days of the suspension. A permanent employee who is suspended in excess of 5 calendar days may appeal such suspension to the Civil Service Commission within 10 calendar days of the suspension. (Civil Service Rules 4 and 18.01)

In general, suspension without pay may be appropriate for a single flagrant act not, in itself, sufficient to warrant discharge; for continued failure to improve performance; for critical situations in which an immediate suspension must be imposed. (Civil Service Rule 18.01)