

County of Sutter

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Office of the County Administrator

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By JACKIE LASWELL Deputy

May 4, 2011

The Honorable Christopher R. Chandler
Presiding Judge of the Superior Court of California
County of Sutter
466 Second Street
Yuba City, CA 95991

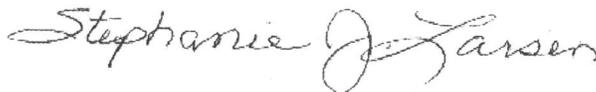
Dear Judge Chandler,

On behalf of the Sutter County Board of Supervisors, I am herewith submitting its response to the findings and recommendations of the 2010-2011 Grand Jury's Report dated December 29, 2010.

The Board of Supervisors appreciates the dedicated efforts of the 2010-11 Grand Jury in the preparation of its report, and trusts that you will find the enclosed material responsive.

I would be happy to meet with the Grand Jury to discuss any or all of these issues.

Sincerely,



STEPHANIE J. LARSEN
County Administrative Officer

SJL:SMC

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MAY 09 2011

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
TRAFFIC DIVISION

Unauthorized Release of Public Information

On August 27, 2007, the California Supreme Court ruled that the public has the right to learn the names and salaries of government employees. Shortly after that, a number of newspapers around the state began compiling databases of state and local government employee salary information.

The **Appeal-Democrat** made a Public Record Act request for the salaries of all county employees in August 2008. The County conscientiously notified all employees of the **Appeal-Democrat** request, and provided a mechanism for employees to demonstrate (with documentation) that their circumstances made them eligible for exemption from release of their names under the narrow guidelines allowed by the California Supreme Court. Individual requests were then reviewed and a limited number of exemptions were made. For example, exemptions were made for undercover officers who could be harmed if their identity as a Sheriff's employee were known, or victims of domestic violence who don't want their abusers to know where they work. The Personnel Director, Mary Lynn Carlton, sent five e-mails regarding the **Appeal-Democrat's** request, and the exemption process (which Auditor-Controller Robert Stark received) on the following dates:

- August 12, 2008
 - 2:51pm – initial e-mail notifying employees of the Public Record Act request (sent to all employees)
 - 6:15pm – e-mail describing the exemption from disclosure process (sent to all employees)
 - 6:29pm – a repeat e-mail describing the exemption from disclosure process (sent to Department Heads, Assistant Department Heads, and Executive Assistants and Secretaries with a request to provide the information to any employees who do not have access to e-mail).
- August 14, 2008 – follow-up e-mail (sent to all employees)
- September 16, 2008 – final notification (sent to all employees)

In addition, the County Administrative Office sent out two e-mails related to the **Appeal-Democrat's** 2008 request:

- August 15, 2008 – e-mail discussing the Supreme Court's decision and the County's legal obligation to comply with the **Appeal-Democrat's** request. In the e-mail, then-County Administrative Officer Larry Combs discussed a meeting he had with the editor of the **Appeal-Democrat** in which he relayed that "many employees are fearful that the publication of their names in an on-line database will jeopardize their personal and financial safety." Mr. Combs went on to say that:

"While the Supreme Court did not allow for exclusions except in the case of undercover police officers, Sutter County is willing to defend the non-disclosure of an individual's name where it can be objectively shown that disclosure would

directly cause demonstrable harm to an individual employee. We have postponed turning over the information to the **Appeal-Democrat** because of the time it will take to review the large number of requests from employees for exclusion from the release of information. We will review each request carefully to determine whether they qualify.”

The remainder of the e-mail included a “Frequently Asked Questions” section regarding various aspects of the Supreme Court ruling and the **Appeal-Democrat** request. (E-mail sent to all employees)

- August 25, 2008 – E-mail announcing that the **Appeal-Democrat** has decided not to publish the names of “rank and file” public employees in its on-line salary database. The message stated that the County is still reviewing evidence provided by employees who feel they have a documented safety concern. (sent to all employees)

There were also four additional e-mails related to the **Appeal-Democrat’s** 2008 request that were received by Mr. Stark:

- August 13, 2008
 - 12:38pm – an e-mail from County Assessor Mike Strong to Personnel Director Mary Lynn Carlton (with copies to the Board of Supervisors and all employees) urging the County to refuse to respond to the **Appeal-Democrat’s** request.
 - 12:41pm – an e-mail from a County employee agreeing with Mr. Strong (sent to all employees)
 - 3:53pm – an e-mail from a second County employee urging all County employees to cancel their **Appeal-Democrat** subscriptions (sent to all employees)
 - 4:05pm – an e-mail from a third County employee agreeing with the second County employee regarding cancelling **Appeal-Democrat** subscriptions, and stating concerns about identity theft if employee names are attached to the salary information (sent to all employees)

In August 2009, Ms. Carlton received a Public Records Act request from a private citizen requesting the e-mail addresses of all employees. After consultation with the County Administrative Officer and County Counsel, it was decided to treat the request for all e-mail addresses in a manner similar to the release of employee names and salaries. Another notification went out to all employees:

- August 26, 2009 – notification to employees of the Public Records Act request for the e-mail addresses of all employees, which informed employees that exemption requests authorized in the prior year would continue to be honored. The e-mail also notified new employees, or long-term employees with new situations which would qualify them for exemptions, of the process for requesting exemption from disclosure. (sent to all employees)

In total, Mr. Stark received 12 e-mails related to the Supreme Court decision, the requirement to disclose names and salaries except for those few cases where security or safety concerns could

be documented, the process for an employee to request exemption from disclosure of his/her name, and the prevailing sentiment of County employees concerning their feelings of vulnerability and fear for their safety.

On May 19, 2010, Mr. Stark e-mailed, to two private citizens, a database which included the names, salary, and position related information for *all* Sutter County employees.¹ Neither the County Administrative Office nor the Personnel Department was contacted to ascertain which employees' names were authorized for release and which should be withheld.

The e-mail was then apparently forwarded to multiple people throughout the County, to the **Appeal-Democrat**, and to KUBA Radio.

On May 26, 2010, the **Appeal-Democrat** sent an e-mail to Ms. Carlton, formally requesting employee salary information for calendar years 2008 and 2009. At that time, County administration was unaware of the unauthorized release that had been made a week earlier, and did not know that the **Appeal-Democrat** already had the information. On May 27, 2010, Ms. Carlton sent out an e-mail notifying employees of the new Public Record Act request from the **Appeal-Democrat**, and informed employees of the process for exempting their names from disclosure. This e-mail was sent to all employees, including Mr. Stark. Even with this fresh reminder of the County procedure in front of him, Mr. Stark did not notify anyone in County administration that he had already released all employee names.

It wasn't until over a month later, in early July, when County administration became aware of the unauthorized release of employee names and salaries. As soon as the Personnel Department became aware of the unauthorized release, Ms. Carlton notified the **Appeal-Democrat** and KUBA that this was not an authorized release of salary information, and requested that they refrain from publishing information from the list until an authorized list (with exempted employees deleted) could be compiled. On July 8, 2010, Ms. Carlton sent out an e-mail to all County employees, notifying them that an unauthorized release of personnel information had been made, and that any adverse reactions that happen to an employee or his/her family as a result of this security breach should be reported to the Sheriff's Office.

On October 12, 2010, Mr. Stark sent the County Administrative Officer, Stephanie Larsen, an e-mail requesting "a list of employees for whom exclusions have been approved. Also, when new exclusions are granted we need to be notified." Ms. Larsen responded the same day with the direction to "direct any Public Records Act requests for employee-related information to the Human Resources Department."

¹ It should be noted that the Auditor-Controller did not release only a list of employee names, compensation and job title information - - the Auditor-Controller also released each individual employee's identification number, department numbers and names, hire dates, pay grades, pay steps, job codes, anniversary dates, hire dates, and employee status (i.e., whether the employee is in full time or part time job status).

Although the County believes that all of these prior communications were sufficient notification for department heads who have access to sensitive information to know that releasing such information was the responsibility of the Personnel Department, the County also adopted a "Public Access to County Documents" policy on December 28, 2010.

Grand Jury Finding:

The Grand Jury finds when the County receives a California Public Records Act (CPRA) request of this nature, the County is responsible to release a list of employee names, compensation and job title information, and may withhold such information and grant an "exclusion" to any information request in a very narrow circumstance where an employee has a legitimate safety or security reason based upon specific, verifiable safety and/or security concerns.

Sutter County Board of Supervisors Response:

The Board of Supervisors agrees with the finding of the Grand Jury.

Grand Jury Finding:

The Grand Jury finds that the Auditor Controller, Mr. Stark, did not violate the CPRA law. At the time of release of personnel names, job titles and salary, a County Policy was not in place regarding CPRA. Mr. Stark received a request for information from a private citizen and he responded to the request based on current law.

Sutter County Board of Supervisors Response:

The Board of Supervisors agrees that the Auditor-Controller did not violate the law, nor was there an official written County policy in place at that time that explicitly addressed this issue. However, the Auditor-Controller could have and should have known that there was an established practice in place whereby certain employee names were intended to be redacted from public information requests of this type to ensure the safety of employees who had a demonstrated reason to believe that release of their names would endanger their safety or security.

*Section 6253.4 of the California Public Records Act provides that "[e]very agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section." In August 2008, Sutter County received a request from the **Appeal-Democrat** newspaper seeking the names, titles, and salaries of all Sutter County employees for the 2007 calendar year. As a result of that request, the County developed, pursuant to applicable case law, a procedure whereby all employees would be notified of such requests and be given an opportunity to request that their names be excluded from the disclosure. According to that procedure, such requests would then be reviewed by the Human Resources Department and the Office of the County Administrator and the names of those who*

could establish a legitimate safety or security concern would be excluded. This procedure was communicated to every employee of the county, including Mr. Stark, through multiple e-mails sent out by the Personnel Department and the County Administrative Office in 2008 and 2009. Several hundred employees took advantage of this opportunity and made requests for exclusion. The Human Resources Department then evaluated the requests and found that some employees did, in fact, have unique situations where the release of their name could constitute a legitimate safety or security concern². The County then redacted those names and presented the information to the *Appeal-Democrat*.³

On or about May 19, 2010, two private citizens made a similar request which was directed only to the Auditor-Controller. Without consulting with the Human Resources Department or the County Administrative Officer, the Auditor-Controller unilaterally decided to provide the names and salary information of all employees to the citizens.⁴ In so doing, the Auditor-Controller neglected to follow the established practice and, as a consequence, failed to give the employees of Sutter County the opportunity to request an exclusion from that disclosure. As a result, many employees who could establish legitimate safety and/or security concerns were denied an opportunity to make that request, or for previously-granted exemptions to continue to be honored, and were placed at an unreasonable risk of harm by the actions of the Auditor-Controller.

Grand Jury Recommendation:

The Grand Jury recommends that Sutter County take steps to prevent the release of confidential employee information in the future by establishing a policy for release of CPRA requests.

Grand Jury Finding:

The CPRA law was enacted in 2007⁵ and neither the CAO nor the Board of Supervisors saw a need to establish a policy within the County to address a request of this nature.

Grand Jury Finding:

The Grand Jury recommends that the CAO establish a policy for the release of public information and the Board of Supervisors approve the policy as soon as possible to insure issues of this nature do not happen in the future.

² Less than two dozen exclusions were actually authorized of the 200+ requests received.

³ It is important to note that the *Appeal-Democrat* never sought disclosure of the redacted names.

⁴ This information was later disseminated to a broad e-mail audience, to the *Appeal-Democrat*, and to KUBA Radio.

⁵ It should be noted that the CPRA was actually enacted in 1968 (it was the California Supreme Court decision that took place in 2007). According to the California Attorney General's Office, "Legislation enacting the California Public Records Act was signed in 1968, culminating a 15-year-long effort to create a general records law for California" ["Summary of the California Public Records Act 2004" published by the California Attorney General's Office, August, 2004; page 2].

Grand Jury Finding:

The Grand Jury finds the potential for future harm continues to be high with no CPRA policies in place. As of December 27, 2010⁶, a CPRA policy has not been approved by the Sutter County Board of Supervisors.

Sutter County Board of Supervisors Response:

The Board of Supervisors will respond to all four of the above Grand Jury findings as a group because they are all related to the basic precept that the County needs to establish a CPRA policy. The Board of Supervisors agrees with the Grand Jury that no official written policy was in place.

*As stated earlier, a process for handling requests for personnel information was already clearly established in 2008 in response to the **Appeal-Democrat's** first request for salary information. As guardian of the County's payroll system for 26 years, Mr. Stark is well aware how sensitive salary information is. Prior to the 2007 California Supreme Court decision, all requests for salary information for individual employees would have been refused as confidential personnel information. Mr. Stark – more than almost any other department head in the County – could have and should have known that County employees who had been granted an exemption in 2008 or 2009 expected to have that exemption honored in future requests of a similar nature.*

Assuming that the procedure for handling requests for personnel information had been clearly articulated, administrative staff did not anticipate that an official written policy would be necessary. The County trusts its department heads to act with discretion and to act in ways that ensure the safety and security of its employees. It is not until a breach such as this occurs that it becomes apparent that a more formal approach is needed. In retrospect, given the importance of employee security, it would have been prudent to establish such a policy. Therefore, on December 28, 2010, the Board of Supervisors adopted Administrative Policy #308, entitled "Public Access to County Documents." Due in part to Mr. Stark's actions, the policy contains the following policy statement (section 1.3):

All requests for County employee information and/or data should be directed to the Sutter County Human Resources Department. If a department receives a request for County employee information and/or data the department shall direct that request to the Sutter County Human Resources Department. The law provides that the County may withhold such information and grant an "exclusion" to an information request in

⁶ The draft policy was considered in a public meeting of the Agriculture, Public Protection and General Government Committee of the Board of Supervisors on Monday, December 13, 2010. Due to the cancellation of the December 21, 2010, regular meeting of the Board of Supervisors, the next available Board meeting date for the policy to be considered by the full Board of Supervisors, following Committee action, was December 28, 2010. While it is true that no policy had been approved by the Board of Supervisors as of December 27th, the policy was on the Board of Supervisors agenda that was made publicly available on Wednesday, December 22nd.

very narrow circumstances where an employee has a legitimate safety or security reason based upon specific, verifiable safety and/or security concerns.

The Board of Supervisors trusts that this policy statement satisfies the concerns expressed by the Grand Jury.

Grand Jury Recommendation:

The Grand Jury recommends any adverse actions against an employee or their family as a result of the breach of confidentiality be forwarded to the Sutter County Sheriff's Department.

Sutter County Board of Supervisors Response:

The Board of Supervisors agrees with the Grand Jury's recommendation.

We have included the response from the elected Auditor-Controller as Attachment A.

Sutter County Auditor-Controller's Response to 2010-2011 Grand Jury
Report

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County Government Release of Information

APR 07 2011

First Finding (in order presented)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By JACKIE LASWELL Deputy

"The Grand Jury finds when the County receives a CPRA request of this nature, the county is responsible to release a list of employee names, compensation and job title information, and may withhold such information and grant an 'exclusion' to any information request in a very narrow circumstance where an employee has a legitimate safety or security reason based upon specific, verifiable safety and/or security concerns."

Auditor-Controller response to first finding—We agree.

First Recommendation (in order presented)

"The Grand Jury recommends that Sutter County take steps to prevent the release of confidential employee information in the future by establishing a policy for release of CPRA requests.

Auditor-Controller response to first recommendation—We agree. However, this is not within the purview of the Auditor-Controller's Office to implement.

Second Finding (in order presented)

"The Sutter Grand Jury finds that the Auditor-Controller, Mr. Stark, did not violate the CPRA law. At the time of the release of personnel names, job titles and salary, a County Policy was not in place regarding CPRA. Mr. Stark received a request for the information from a private citizen and he responded to the request based on current law."

Auditor-Controller response to second finding—We agree.

Second Recommendation (in order presented)

"The Sutter Grand Jury recommends that the CAO establish a policy for the release of public information and the Board of Supervisors approve the policy as soon as possible to insure issues of this nature do not happen in the future."

Auditor-Controller response to second recommendation—We agree. However, this is not within the purview of the Auditor-Controller's Office to implement.

Third Finding (in order presented)

The Grand Jury finds the potential for future harm continues to be high with no CPRA policies in place. As of December 27, 2010 a CPRA policy has not been approved by the Sutter County Board of Supervisors.

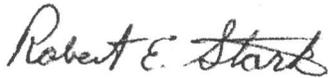
Auditor-Controller response to third finding—We agree.

Third Recommendation (in order presented)

The Grand Jury recommends any adverse actions against an employee or their family as a result of the breach of confidentiality be forwarded to the Sutter County Sheriff's Department.

Auditor-Controller response to third recommendation—We agree.

Submitted by,



Robert E. Stark, CPA
Auditor-Controller
March 4, 2011