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Napa Superior Court



Town of Yountville
The Heart of the Napa Valley

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JUL 29 2013

Clerk of the Napa Superior Court
By: C. Bannan
Deputy

July 18, 2013

The Honorable Mark S. Boessenecker
Supervising Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, California 94559

Re: 2012-13 Grand Jury Final Report: On the Integrity of Grand Jury Investigations.

Dear Judge Boessenecker:

As requested, the Town Council of the Town of Yountville has reviewed the report and offers the following in response in regard to the report recommendations.

As described in the responses to findings and recommendations, below, the Town is not aware of any violation of the secrecy admonition by any Town official. Moreover, the Town of Yountville has not been directly involved in a Grand Jury investigation this past year nor was the Town consulted with or interviewed by the current Grand Jury as a part of the investigation which led to the Grand Jury issuing this report. I have no direct knowledge of any particular concerns that the Grand Jury may have that regarding to their investigations involving Town officials.

The Town acknowledges, understands, and respects the Grand Jury's authority to investigate the Town's operations (as set forth in California Penal Code sections 888, *et seq.*, notably section 925a), and the Town's corresponding obligations to provide information and records to the Grand Jury. The Town's obligations to the Grand Jury include compliance with the secrecy admonition which provides:

"You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court." (86 Ops.Cal.Atty.Gen. 101)

The Town Manager's Office and contracted Town Attorney regularly advises Town staff regarding the scope of each employee's obligations in responding to the Grand Jury, as summarized above. However, this report also summarizes two important clarifications. First, there are practical limitations on the secrecy admonition as it relates to Grand Jury requests for Town records. Second, when a Town official is requested to provide testimony to the Grand Jury, it is important for the Town official to contact the Town Manager's Office in order to coordinate obtaining legal advice from the contracted Town Attorney to resolve any potential conflict between the obligation to provide testimony to the Grand Jury, and the obligation to withhold confidential information from the Grand Jury (e.g., information protected by the attorney client privilege or the official information privilege).

First, as a practical matter, while there is a clear obligation for a Town official to maintain the confidentiality of questions asked and answers provided orally during questioning by the Grand Jury, it is likely that a Grand Jury request for Town records will require the involvement of more than one Town official to prepare the response (depending, of course, on the scope of records requested, and the individual Town official being questioned). Even if an individual Town official has direct access to records requested by the Grand Jury, it is likely that the requested records are used in the normal course of Town operations by more than one official. Frequently Town records that are relevant to a Grand Jury investigation will require assembly by more than one Town official, and coordination of copying the records with others in the organization who use the records.

There are certainly methods that may be used by the Town in order to minimize the number of Town officials who are aware of the substance of the records requested from the Grand Jury, and within that limited number of affected Town officials, those officials may be effectively directed by the Town to maintain the confidentiality of the Grand Jury's request for the records. The Town has successfully had conversations of this type with the Grand Jury in the past, and the Town is open to having that discussion on an ongoing basis with the Grand Jury as requests for Town records are made. It is the Town's understanding that this practice of coordination between the Grand Jury and the Town is included as a part of the "Napa County Grand Jury Procedures Manual." In particular, from the June 2005 version of the Procedures Manual, the section entitled "Communications with Agency" on page VII-2 provides:

"Upon selection of an agency to be investigated, the assigned committee chair shall communicate with the agency head [for the Town of Yountville, this would be the Town Manager] and set a time to meet. The purposes of this meeting are to allow [Town] and committee personnel to meet each other; to establish the agenda; to agree upon mutually satisfactory procedures concerning schedules, access to personnel, documentation requirements; and to create an atmosphere of mutual respect and cordiality...."

From the Town's perspective, this type of initial meeting is an excellent opportunity for the Town to efficiently provide the Grand Jury access to all information and witnesses needed to conduct the investigation, with minimal disruption to the Town's ongoing obligations to provide daily services to the general public. This meeting is also an opportunity to ensure that all Town officials who will be needed to provide information (either oral testimony or documents) to the Grand Jury are provided training regarding the secrecy admonition. Perhaps more importantly, this meeting is an opportunity for the Town to identify and provide training to non-witness Town employees within departments affected by the Grand Jury investigation (supervisors and co-workers of Grand Jury witnesses), regarding the obligations of non-witnesses to refrain from questioning witnesses regarding matters subject to the Grand Jury secrecy admonition. It is important to note that the City's authority to manage the conduct of non-witnesses is broader than the scope of the secrecy admonition (which only applies to Grand Jury witnesses, per 83 Ops.Cal.Atty.Gen. 161).

The initial meeting recommended by the Grand Jury Procedures Manual is also an opportunity to identify any information requested by the Grand Jury that could potentially be withheld by the Town, based on an obligation of the Town to maintain the confidentiality of certain information from the Grand Jury. The clearest example of this situation is the Town's obligation to withhold from the Grand Jury information that is protected by the attorney client privilege (per California Evidence Code section 954). The California Attorney General has concluded that the attorney client privilege is available to Grand Jury witnesses (See 70 Ops.Cal.Atty.Gen. 28.) That same Attorney General opinion also cites the "official information privilege" (as defined by Evidence Code section 1040) as a basis for the Town to refuse to disclose information. In general, the official information privilege protects information that was provided to the Town in confidence, such as (to cite two examples): health information (protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")), and financial information (protected by California Revenue and Taxation Code section 7056).

Due to the potentially conflicting responsibilities of Town officials called as witnesses to the Grand Jury, balancing the obligation to provide information to the Grand Jury against the obligation to maintain the

confidentiality of certain information, it is essential that Town officials called as witnesses before the Grand Jury have an opportunity to seek legal advice from the Town Attorney's Office. It is also noted that, if any Town official is called to give testimony under oath, that Town official may have the Town Attorney present to provide legal advice during the questioning (per Penal Code section 939.22).

One final issue that could be clarified in the initial meeting between the Grand Jury and the Town would be the manner of distributing the "early" non-public version of each report (provided to the Town two working days prior to public release, per Penal Code Section 933.05(f)). From the Town's perspective, it is important for this early report to be provided to the Town Manager and the Town Attorney, so that the Town has an opportunity to determine whether or not any information in the report is confidential in nature and should not be released to the public. While the report is reviewed by the Presiding Judge to ensure that privileged information is not inadvertently revealed to the public (per Penal Code Section 929), the Presiding Judge may not be aware of the privileged nature of certain information. If the Town Attorney is provided a copy of the non-public version of each report, the Town Attorney will have an opportunity to notify the Presiding Judge and the Grand Jury Foreperson if there is any confidential information in the document, along with a request to redact the confidential information prior to publication. (See McClatchy Newspapers v. Superior Court of Fresno County (1988) 44 Cal.3d 1162.)

The Grand Jury's Findings and Recommendation, the Town's Response:

Finding F1: Certain witnesses interviewed by the Grand Jury, knowingly, repeatedly, and willfully violated their lawful secrecy admonition.

Response to Finding F1: The Town disagrees with this finding, as related to witnesses that are Town officials. The Town has no information regarding witnesses that are not Town officials. The Grand Jury has provided no information to the Town to indicate that any Town official has ever violated the secrecy admonition, and the Town has no information that any Town official has ever violated the secrecy admonition.

Finding F2: The conduct of the witnesses in repeatedly violating the Grand Jury's lawful secrecy admonition created an atmosphere of apprehension and intimidation which impeded the proper investigation of the Grand Jury.

Response to Finding F2: The Town disagrees with this finding, as related to witnesses that are Town officials. The Town has no information regarding witnesses that are not Town officials. The Town has consistently taken extraordinary efforts to cooperate with requests for information from the Grand Jury.

Finding F3: The conduct of the witnesses who violate the secrecy admonition is punishable as contempt of the Superior Court.

Response to Finding F3: The Town agrees that a violation of the secrecy admonition may constitute a contempt of court; however, it is within the discretion of the court to determine whether or not particular conduct rises to the level of contempt.


Recommendation R1: That ... the Town Council ...provide instruction to all county [sic – intended to be "city"] employees within their jurisdiction regarding their duties and responsibilities towards the grand jury process and that said instruction be completed prior to the end of the year.

Response to Recommendation R1: This recommendation has been implemented prior to the issuance of this Grand Jury Report. The Town Manager and Town Attorney's Office regularly advises Grand Jury witnesses who are called to testify before the Grand Jury regarding the scope and requirements of the secrecy admonition. The Town Council directs the Town Manager to ensure that each Town official called to provide testimony or records to the Grand Jury makes contact with the Town Attorney to discuss the scope of the Town official's responsibilities to the Grand Jury, specifically including the scope of the secrecy admonition, and the scope of any potentially conflicting responsibilities by Town employees to

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maintain confidential information from the Grand Jury (such as information protected by the attorney client privilege per California Evidence Code section 954, and information protected by the official information privilege per California Evidence Code section 1040).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. R. Rogers". The signature is written in a cursive, flowing style.

Steven R. Rogers,
Town Manager

Cc: Town Council
Town Clerk