



## STAFF REPORT

**Date:** July 8, 2014  
**To:** City Council  
**From:** Bryan Montgomery, City Manager

Approved and Forwarded to City Council:

Bryan H. Montgomery, City Manager

**SUBJECT: Approval of responses to Civil Grand Jury Reports No. 1403 "Training City Personnel in Reporting Child Abuse;" No. 1404 "Planning for Technology;" and, No. 1405 "The Public Records Act In Contra Costa County."**

### Summary

The California Constitution established civil grand juries in each county. The California Code includes provisions on the formation of civil grand juries and their powers and duties. With respect to public agencies, civil grand juries are authorized to "investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit" (California Penal Code section 925a). The Code also stipulates that a written response will be provided by the city or joint powers agency within 90 days after the civil grand jury submits a report.

The Contra Costa Grand Jury has recently issued three reports that require a response from the City of Oakley: No. 1403 "Training City Personnel in Reporting Child Abuse;" No. 1404 "Planning for Technology;" and, No. 1405 "The Public Records Act In Contra Costa County."

Staff has prepared the attached responses.

### Fiscal Impact

Staff time to prepare the responses to these Reports is estimated to have cost approximately \$800.

### Recommendation

Approve the draft responses and authorize the City Manager to forward them to the Civil Grand Jury.

### Attachments

1. Contra Costa Civil Grand Jury Reports No. 1403, 1404, 1405 and corresponding draft response letters from the City.

~ DRAFT~

July 9, 2014

Stephen D. Conlin, Foreperson  
CONTRA COSTA CIVIL GRAND JURY  
P.O. Box 911  
Martinez, CA 94553-0091  
*Attn:* [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

**Subject: Civil Grand Jury Report 1403, "Training City Personnel in Reporting Child Abuse."**

Mr. Conlin:

This letter is in response to this Grand Jury report regarding training for the reporting of suspected child abuse. Our letter is consistent with Section 933.05 of the California Penal Code and includes the requested responses to the Grand Jury findings and recommendations on this topic.

With regard to **Findings #1 through #7** (which includes all of the Findings in this report), the City of Oakley agrees with all of them.

**Recommendation #1** – Each city should consider immediately adopting a policy to train its employees and other personnel about their obligations to identify and report suspected cases of child abuse

*City Response: The City has implemented this recommendation and has already adopted this policy.*

**Recommendation #2** – Each city should review the duties of all employees and other personnel to determine which personnel fall within the definition of "mandated reports" under Penal Code section 11165.7.

*City Response: The City has implemented this recommendation and the employees have been identified as a part of the City's Mandated Reporter Policy.*

**Recommendation #3** – The training program should include all personnel who are "mandated reporters."

*City Response: This recommendation has been implemented and all identified personnel have been trained and will continue to be trained.*

**Recommendation #4** – The training program should include:

- a. Who are “mandated reporters”;
- b. What is “reasonable suspicion” of child abuse;
- c. How and when a report should be made;
- d. What safeguards are in place to protect mandated reporters; and
- e. What are the ramifications of making a suspected child abuse report.

*City Response: This recommendation has been implemented and these components are included in the required training.*

**Recommendation #5** – Each city should consider including all volunteers who have direct contact with or supervise children in its abuse reporting training program.

*City Response: The current volunteers working periodically with children are minors themselves. We will evaluate other cities’ policies relating to the training of volunteers in this area and work to adopt and implement similar provisions.*

**Recommendation #6** – In the case of an independent contractor providing services that require direct contact or supervision of children, the city should consider ensuring that the independent contractor and each of its staff who will have direct contact or supervision of children have successfully completed the city’s “mandated reporting” training program.

*City Response: This has been implemented and contract personnel have been included in the training.*

**Recommendation #7** – Each city should establish a procedure for verifying that all employees and other personnel who are mandated reporters.

*City Response: This has been implemented.*

**Recommendation #8** – Each city should consider retaining the Child Abuse Prevention Council of Contra Costa County to provide free training services about child abuse training.

*City Response: The City will gladly seek out this source for future training.*

Respectfully submitted,

Bryan H. Montgomery  
City Manager

**A REPORT BY  
THE 2013-2014 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

**Report 1403**

**TRAINING CITY PERSONNEL IN  
REPORTING CHILD ABUSE**

APPROVED BY THE GRAND JURY:

Date: 04/24/2014

  
STEPHEN D. CONLIN  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 5/5/14

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

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Contra Costa County Grand Jury Report 1403

***Training City Employees in Reporting Child Abuse***

**TO:** All Contra Costa County Cities

**SUMMARY**

Multiple lawsuits alleging child abuse, and the failure to report suspected instances of the same, have revealed that many employees of public entities, including those of cities, do not understand their duties to identify and report suspected or known instances of child abuse. This failure is due, in large part, to inadequate training of employees, and other personnel, in their legal obligations as “mandated reporters”.

To help protect children from child abuse, and cities from liability for failing to report suspected cases of abuse, each city should establish and implement a program to train all “mandated reporters”, including volunteers and other personnel who have direct contact or supervision of children, in abuse reporting guidelines. The training programs should be conducted on an annual basis and each city should implement a system to verify that employees and other personnel who are mandated reporters have successfully completed the training.

**METHODOLOGY**

- Review of California Penal Code sections mandating reporting of child abuse;
- Review of publications by the State Office of Child Abuse Prevention, Greater Bay Area Child Abuse Prevention Council Coalition and Child Abuse Prevention Council of Contra Costa County;
- Detailed survey of each city regarding their policies, procedures and practices in the training of employees to report suspected child abuse;
- Interviews of child abuse prevention experts;
- Interview of city personnel responsible for child abuse reporting training, and;
- Review of Walnut Creek Investigative Report.

## **BACKGROUND**

The first child abuse reporting law was enacted in California in 1963. Nevertheless, more than 50 years later, cities within this County, as well as other public entities, have failed to provide basic training to their employees in reporting suspected, or actual, child abuse. The lack of training has resulted in instances when suspected or known child abuse was not reported as required by law and where city employees were unaware of their duties to report the alleged abuse.

### **The Problem**

The alleged failures of various school districts within the County to report suspected or known child abuse are now well documented, as set forth in the Grand Jury's recent report (Report No. 1402). School Districts in Moraga, Antioch and Brentwood have recently agreed to pay millions of dollars to settle lawsuits alleging instances of child abuse that resulted, in part, from the purported failure of school personnel to report suspected, or known, cases of child abuse. Additional lawsuits are pending.

However, problems relating to the alleged failure to report suspected or known child abuse, and the lack of employee training about the duty to report the same, is not confined to school districts in the County. A recent case in the City of Walnut Creek revealed the potential damaging effects that may result when child abuse allegations arise from the failure of a city to adequately train its employees, or other personnel, to report known or suspected instances of child abuse.

This well-documented incident involved allegations of child molestation in 2012 by a part-time employee of Walnut Creek's Leshner Center for the Arts. The suspected abuse became known to various City officials. The District Attorney filed criminal charges against the employee in February 2013. In addition, investigations by the Concord Police Department and later by an independent investigator retained by the City were undertaken to determine whether Walnut Creek employees failed to report the suspected abuse pursuant to their obligations under the California Penal Code.

The report prepared by the independent investigator ultimately concluded that there was no city-wide training of employees about their obligations to report suspected child abuse. The report found that numerous City officials had not received **any** training on "mandated reporting" and, at least in one case "did not know there was such a thing as 'mandated reporting'." The report found that all of the officials should have received adequate training in reporting suspected child abuse.

The incident cost Walnut Creek far more than the expense of the investigative report. Several City officials were temporarily suspended from their jobs and others resigned. The City ended up paying the attorney's fees for at least some of the suspended employees. The damage to the City's reputation and morale is unknown.

The above discussion is not intended to single out Walnut Creek, as the lack of adequate training has been almost uniform among cities within the County for years. Instead, it is an illustration of the potential consequences cities may face for failing to provide their employees adequate training to report abuse. In light of the explosion of claims against school districts, cities may face serious abuse claims in the future unless adequate training is instituted and maintained.

## The Law

The California Child Abuse and Neglect Reporting Law is set forth in Penal Code sections 11165 – 11174.3. Since its enactment in 1963, the law has been amended on several occasions, expanding both the definition of “abuse” and the persons – known as “mandated reporters” – who are required to report suspected instances of child abuse. The law defines the obligations in detail, that include:

1. **What** is child abuse (Penal Code section 11165.6 [all references are to the Penal Code]);
2. **What** must be reported (P.C. section 11166);
3. **Who** is a mandated reporter (P.C. section 11165.7);
4. **When** the suspected abuse should be reported (P.C. section 11166)
5. **To Whom** the suspected abuse should be reported (P.C. section 11166);
6. **Safeguards** for persons making the mandated reports (P.C. section 11172)
7. **Liabilities** for failure to make a required report (P.C. section 11166.01);and
8. **Responsibilities** of the agency employing the mandated reporter (P.C. section 11166.1).

The Penal Code’s definition of a “mandated reporter” is extensive and should be scrutinized by each city to determine which of its employees fall within the statutory definition. However, certain categories of employees set forth in P.C. section 11165.7 clearly apply to certain employees within a city. These employees include:

“ ...

(6) An administrator of a public or private day camp;

(7) An administrator or employee of a public or private youth center, youth center recreation program or youth organization;

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children...”

The Penal Code does not explicitly require cities to train their “mandated reporters” in their obligations; however, P.C. section 11165.7(c). provides:

“Employers are strongly encouraged to provide their employees who are mandated reporters in [their] duties . This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. ...”

A report of suspected child abuse must be made **immediately**, or as soon as practical, to legal authorities by phone and then followed by a **written** report within 36 hours. Failure to do so,

subjects the mandated reporter to criminal liability. Moreover, the obligation to make the report cannot be satisfied by telling a supervisor or colleague – an apparent misconception in many of the child abuse cases.

## **The Training**

### **1. Mandated Reporters**

The Grand Jury recently issued a report (Report No. 1402) on the status of child abuse reporting training by school districts in the County. While the Grand Jury concluded that the training programs were long overdue and deficient in a number of respects, the Grand Jury found that most of the districts were making a serious effort to develop and improve their training programs. Clearly there is further work to be done.

However, the abuse reporting policies and training programs of the cities in the County lag far behind the programs instituted by the school districts. Almost none of the cities had a city-wide policy on reporting child abuse, let alone a training program, until the last few months. The responses of several of the cities to the Grand Jury's request in November 2013 for information on this subject illustrate the problem.

The City of Clayton responded, in part, that:

“Following the recent unfortunate incident and publicity on this subject with The City of Walnut Creek, Clayton was in the midst of preparing a City Administrative Policy. After receipt of the Civil Grand Jury's November 2013[letter], City staff accelerated the task and the enclosed City Administrative Policy was adopted by the Council at its public meeting on 12/13/13.”

The City of Oakley responded that it did not have a formal policy on child abuse reporting in place, but attached a draft Mandated Reporting Policy “...that is currently under review by the City Attorney.”

The City of San Pablo responded to the Grand Jury's request by stating, in part:

“...the City plans on presenting for City Council approval in the near future a child abuse reporting policy along the lines of similar policies recently adopted by Concord, Brentwood and Lafayette.”

These responses reflect the status of policies and training programs across almost all cities within the County. Almost all of the cities are scrambling to enact policies. But policies alone are not enough. Adoption of actual training programs and effective implementation of those programs are critical. Such training programs should be adopted and implemented now.

From a training perspective, the Child Abuse Prevention Council of Contra Costa County (CAPC) has been retained by a number of school districts and cities to provide “mandated reporter” training to their personnel. CAPC provides live training by qualified instructors. The training lasts approximately one to one and a half hours and includes sample scenarios, as well as a “give and take” discussion with the training participants. Moreover, the training is provided at

no cost to the city.

The evidence clearly suggests that cities within the County should be encouraged to adopt a uniform training program in order to ensure adequate and comprehensive education of City personnel in reporting suspected child abuse. A review of the Penal Code provisions relating to mandated reporters, as well as other pertinent information, indicate that an effective and comprehensive training program should be mandatory for all city employees whose duties require direct contact and supervision of children. The training program should be given annually and, at a minimum, include the following topics:

- Who are “mandated reporters”;
- What is “reasonable suspicion” of child abuse;
- How and when should a report be made;
- What safeguards are in place to protect mandated reporters; and
- What are the ramifications of making a suspected child abuse report.

In addition, each City should establish a procedure for **verifying** that all employees who are mandated reporters have successfully completed the training program.

## **2. Volunteers**

Volunteers are specifically excluded from the definition of “mandated reporters” under the Penal Code, even those who have direct contact with and supervise children. (P.C. section 11165.7(b).) However, the statute also provides that such volunteers are:

“ . . . encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect . . . ”

Moreover, the statute further provides:

“Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.” (P.C. 11165.7(f).)

There have been well-documented instances of child abuse by volunteers in city programs, particularly those in recreational or sports areas. Given the potential for abuse, as well as the statutory language that encourages training of volunteers, each city should consider including volunteers in its abuse reporting training programs.

## **3. Independent Contractors**

Some cities enter into agreements with independent contractors to provide services that require direct contact or supervision of children. In those cases, the contracting city should ensure that

each independent contractor involved in such contact with children has successfully completed the city's "mandated reporter" training program.

Obviously, training programs alone cannot prevent all instances of child abuse. However, if an effective and comprehensive training program prevents only **one** child from being abused, **one** family from having to endure the hardships of an abused child, **one** City from having to pay millions of dollars to settle a child abuse lawsuit, then there is no reason for any district to resist implementing the same.

## **FINDINGS**

1. The law strongly encourages cities to provide their employees who are "mandated reporters" with training about their obligations to identify and report known or suspected child abuse.
2. A "mandated reporter" employed by a city includes, but is not limited to, an administrator or employee whose duties require direct contact and supervision of children.
3. Training in child abuse reporting obligations should be given annually to every city employee whose duties require direct contact and supervision of children.
4. Training in child abuse reporting obligations should include:
  - a. Who are "mandated reporters";
  - b. What is "reasonable suspicion" of child abuse;
  - c. How and when a report should be made;
  - d. What safeguards are in place to protect mandated reporters; and
  - e. What are the ramifications of making a suspected child abuse report.
5. While volunteers who have direct contact or supervise children are excluded from the definition of "mandated reporters" under the Penal Code, the law "encourages" such volunteers to obtain training in identifying and reporting suspected or known child abuse.
6. A procedure should be implemented to verify that all city personnel who are mandated reporters receive training.
7. The Child Abuse Prevention Council of Contra Costa County provides training services in abuse reporting at no cost to cities in the County.

## **RECOMMENDATIONS**

1. Each city should consider immediately adopting a policy to train its employees and other personnel about their obligation to identify and report suspected cases of child abuse.

2. Each city should review the duties of all employees and other personnel to determine which personnel fall within the definition of “mandated reporters” under Penal Code section 11165.7.
3. The training program should include all personnel who are “mandated reporters”.
4. The training program in child abuse reporting obligations should include:
  - a. Who are “mandated reporters”;
  - b. What is “reasonable suspicion” of child abuse;
  - c. How and when a report should be made;
  - d. What safeguards are in place to protect mandated reporters; and
  - e. What are the ramifications of making a suspected child abuse report.
5. Each city should consider including all volunteers who have direct contact with or supervise children in its abuse reporting training program.
6. In the case where a city enters into an agreement with an independent contractor to provide services that requires direct contact or supervision of children, the city should consider ensuring that the independent contractor and each of its staff who will have direct contact or supervision of children have successfully completed the city’s “mandated reporting” training program.
7. Each city should establish a procedure for verifying that all employees and other personnel who are mandated reporters have successfully completed the training program each year.
8. Each city should consider retaining the Child Abuse Prevention Council of Contra Costa County to provide free training services about child abuse reporting.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
City of Antioch	1-7	1-8
City of Brentwood	1-7	1-8
City of Clayton	1-7	1-8
City of Concord	1-7	1-8
Town of Danville	1-7	1-8
City of El Cerrito	1-7	1-8
City of Hercules	1-7	1-8
City of Lafayette	1-7	1-8
City of Martinez	1-7	1-8
Town of Moraga	1-7	1-8
City of Oakley	1-7	1-8
City of Orinda	1-7	1-8
City of Pinole	1-7	1-8
City of Pittsburg	1-7	1-8
City of Pleasant Hill	1-7	1-8
City of Richmond	1-7	1-8
City of San Pablo	1-7	1-8
City of San Ramon	1-7	1-8
City of Walnut Creek	1-7	1-8

~ DRAFT~

July 9, 2014

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Martinez, CA 94553-0091  
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**Subject: Civil Grand Jury Report 1404, "Planning for Technology"**

Mr. Conlin:

This letter is in response to this Grand Jury report regarding technology planning. Our letter is consistent with Section 9333.05 of the California Penal Code and includes the requested responses to the Grand Jury findings and recommendations on this topic.

With regard to **Findings #1 through #6** (which includes all of the Findings in this report), the City of Oakley agrees with all of them.

**Recommendation #1** – Each city within the County should consider creating and implementing a strategic technology plan, and identifying funds to do so.

*City Response: The City agrees. While the City has not developed a long-term strategic technology plan as a stand-alone document the City has formally established an Equipment Replacement Fund that envelopes a plan of replacing key components of our technology infrastructure when needed, and the City's Comprehensive Statement of Financial Policies includes a policy to fund it. The details for the Fund are t incorporated technology planning into every annual budget cycle, including both consideration of asset replacements/upgrades, as well as consideration of what cost effective initiatives might improve public outreach, service delivery and/or operational efficiency.*

**Recommendation #2** – Each city should consider identifying the technology needs of the city over a minimum of a five-year period.

*City Response: Various components of the City's equipment replacement program are at a three-year interval and others at greater intervals. Due to funding constraints and the rate of change in technology, Staff's review and consideration of technology needs for the current and upcoming several years as part of developing each year's Budget, is the most practical.*

**Recommendation #3** – Each city should consider identifying technology projects and costs in the city budget.

*City Response:* This recommendation has been implemented and these costs are identified in each annual budget.

**Recommendation #4** – Each city should consider identifying any technological objectives and needs that are common to multiple departments within the city in the technology plan and developing integrated programs to increase efficiency and cost savings.

*City Response:* This recommendation has been implemented with the key focus of increasing efficiency, improving public outreach and service delivery, and realizing cost savings.

**Recommendation #5** – Each city should consider reviewing its technology plan on an annual basis and updating it as appropriate.

*City Response:* This has been implemented and a review takes place every year during budget preparation.

Respectfully submitted,

Bryan H. Montgomery  
City Manager

**A REPORT BY  
THE 2013-2014 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
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**Report 1404**

# **PLANNING FOR TECHNOLOGY**

*Towards an Integrated, Strategic Approach*

APPROVED BY THE GRAND JURY:

Date: 04/24/2014

  
STEPHEN D. CONLIN  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: May 5, 2014

  
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Contra Costa County Grand Jury Report  
**PLANNING FOR TECHNOLOGY**  
*Towards an Integrated, Strategic Approach*

**TO:** All Contra Costa County Cities

## **SUMMARY**

The use of technology by cities has increased dramatically over the past 20 years, from simply playing a support role in providing desktop computers and network servers to being a catalyst for productivity and touching virtually every department operation. As demand for technology applications has expanded, the need for cities to develop integrated plans has become critical.

Technology budgets of cities have increased significantly over the past few years. Some cities in Contra Costa County spend over 6% of their total funding on technology. Industry experts estimate that municipal technology budgets typically range between 5-7% of total city budgets.

Strategic planning is essential for the largest cities, which offer a variety of services, but even the smallest cities face increasing technological demands for communication, efficiency and safety. Furthermore, access to information around the clock is a baseline public expectation, no matter the city size. Demand for access to local government services via the Internet will continue to increase.

Cities would benefit from developing a five-year plan to ensure effective and economical use of technology. Each plan should include an analysis of the technology investments and a detailed budget. The plan should also identify objectives and needs that are common to multiple departments within the city to increase efficiency and cost savings. Finally, each plan should be reviewed on an annual basis by city staff and updated as appropriate.

## **METHODOLOGY**

Information was obtained from:

- Surveys completed by all 19 cities in Contra Costa County

- Interviews with municipal technology managers
- Information from industry experts
- Industry association of municipal technology managers
- Public media

## **BACKGROUND**

### **Growing importance of technology**

Cities are experiencing increased demand for the implementation of new technology despite limited resources. Having a long-range technology plan clarifies the sequence of implementation and provides clear communication with departments, the city council, and the public about what is both envisioned and ultimately accomplished.

Highlights of an annual city budget are typically summarized in the city manager's "budget message". The messages of many city managers in Contra Costa County place an emphasis on expanded implementation of technology as a primary strategy to create greater efficiency and provide the public with increased access to city services.

As limited city resources continue to put pressure on the delivery of city services, city departments are forced to do more with less. Technology can often provide solutions without increasing personnel. Technology can also improve efficiency by providing the public with internet access to city services, such as on-line registration for recreation programs, license renewals, and on-line payments for a multitude of services.

The public increasingly expects access to city information via the Internet. Examples include live video streaming of city council meetings and other city meetings, land and geographical information, access to city records, budgets, and ordinances.

The use of crime-fighting technology applications are also increasing in some cities. Gunshot audio-detection systems, automatic license plate readers that spot stolen vehicles, and remote-controlled cameras all increase the breadth of technology used by municipalities. In a recent newspaper article, the City Manager of Pinole stated:

"The city continues to see violent crime trending downward. This reflects significant public investment by the City Council in emerging technologies along with effective proactive community policing to engage residents in assisting the Police Department in solving major crimes."

### **Technology planning**

Some cities in Contra Costa County have developed technology master plans with clear priorities and goals. Technology managers have stated that the process used to develop these plans includes:

- Assessment of existing technology organization and skills;
- Analysis of current and future technological needs;
- Facilitated department level and city-wide prioritization process; and
- Communication of the final plan including timeline and budgets

Effective technology planning has the potential to create significant improvements in the internal operations of the city. By identifying objectives and needs that are common to multiple departments, integrated programs can be developed that improve communication, efficiency and cost savings. As reported by city technology managers, a technology plan establishes clear priorities that are aligned with overall city goals, and identifies funding for those projects deemed most critical to the community.

The interdepartmental approach for development of a technology plan also highlights shared business needs across department lines, as well as results in computer programs that benefit multiple departments and applications that are more cost effective and easier to manage. Plans often include the formation of an internal group within the city that includes high-level department representatives. The group tracks priorities identified in the plan, evaluates requests from departments for technology projects, communicates back to the organization the status of project implementation, and makes recommendations to the city manager on budget allocation and shifting priorities.

Strategic technology planning has become common practice for many California municipalities. One industry expert explained:

“Historically, technology master plans have focused on infrastructure (desktop computers, network servers, data centers, etc.). However, in today’s environment, technology master plans are more focused on business or operational needs and the applications that can improve, streamline, or automate functions. In addition, today’s plans also focus more on data security, data sharing, integration/ interfaces, and mobility.”

There are several benefits to the strategic planning process:

- Requires a thorough assessment of existing technology resources and systems;
- Requires communication with all stakeholders and results in a set of priorities that make decisions transparent;
- Includes setting realistic budgets that include capital investments and on-going staff resources;
- Allows for monitoring progress and making adjustments as technology needs change; and
- Educates city executives on the technological implications of their decisions.

## **Where it's working**

The cities of Walnut Creek and Danville have embraced technology planning and developed multi-year plans that guide technology investment and prioritize staff resources. Each city has a strategic technology plan that outlines technology needs for the city over a five-year period. This period gives cities sufficient time to choose and implement technology, but is not so long as to incorporate technology that may be obsolete within the time horizon. The plans include an analysis of the technology investment, a budget, and a timeline. The plans are reviewed on an annual basis for updates and modifications.

The programs developed and implemented by Walnut Creek and Danville are consistent with recommendations by experts in the technology field, as well as the industry literature on best practices. Perhaps as important, is the fact that the plans appear to be working, as technology projects are planned, budgeted and implemented. Strategic planning that incorporates technology requirements is a benefit regardless of the size of a city or its budget. Each city should strive for greater efficiency in operations, improved services and easier public access to local government. Planning for specific technology needs within the context of over-arching city-wide goals is a necessary part of the budgeting process.

## **FINDINGS**

1. Demand for technology in all aspects of local government has exploded over the past 20 years and is expected to continue to increase.
2. City budgets often identify the need for technology improvements to achieve greater efficiency in government services.
3. Technology expenditures represent a significant part of many city budgets.
4. Technology project implementation is often a multi-year investment.
5. Technology in city government is rapidly changing. Industry associations and technology research groups are a good source of information on emerging trends.
6. A city with a long-range plan for technology, including a budget, has a road map of priorities that provides clarity to city personnel and the public.

## **RECOMMENDATIONS**

1. Each city within the County should consider creating and implementing a strategic technology plan, and identifying funds to do so.
2. Each city should consider identifying the technology needs of the city over a minimum of a five-year period in the strategic technology plan.

3. Each city should consider identifying technology projects and costs in the city budget.
4. Each city should consider identifying any technological objectives and needs that are common to multiple departments within the city in the technology plan and developing integrated programs to increase efficiency and cost savings.
5. Each city should consider reviewing its technology plan on an annual basis and updating it as appropriate.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
City of Antioch	1-6	1-5
City of Brentwood	1-6	1-5
City of Clayton	1-6	1-5
City of Concord	1-6	1-5
Town of Danville	1-6	1-5
City of El Cerrito	1-6	1-5
City of Hercules	1-6	1-5
City of Lafayette	1-6	1-5
City of Martinez	1-6	1-5
Town of Moraga	1-6	1-5
City of Oakley	1-6	1-5
City of Orinda	1-6	1-5
City of Pinole	1-6	1-5
City of Pittsburg	1-6	1-5
City of Pleasant Hill	1-6	1-5
City of Richmond	1-6	1-5
City of San Pablo	1-6	1-5

~ DRAFT ~

July 9, 2014

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**Subject: Civil Grand Jury Report 1405, "The Public Records Act In Contra Costa County"**

Mr. Conlin:

This letter is in response to this Grand Jury report regarding the California Public Records Act. Our letter is consistent with Section 933.05 of the California Penal Code and includes the requested responses to the Grand Jury findings and recommendations on this topic.

**Finding #1** – The State of California’s policy of transparency in government is embodied in the California Public Records Act (CPRA).

*City Response:* *The City agrees; however, there are likely other statutes that relate to "transparency" in addition to CPRA.*

**Finding #2** – Contra Costa County’s policy of transparency in government has been strengthened by its adoption of the Better Government Ordinance

*City Response:* *Due to not having full knowledge of the impact of this Ordinance, the City can only partially agree with this finding - by partially agreeing we are assuming that the Grand Jury’s assessment is accurate.*

**Finding #3** – Contra Costa County’s conducts periodic training of its employees regarding how to respond to request under the CPRA and the Better Government Ordinance.

*City Response:* *Due to not having full knowledge of the County’s activities in this area, the City can only partially agree with this finding – by partially agreeing we are assuming that the Grand Jury’s assessment is accurate.*

**Finding #4** – The response to CPRA requests by departments reporting to the Board of Supervisors is generally timely and appropriate.

*City Response:* Due to not having full knowledge of the County departments reporting activities, the City can only partially agree with this finding – by partially agreeing we are assuming that the Grand Jury's assessment is accurate.

**Finding #5** – The response to CPRA by cities and special districts within Contra Costa County is uneven. Some entities are responsive, while others have delayed responses or fail to respond entirely.

*City Response:* Due to not having full knowledge of the other cities' reporting activities, the City can only partially agree with this finding – by partially agreeing we are assuming that the Grand Jury's assessment is accurate.

**Finding #6** – Employees of cities and some special districts who deal with CPRA requests are unfamiliar with the Act and the responsibilities of their agency when records are requested.

*City Response:* The City disagrees with this finding if it is applied to Oakley. The City employees responsible for responding to these requests are well aware of the CPRA provisions and do comply.

**Finding #7** – Among the most valuable documents that could be included on the websites are: Statements of Economic Interests, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements, and agendas and supporting documents for public meetings.

*City Response:* The City agrees that these are very valuable documents to have available for online public review.

**Recommendation #1** – Cities and special districts in Contra Costa County should consider adopting a policy similar to the Better Government Ordinance, expanding the right of the public to access to public records.

*City Response:* The City will review more closely the provisions of the County's "Better Government Ordinance," though a quick review indicates that the City is already implementing many of its provisions.

**Recommendation #2** – Cities and special districts in Contra Costa County should arrange for periodic training of employees who are responsible for responding to Public Records Act requests.

*City Response:* The City has implemented this recommendation and key personnel are trained and will continue to receive training related to CPRA.

**Recommendation #3** – Cities and special districts should consider making certain public records that are clearly disclosable under the CPRA available on their websites.

***City Response:** The City has implemented this recommendation and these public records are accessible through the City's website link to our online public document retrieval system (ImageSilo).*

Respectfully submitted,

Bryan H. Montgomery  
City Manager

**A REPORT BY  
THE 2013-2014 CONTRA COSTA COUNTY GRAND JURY**

725 Court Street  
Martinez, California 94553

**REPORT 1405**

**THE PUBLIC RECORDS ACT IN  
CONTRA COSTA COUNTY**

*Letting the Sun Shine In*

APPROVED BY THE GRAND JURY:

Date: 5/22/2014

  
STEPHEN D. CONLIN  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: 5/30/14

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1405

## THE PUBLIC RECORDS ACT IN CONTRA COSTA COUNTY

### *Letting the Sun Shine In*

**TO:** Contra Costa County Board of Supervisors  
All Contra Costa County Cities,  
All Contra Costa County School Districts,  
All Contra Costa County Fire Districts,  
Selected Special Districts in Contra Costa County

### SUMMARY

The California Public Records Act (the "CPRA" or "Act") is the law that ensures the public has access to records generated by public agencies. The Act, however is complex and flawed. Employees responsible for fulfilling CPRA requests do not always respond in the manner required by the law. Contra Costa County has adopted a Better Government Ordinance; it allows the public even greater access to government records and information and clarifies some of the uncertainties of the ACT. The practice of making public records available on a governmental entity's website is an economical and practical means of complying with the Act.

### METHODOLOGY

In preparing this report, the Contra Costa Civil Grand Jury:

- Interviewed an individual who makes frequent requests for public records from agencies in Contra Costa County and one who bears responsibility for insuring compliance with the law.
- E-mailed and made in-person requests for routine public records to a cross-section of agencies within the County.

Reviewed:

- The California Public Records Act, Government Code Section 6250 et seq.;
- The Summary of the California Public Records Act 2004 prepared by the California Attorney General's Office;

- Contra Costa County's Better Government Ordinance, 25-2.202 et seq.;
- Contra Costa County Administration Bulletin Number 120.5, Public Access to County Records;
- The People's Business: A Guide to the California Public Records Act published by the League of California Cities;
- Materials concerning audits of public agencies for Public Records Act compliance published by Californians Aware, the Center for Public Form Rights.

## **BACKGROUND**

The CPRA, enacted in 1968, ensures that the public has access to governmental records, and that those records will be disclosed to the public upon request, unless there is a specific reason provided by the Act not to do so. Access to information concerning the conduct of governmental activities permits the public to better monitor the functioning of government and reduces the likelihood of waste, fraud and corruption.

The Act strongly favors the release of the requested records. For example:

- The request need not be in writing. There may be good reason to do so to establish the exact nature of the documents sought and the time frame for responses, but it is not required by law.
- The person requesting the records does not need to identify him/herself. Although it may be easier for the responding agency to deal with the request and get back to the party making the request, only in a few specified situations need the requester be identified.
- The request need not state the purpose of the request.
- The governmental entity has the burden of justifying the denial of a request.
- The agency must respond to the request within 10 days, or provide notice to the requester within 14 days concerning the existence of the requested records, and the records must be produced within a reasonable time.
- The agency must assist the requester by attempting to identify records that contain the information sought.
- Fees may be charged for the costs of reproduction of the records, but not for the time required to conduct a search.

Despite the CPRA's strong mandate and the important policy that lead to its enactment, members of the public and the press are occasionally rebuffed or given the runaround when making legitimate CPRA request. In some cases this may be the result of imprecise requests:

- The scope of the request must be reasonably clear.
- The requester may ask for records that don't exist. The government entity need not create information or write reports in response to requests under the Act.
- The government entity need only produce records that are reasonably identified.

The CPRA does present problems in its implementation. It is complicated in that it contains many exceptions to disclosure, including such matters as attorney-client communications, code enforcement records, law enforcement records, pending litigation, personnel records, and recipients of public services, among others.

If an agency in or of the County opposes disclosure of the records, it can argue that one or more of the exceptions apply. Unless the person making the request is persistent and challenges the agency's right to withhold the record, the agency may avoid disclosure. The requesting party's only option at that point is to threaten litigation or actually file a lawsuit, a choice that realistically is an option available only to the press or other entities with significant resources but less likely to be exercised by individual members of the public.

The Board of Supervisors has adopted the "Better Government Ordinance," (the "BGO"), that expands the public's access to records beyond those available to the public under the CPRA. The BGO applies to the offices of County government under the authority of the Board of Supervisors. Independent districts are covered only by the Public Records Act.

An increased number of County agencies maintain websites that provide links to public records. This has been of major assistance to citizens seeking information, and it is an efficient and inexpensive way of complying with the Public Records Act.

Among the most valuable classifications of documents whose publication would strengthen integrity in government are: Statements of Economic Interests, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements and agendas and supporting documents for public meetings.

### **Compliance with the Act in Contra Costa County**

Compliance with the Act by those agencies reporting to the Board of Supervisors is generally good, but compliance by cities and special districts is uneven, with some being very forthcoming and others less so. There are several reasons that could account for the failure to comply, from an unwillingness to provide information during the existence of a public controversy to simple ignorance about the requirements and workings of the Act. The County provides annual training about the CPRA and compliance. This, no doubt, accounts for the greater receptiveness of County offices to document requests.

E-mail requests were sent to 41 different cities, special districts and divisions of County government. The same request was made to each entity; a request for a copy of the contract of the highest-ranking official for that entity. The request did not identify the name of the person making the request nor did it reveal any connection with the Grand Jury. In many instances an e-mail response with the appropriate document attached or a reference to the document online was received within an hour or so from the time of the inquiry. Several took from one to three days. Several took seven days; one took 24 days. Several of the e-mails bounced and had to be re-directed to a different e-mail addresses where the response was normally prompt once the request reached the appropriate staff member. There was no response from 12 of the offices.

Visits, including visits to some of the offices that failed to respond to the e-mail requests, resulted usually in positive responses. When the Statement of Economic Interest form (Form 700) was requested, it was produced in a matter of minutes in some instances. At other times, an e-mail was sent to the requester with the document attached.

Requests pursuant to the CPRA do not need to be in writing; the requesters do not have to reveal their identity, explain the purpose of the request or with whom they might be affiliated. However this information was requested on several occasions and one entity insisted that the request be in writing.

Several patterns emerged in response to CPRA requests.

- Requests by e-mail were generally directed to knowledgeable individuals within the office so the resulting response was timely and professional.
- Personal visits to offices, while usually successful (the requested record was provided), often revealed the staff's uncertainty about who in the office should respond to the request.
- In-person visits often resulted in requests for the requestor's name and purpose of the request, disclosures the law does not require.
- The quickest responses came when the information was already on the entity's website and could be referenced easily.
- The requests were for very routine documents that are clearly subject to the Act and should be readily forthcoming.

## **FINDINGS**

1. The State of California's policy of transparency in government is embodied in the California Public Records Act (CPRA).
2. Contra Costa County's policy of transparency in government has been strengthened by its adoption of the Better Government Ordinance.

3. Contra Costa County conducts periodic training of its employees regarding how to respond to requests for records under the CPRA and the Better Government Ordinance.
4. The response to CPRA requests by departments reporting to the Board of Supervisors is generally timely and appropriate.
5. The response to CPRA by cities and special districts within Contra Costa County is uneven. Some entities are responsive, while others have a delayed responses or fail to respond entirely.
6. Employees of cities and some special districts who deal with CPRA requests are unfamiliar with the Act and the responsibilities of their agency when records are requested.
7. Among the most valuable documents that could be included on websites are: Statements of Economic Interests, Employment Contracts, Annual Audits, Travel and Entertainment reimbursements, and agendas and supporting documents for public meetings.

## **RECOMMENDATIONS**

1. Cities and special districts in Contra Costa County should consider adopting a policy similar to the Better Government Ordinance, expanding the right of the public to access to public records.
2. Cities and special districts in Contra Costa County should arrange for periodic training of employees who are responsible for responding to Public Records Act requests.
3. Cities and special districts should consider making certain public records that are clearly disclosable under the CPRA available on their websites:
  - a. Statements of Economic Interests
  - b. Employment Contracts
  - c. Annual Audits
  - d. Travel and Entertainment reimbursements
  - e. Agendas and supporting documents for public meetings.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	1-7	1 - 3
City of Antioch	1-7	1 - 3
City of Brentwood	1-7	1 - 3
City of Clayton	1-7	1 - 3
City of Concord	1-7	1 - 3
Town of Danville	1-7	1 - 3
City of El Cerrito	1-7	1 - 3
City of Hercules	1-7	1 - 3
City of Lafayette	1-7	1 - 3
City of Martinez	1-7	1 - 3
Town of Moraga	1-7	1 - 3
City of Oakley	1-7	1 - 3
City of Orinda	1-7	1 - 3
City of Pinole	1-7	1 - 3
City of Pittsburg	1-7	1 - 3
City of Pleasant Hill	1-7	1 - 3
City of Richmond	1-7	1 - 3
City of San Pablo	1-7	1 - 3
City of San Ramon	1-7	1 - 3
City of Walnut Creek	1-7	1 - 3
Acalanes Union High School District	1-7	1 - 3
Antioch Unified School District	1-7	1 - 3

	<u>FINDINGS</u>	<u>RECOMMENDATIONS</u>
Brentwood Union School District	1-7	1 - 3
Byron Unified School District	1-7	1 - 3
Canyon School District	1-7	1 - 3
Contra Costa Community College District	1-7	1 - 3
John Swett Unified School District	1-7	1 - 3
Knightsen Elementary School District	1-7	1 - 3
Lafayette School District	1-7	1 - 3
Liberty Union High School District	1-7	1 - 3
Martinez Unified School District	1-7	1 - 3
Moraga School District	1-7	1 - 3
Mount Diablo Unified School District	1-7	1 - 3
Oakley Union Elementary School District	1-7	1 - 3
Orinda Union School District	1-7	1 - 3
Pittsburg Unified School District	1-7	1 - 3
San Ramon Valley Unified School District	1-7	1 - 3
Walnut Creek School District	1-7	1 - 3
West Contra Costa Unified School District	1-7	1 - 3
Contra Costa County Office of Education	1-7	1 - 3
Kensington Police Protection and Community Services District	1-7	1 - 3
Pleasant Hill Recreation and Park District	1-7	1 - 3
Contra Costa Water District	1-7	1 - 3
Diablo Water District	1-7	1 - 3

	<u>FINDINGS</u>	<u>RECOMMENDATIONS</u>
West Contra Costa Health Care District	1-7	1 - 3
Contra Costa County Fire Protection District	1-7	1 - 3
Crockett-Carquinez Fire Protection District	1-7	1 - 3
East Contra Costa Fire Protection District	1-7	1 - 3
Kensington Fire Protection District	1-7	1 - 3
Moraga-Orinda Fire District	1-7	1 - 3
Rodeo-Hercules Fire Protection District	1-7	1 - 3
San Ramon Valley Fire Protection District	1-7	1 - 3