TO: SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT

FROM: PATRICIA FREDERICKS, ESQ.

RE: DISCOVERY REQUEST OF RICHARD P. SWARTZELL

DATE: JANUARY 16, 2001

The information sought by Mr. Swartzell may or may not be relevant to any claim he may have against the District, and thus may or may not be discoverable under the usual civil discovery rules. However, the information is clearly discoverable by him as public record as he indicates in his letter of December 23, 2000. It is discoverable under the provisions of the California Public Records Act (CPRA), Government Code §6250 et seq., that states in pertinent part:

> *"Access to information concerning the conduct of the public business is a fundamental and necessary right of every person in this state."*

It should be noted that in his earlier letters Mr. Swartzell indicates that he is requesting the information sought (a list of all promotions made in the District during his term of employment) to support the grievance he filed with the District on September 7, 2000. Specifically, he requests the information because he contends that the conditions of secrecy surrounding some promotions prevent him from having necessary information. It is only in his letter of December 23, 2000 that he refers to the information sought as being within the public record and relates his request to public records access rather than civil discovery.

The San Joaquin County Mosquito Abatement District is clearly a Local Agency within the meaning of Government Code §6252(b). Mr. Swartzell is both a person under subsection (c) and a member of the public as contemplated by subsection (f). However, if he were still an employee of the board, requesting this information in the scope and course of his normal duties, the information would not be discoverable under this section.

Section 6252 (e) indicates that `*"Public Records" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics..."* The requested information concerning promotions over a period of years would appear to fall within this definition.

The requested information also does not appear to fall within any of the exceptions to the CPRA. While §6254(b) grants an exemption to records pertaining to pending litigation that the public agency maybe a party to, this provision has been narrowly construed.

Records generated in the ordinary course of a public agency's business that may be relevant to future litigation are not exempt either before or after a claim is filed; the subsection applies only to records prepared specifically for litigation. 71 App. Atty. Gen. 235, July 1988. Further, the exemption does not apply (other than to information specifically prepared for litigation) even when the person seeking the information is a party to litigation

and is seeking it for purposes of litigation. Fairley v. Sup. Ct. (1988) 66CA 4th 1414, 78 Cal. Rptr. 2nd 35.

Disclosure under the provisions of the CPRA of personnel letters appointing and rescinding the appointment of a transit administrator was not barred as an invasion of privacy but instead constituted a discoverable public record within the meaning of the Act. Braun v. City of Taft (Polson) (1984) 154 C.A. 3rd 332, 201 Cal.Rptr. 634.

Finally, "Exemptions from compelled disclosure under the California Public Records Act (CPRA) are construed narrowly, and the burden is on the public agency to show why disclosure should not be ordered." City of Hemet v. Sup.Ct. (1995) 37 Cal. App. 4th 1411, 44 Cal. Rptr. 532.

Section 6253, as amended in 1999, sets forth the requirements for complying with the provisions of the CPRA. Generally, a determination regarding whether or not records are disclosable must be made within ten days of receiving a request for information. However, in unusual circumstances the time limit may be extended by written notice from the head of the agency or their designee setting forth the reasons for the extension and giving a date for the determination of disclosability. Under the section, unusual circumstances include the need to search for and collect requested records from field facilities or the need to search for and collect and appropriately examine a voluminous amount of separate and distinct records demanded in a single request. The "unusual circumstances" should not require more than fourteen additional days for the agency to determine if, in their opinion, the records must be disclosed. If the agency determines that the records requested fall under one of the exemptions to the CPRA, they must furnish to the person requesting the records a written denial, setting forth the names and titles of each person responsible for the denial.

Once the agency has made the determination that the records sought are not covered by an exemption, they must follow the provisions of §6257.

> *"...each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record or information produced therefrom, shall make the records promptly available to any person, upon payment of fees, if applicable. Any reasonably segregated portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.*

Section 6253 also contains the proviso that the records must be promptly furnished after the fee is paid.

Section 6257.5 adds that the chapter does not allow limitations on the access to public records based upon the purpose for which the record is sought if the record is otherwise subject to disclosure.

Although there are no penal or monetary penalties provided for violations of the Act, §6259 provides that a plaintiff who is forced to take legal action to enforce any of the

provisions of the Act and is successful may recover court costs and attorney fees. The case need not be completely litigated for the court to impose fees and costs on the public agency, as long as the plaintiff can show that his action in filing suit was a substantial factor in prompting the agency to turn over the requested material.

The difficulty of finding or providing the record is also not a bar to supplying a request for information that falls within the Act. An agency is required to comply with even burdensome requests as long as the record can be located with reasonable effort. California First Amendment Coalition v. Superior Court (1998) 67 Cal. App. 4th 159, 78 Cal. Rptr. 2nd 847.

In assessing fees for furnishing the information the agency may only charge a fee covering the direct costs of duplication. "Public Records Act provision allowing an agency to charge a fee covering "the direct costs of duplication" only allows agencies to recover costs of copying documents, and "direct costs" does not include ancillary tasks necessarily associated with retrieval, inspection and handling of the file from which the copy is extracted." North County Parents Organization v. Dept. of Education (1994) 28Cal. App. 4th 144, 28 Cal. Rptr. 2nd 359.