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February 3, 2009

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Staff Reporter
San Gabriel Valley Tribune
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VIA FACSIMILE & EMAIL

(626) 338-9157

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Re: San Gabriel Valley Tribune California Public Records Act Request

Dear Mst. Chatila:

Our office has reviewed the letter of December 11, 2008, sent by the City of El Monte, Office of the City Attorney, to you concerning your first Public Records Act request for a copy of the arrest report involving Ernest Gutierrez. We have also reviewed the summary of information concerning the arrest of Ernest Gutierrez which was also provided to the San Gabriel Valley Tribune. We have been asked to respond on behalf of the City of El Monte to your January 4, 2009, renewed request for the documents you originally requested. We appreciate the extension of time granted by you to respond to this request.

As you know, the California Public Records Act proclaims that every document or writing as defined in the Public Records Act, which is in the possession of a local public agency, is a public record. The Act also provides numerous exemptions for certain types of public records that are maintained by a local law enforcement agency. A record maintained by a local law enforcement agency will retain its public record status unless one of the specific exemptions applies to the subject matter of the document. If an exemption is applicable, the document is exempt from public disclosure should the agency choose to use the exemption.

Government Code § 6254(f) is one such exemption which captures any record of a complaint to or an investigation conducted by a local law enforcement agency for law enforcement purposes. Any such record that would fit within that definition is exempt from public disclosure. Obviously, an arrest report concerning any individual, including Ernest Gutierrez, would be a record of a complaint to or an investigation conducted by a law enforcement agency for law enforcement purposes. Thus, the arrest report of Ernest Gutierrez is exempt from public disclosure and is not required to be provided to any member of the public, including the news media.

There is, however, an exception to that exemption. Notwithstanding the fact that the arrest report of any individual by a local law enforcement agency is exempt from public disclosure, there is certain information concerning that arrest that has to be made public through some means. This requirement to make certain information about all of its arrests public applies only to *current* information or *contemporaneous police activity* as those phrases are used in the case of County of Los Angeles v. Superior Court (Kusar) (1993) 18 Cal. App. 4th 588. While the number of days something remains current or contemporaneous is not further defined in that case, most law enforcement agencies keep such information current for approximately thirty days. This information is made available to the public usually in the form of a press board, activity log, event log, or some other type of document that is similarly named.

The information about each arrest that must be made public under § 6254(f) relates to the name and occupation of the individual arrested, their date of birth, their description, the date of arrest, the time of arrest, the date of booking, the time of booking, the location where they were booked, the location of the arrest, the charges upon which they are being held, any bail amount, the date, time and manner of release, and the place from which they were released. We note in the summary of the arrest information provided to the San Gabriel Valley Tribune all of this information was included.

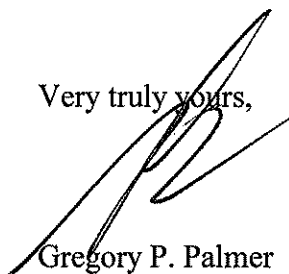
In addition to the above requirements another element of each arrest which must be made public is the "factual circumstances surrounding the arrest." In the summary provided to the San Gabriel Valley Tribune concerning the arrest of Ernest Gutierrez, there were two paragraphs which provided a more than adequate summary of the factual circumstances surrounding the arrest event.

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The current state of the law under the California Public Records Act requires no more disclosure to any member of the public, including the San Gabriel Valley Tribune, about the arrest of Ernest Gutierrez than was provided by the city last month. Therefore, the City of El Monte and its police department will deny your renewed request for a copy of the arrest report concerning Ernest Gutierrez.

Thank you for allowing our input on this very important matter. If you have any questions or comments, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to be 'G.P. Palmer', written over the typed name.

Gregory P. Palmer

GPP/mlt