

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-502
	:	
of	:	<u>August 7, 1979</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Paul H. Dobson	:	
Deputy Attorney General	:	
	:	

SUBJECT: CONCEALED WEAPONS PERMITS—A sheriff may publicly disclose the names of persons to whom his office has issued concealed weapons permits and may solicit his re-election campaign contributions from these persons unless the solicitation or support is connected with the issuance of the permit.

The Honorable Michael Gage, Assemblyman, Eighth District, has requested an opinion on the following questions:

1. Is it lawful for an incumbent county sheriff to make public the names of persons to whom his office issued concealed weapons permits?
2. Can an incumbent county sheriff solicit contributions or other support for his own re-election campaign from those persons to whom he has issued concealed weapons permits?

CONCLUSIONS

1. A sheriff may publicly disclose the names of persons to whom his office has issued concealed weapons permits.

2. The law does not prohibit a sheriff from soliciting contributions or other support for his re-election campaign from a person to whom he has issued a concealed weapons permit unless the solicitation or receipt of the support is connected with the issuance or renewal of the concealed weapons permit or other official act.

ANALYSIS

Subject to certain express exceptions (Pen. Code, §§ 12026, 12027), Penal Code section 12025 prohibits a person from carrying a firearm concealed on his person or in his vehicle without a permit. A county sheriff (or a city police chief) is authorized to issue a permit to carry such a concealed weapon to a county resident of good moral character if there is “good cause.” The permit may be issued for any period of time not to exceed one year except in the case of a reserve police officer or deputy sheriff who may be issued a three-year permit. (Pen. Code, § 12050.) A record of the permit is required to be maintained in the office of the issuing authority and with the Department of Justice. (Pen. Code, § 12053.) Applications for permits must include the name, occupation, residence and business addresses of the applicant, his age, height, weight, color of eyes and hair, the reason for desiring a license to carry a weapon, as well as a description of the weapon for which the permit is sought. (Pen. Code, § 12051.)

It has been asked whether a sheriff has the legal right to make public the names of the persons to whom he has issued permits. We have concluded a sheriff has such a right because the names of such persons are information contained in public records which are not confidential.

The California Public Records Act, set forth in Title 1, Division 7, Chapter 3.5 (§ 6250 *et seq.*) of the Government Code, provides that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. The records of weapons permit holders maintained by the sheriff are public records. (See Gov. Code, §§ 6252, 6253.)

Government Code section 6254 sets forth fourteen categories of public records which are permitted to be exempt from public disclosure.¹ There is no need, however, to resolve the

¹ Section 6254 provides:

“Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

“(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

“(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

“(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

“(d) Contained in or related to:

“(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;

“(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1);

“(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1); or

“(4) Information received in confidence by any state agency referred to in subdivision (1).

“(e) Geological or geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

“(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, except that local police agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the persons involved in an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage as the result of the incident caused by arson, burglary, fire, explosion, robbery, vandalism, or a crime of violence as defined by subdivision (b) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, disclosure would endanger the successful completion of the investigation or a related investigation;

“(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the

question of whether the names of concealed weapons permit holders fall within any exemption set forth in section 6254 because the last sentence of that section states:

“Nothing in this section is to be construed as preventing any agency from

Education Code:

“(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluation made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

“(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

“(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes;

“(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege;

“(l) Correspondence of and to the Governor or employees of the Governor’s office or in the custody of or maintained by the Governor’s legal affairs secretary, provided public records shall not be transferred to the custody of the Governor’s legal affairs secretary to evade the disclosure provisions of this chapter;

“(m) In the custody or maintained by the Legislative Counsel;

“(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for; and

“(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of such financial data would be competitively injurious to the applicant and such data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

“(p) Records of the University of California, Hastings College of the Law, and the California State University and Colleges prepared for or during collective bargaining sessions, or minutes of such sessions. Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.”

opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

In *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, the court stated at 656:

“The last sentence of section 6254, as we view the legislative scheme, endows the agency with discretionary authority to override any of the 14 statutory exemptions when some dominating public interest favors disclosure. The 14 exemptions, then, are permissive, not mandatory; they permit nondisclosure but do not prohibit disclosure. When the agency exercises its permissive disclosure authority, public inspection follows.”

In *Berkeley Police Association v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 941, the court held that the disclosure by the police department of internal affairs bureau reports, otherwise exempt by section 6254, was not prohibited. The court, citing *Black Panther Party v. Kehoe, supra*, rejected the Police Association’s contention that the reports were “presumptively privileged” by section 6254 and held that in the absence of the department’s invocation of the privilege of nondisclosure under section 6254, the reports were public records subject to disclosure.

Thus the California Public Records Act and the cases make it clear that a sheriff may disclose any public records of his office to the public unless such disclosure is prohibited by law. We know of no statute or case law which expressly provides that disclosure of the names of concealed weapons permit holders is prohibited.²

However, there still remains the question of whether disclosure of the names of concealed weapons permit holders by a sheriff (or a police chief) may violate an individual weapons permit holder’s right of privacy. Article I, section 1 of the California Constitution provides:

“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, *and privacy.*” (Emphasis added.)

² The Information Practices Act of 1977, Division 3, Part 4, Title 1.8, Chapter 1 (§ 1798 *et seq.*) of the Civil Code which restricts disclosure of certain personal information contained in public records applies to state agencies only and not to county agencies.

We express no opinion as to the confidentiality of information on concealed weapons permits compiled by the state Department of Justice. (See Pen. Code, § 11106.)

Additionally there is a “penumbral” federal constitutional right of privacy. (See *Griswold v. Connecticut* (1965) 381 U.S. 479.) It would appear that this right is no more protective and inclusive than the explicit state constitutional right of privacy. (*Lehman v. City and County of San Francisco* (1978) 80 Cal. App. 3d 309, 313.)

In *White v. Davis* (1975) 13 Cal. 3d 757, 775 the state Supreme Court, noting that the right was created by constitutional amendment adopted pursuant to a vote of the people in November, 1972, referred to the “argument” in favor of the amendment found in election brochure:

“Several important points emerge from this election brochure ‘argument, a statement which represents in essence, the only ‘legislative history’ of the constitutional amendment available to us. [Footnote omitted.] First, the statement identifies the principal ‘mischiefs’ at which the amendment is directed: (1) ‘government snooping’ and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records. Second, the statement makes clear that the amendment does not purport to prohibit all incursion into individual privacy but rather that any such intervention must be justified by a compelling interest. Third, the statement indicates that the amendment is intended to be self-executing, i.e., that the constitutional provision, in itself, ‘creates a legal and enforceable right of privacy for every Californian.’”

Public disclosure of the names of concealed weapons permit holders does not involve “government snooping,” overbroad collection and retention of personal information, or a lack of accuracy of existing records. Thus, the only issue suggested is whether such disclosure constitutes an “improper use” of the information.

In view of the facts that the information constitutes a “public record” (Gov. Code, § 6252) and that the California Public Records Act declares access to public records a “fundamental and necessary right of every person in the state,” (Gov. Code, § 6250) it would appear that generally speaking public disclosure is not an “improper use” of a public record. In *Lehman v. City and County of San Francisco, supra*, 80 Cal. App. 3d 309, the court held that a complaint alleging that the San Francisco jury commissioner disclosed the name of the plaintiff, a prospective juror, to litigants, knowing the litigants would investigate and invade his private affairs, did not state a claim of invasion of privacy. The court pointed out that the California Public Records Act required such disclosure and that

the information was not of a sensitive personal nature. Furthermore, the court held that the jury commissioner's knowledge or intent as to how the information would be used was not relevant in view of the fact the disclosure was authorized by the Act.

In *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal. 3d 652 the State Supreme Court noted that a bank customer had a "reasonable expectation of privacy" that, absent legal process, his financial records would be used for internal banking purposes only and would not be disclosed to outside parties. While the scope of the state constitutional right of privacy is still "neither carefully defined nor analyzed by the courts," (*Valley Bank of Nevada v. Superior Court, supra*, at p. 656), it appears that as a general rule regarding the disclosure of information contained in public records, the person who is the subject of the information must have a "reasonable expectation of privacy" that the information will not be publicly disclosed pursuant to the California Public Records Act.

The instant inquiry involves disclosure of the names of concealed weapons permit holders. The issue, therefore, is whether such a permit holder has a reasonable expectation that his name will not be publicly disclosed. We believe that a concealed weapons permit holder has no reasonable expectation that his name will not be subject to disclosure by the licensing authority.³ As already indicated, there is no express provision of law making such information confidential.

Prior to 1957, there was no express provision of law indicating whether concealed weapons permits were or were not subject to public inspection. (See Stats. 1917, ch. 145, § 6; Stats. 1923, ch. 339, § 8; Stats. 1947, ch. 1281, § 1; Stats. 1951, ch. 1619, § 1; Stats. 1953, ch. 36, § 1.) In 1957 Penal Code section 12053 was amended to expressly provide that concealed weapons permits maintained by the licensing authority "shall be open to public inspection." (Stats. 1957, ch. 1838, § 1.) The express reference to public inspection was deleted by Statutes of 1969, chapter 371, section 43, only after enactment of the California Public Records Act. (See Stats. 1968, ch. 1473.) Statutes of 1969, chapter 371 amended or repealed more than fifty sections of various codes either by deleting particular references to "public records" or records "open to public inspection" or by specifying certain records to be confidential. The express purpose of the act was set out in the Legislative Counsel's digest:

"Revises various provisions of law regarding certain public records with respect to the California Public Records Act."

³ We are not asked and we do not consider whether other information contained in application or investigative files regarding a concealed weapon permit would be subject to disclosure. (*Cf.* 53 Ops. Cal. Atty. Gen. 136 (1970).)

The Legislature chose not to make the concealed weapons permits confidential, but left their status to be determined pursuant to the California Public Records Act. As we have already seen, the Act permits disclosure. (*Berkeley Police Association v. City of Berkeley, supra.*) In view of the fact that for more than a decade the names of concealed weapons permit holders were expressly subject to public inspection and thereafter apparently have been open to public inspection absent a bona fide claim of exemption, (see Gov. Code, §§ 6254 and 6255),⁴ we do not believe that one of the purposes of the concealed weapons permit law is to afford permit holders anonymity.

Prior to state regulation of concealed weapons, the Supreme Court in *Ex parte Cheney* (1891) 90 Cal. 617, 621, in upholding the right of a city to enact an ordinance restricting the carrying of concealed weapons, stated:

“It is a well-recognized fact that the unrestricted habit of carrying concealed weapons is the source of much crime, and frequently leads to causeless homicides, as well as to breaches of the peace, that would not otherwise occur. The majority of citizens have no occasion or inclination to carry such weapons, and it is often the case that *the innocent bystander is made to suffer from the unintended act of another; who, in the heat of passion, attempts to instantly resent some fancied insult or trivial injury. It is to protect the law-abiding citizen, as well as to prevent a breach of the peace or the commission of crime,* that the ordinance in question has been passed. By its terms, ample provision is made for those whose necessities of life or of occupation require protection from carrying such weapons, and as the prohibition does not extend to those who come within the exceptions, there is no invasion of the rights of the citizen.” (Emphasis added.)

It is likely the Legislature was motivated by similar concerns when it enacted statutes regulating the carrying of concealed weapons. Since one purpose of such regulation is to protect the law-abiding citizen from the unintended act of another who is carrying a concealed weapon, and since the licensing authority has broad discretion to issue concealed weapons permits (see *Salute v. Pitchess* (1976) 61 Cal. App. 3d 557), it would appear that the public does have a legitimate interest in knowing to whom the licensing authority has

⁴ Government Code section 6255 provides:

“The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record clearly outweighs the public interest served by disclosure of the record.”

We do not decide in this opinion whether the names of concealed weapons permit holders are exempt under a particular subdivision of Government Code section 6254 or would be in particular cases exempt under the “public interest” exemption of this section.

issued permits. Thus, we believe that concealed weapons permit holders do not have a reasonable expectation of privacy with regard to the fact they have such a permit, and it is not an invasion of privacy for the licensing authority to permit disclosure of their names.

However, again we emphasize that the scope of the state constitutional right of privacy has not yet been fully defined. The instant inquiry posits the situation of a sheriff disclosing names of weapons permit holders for political solicitation purposes. It is within the realm of possibility that a court under certain factual circumstances could find that such conduct constitutes an “improper use” of information in violation of an individual weapons permit holder’s right of privacy. (Compare *Lehman v. City and County of San Francisco*, *supra*, with *Porten v. University of San Francisco* (1976) 64 Cal. App. 3d 825; *cf. Black Panther Party v. Kehoe*, *supra*, at pp. 651–653.) In the absence of more definitive case law on the issue, we are unable to state such a conclusion as a general proposition of law.

It has also been asked whether an incumbent county sheriff lawfully may solicit contributions or other support for his re-election campaign from persons to whom he has issued concealed weapons permits. We have found no law which prohibits such solicitation in and of itself, but additional factors may well make such solicitation unlawful.

Penal Code section 70 makes it a misdemeanor for a public officer to ask for or receive a reward for doing an official act. Thus if the campaign contribution is sought or made as a reward for the issuance of the concealed weapons permit, section 70 of the Penal Code is violated.

Penal Code section 68 defines bribery, a felony, to include the asking or receipt by a public officer of any thing of value upon the understanding that his official action will be influenced thereby. (See also Pen. Code, § 7.) Thus if the campaign contribution is solicited or received with the understanding that the revocation or renewal of the concealed weapons permit would be influenced by such contribution, it is bribery.

Solicitation of a bribe need not be in particular language or form; it is sufficient if the words and/or conduct are evidently intended to be understood as solicitation of a bribe. (*People v. King* (1963) 218 Cal. App. 2d 602, 610.) Moreover, a person who is solicited need not consent to give a bribe and there need not be a specific mutual understanding or agreement; it is sufficient that the party soliciting the bribe is ready to enter into such an agreement. (*People v. Kerns* (1935) 9 Cal. App. 2d 72, 74–75; *People v. Powell* (1920) 50 Cal. App. 436, 442.) Under some circumstances the solicitation and subsequent obtaining of a bribe by a public official from a private person in return for the official’s action on a matter within the scope of his office could constitute extortion. (See Pen. Code, §§ 518, 521; *People v. Powell*, *supra*.)

Thus solicitation by a sheriff of a campaign contribution from a person to whom he has issued a concealed weapons permit, standing alone, is not unlawful. But, if such solicitation is connected with a concealed weapons permit so as to make the contribution in effect a reward for the issuance of a prior permit or payment to influence future action on the permit, such solicitation is not only unlawful, but criminal.
