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OPINION	:	No. 79-609
	:	
of	:	October 16, 1979
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SUBJECT: CONCEALED WEAPONS PERMIT RECORDS—Records of state summary criminal information contained in concealed weapons permit records of a sheriff may not be disclosed to the public.

The Honorable Gary K. Hart, Assemblyman for the Thirty-Fifth Assembly District, has requested an opinion on the following question:

Are concealed weapons permit records maintained by a county sheriff subject to public inspection?

CONCLUSION

Records of state summary criminal information contained in concealed weapons permit records of a sheriff may not be disclosed to the public. The records of the sheriff's investigation of the qualifications and fitness of an applicant for a concealed weapons permit are exempt from public disclosure by section 6254(f) of the Government Code. The application for and record of a permit for a concealed weapon are open to public inspection unless they contain exceptional information by which the sheriff can demonstrate that the

public interest served by not making such records public clearly outweighs the public interest in their disclosure as provided in section 6255 of the Government Code.

ANALYSIS

Carrying firearms concealed on one's person or in a vehicle is generally prohibited by Penal Code section 12025.¹ One exception is set forth in Penal Code sections 12050–12054 providing for the issuance of a license to carry firearms concealed (generally referred to and referred to herein as a “permit”) issued by a sheriff or chief of police.² The

¹ Certain exceptions are set forth in Penal Code sections 12026 and 12027.

² Penal Code section 12050 provides:

“(a) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county, may issue to such person a license to carry concealed a pistol, revolver, or other firearm for any period of time not to exceed one year from the date of the license, or in the case of a peace officer appointed pursuant to Section 830.6, three years from the date of the license.

“(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, and circumstances under which the person may carry a concealed firearm.

“(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued on or after the effective date of the amendments to this section enacted at the 1970 Regular Session of the Legislature.”

Penal Code section 12051 provides:

“(a) Applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number and the caliber.

“Applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. Such forms shall contain a provision whereby the application attests to the truth of statements contained in the application.

“(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor.”

Penal Code section 12052 provides:

“The fingerprints of each applicant shall be taken and two copies on forms prescribed by the Department of Justice shall be forwarded to the department. Upon receipt of the fingerprints and the fee as prescribed in Section 12054, the department

permit procedures require the preparation and collection of certain records including: (a) An application describing the applicant and the reason for desiring the permit (Pen. Code, § 12051); (b) A report of all data and information in the California Department of Justice files on the applicant, including any state summary criminal history information (“rap sheet”) maintained pursuant to Penal Code section 11105 (Pen. Code, § 12052); (c) Any records of the investigation which are required to be made on each application (See *Salute v. Pitchess* (1976) 61 Cal. App. 3d 557, 561); and (d) A record of the permit, if granted. (Pen. Code, § 12053.) The permit issued must set forth the data required in the application and a description of the weapon authorized to be carried. (Pen. Code, § 12051.)

The question submitted is whether these records are open to public inspection. The law which governs the response is the California Public Records Act (“the Act” herein) set forth in section 6250 *et seq.* of the Government Code.

Section 6253³ provides in part: “Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided” Section 6252 defines “public records” to include “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 records of concealed firearm permits are public records as defined in the Act. (See *Cook v. Craig* (1976) 55 Cal. App. 3d 773 and *Vallejos v. California Highway Patrol* (1979) 89 Cal. App. 3d 781.)

shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office. No license shall be issued by any licensing authority until after receipt of such report from the department.

“Provided, however, that if the license applicant has previously applied to the same licensing authority for a license to carry concealed firearms and the applicant’s fingerprints and fee have been previously forwarded to the Department of Justice, as herein provided, the licensing authority shall note such previous identification numbers and other data which would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 12053 and no additional application form or fingerprints shall be required.”

Penal Code section 12053 provides:

“When any such license is issued a record thereof shall be maintained in the office of the licensing authority. Copies of each license issued shall be filed immediately by the issuing officer or authority with the Department of Justice.”

Penal Code section 12054 relates to application fees.

³ All section references are to the Government Code unless otherwise specified.

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 public clearly outweighs the public interest served by disclosure of the record.*” (Emphasis added.)

The portion of section 6255 underlined above sets forth a general exception to the public disclosure requirement applicable to any particular public record which meets the stringent test of the statute. That test requires the sheriff, as custodian of the concealed firearm permit records, to balance the public interest served by nondisclosure against that served by disclosure and requires disclosure unless the former *clearly outweighs* the latter. The sheriff’s decision applying this test or any other exemption under the Act is subject to review by a court in an action authorized by sections 6258 and 6259.

The exemptions applicable to particular kinds of records are set forth in section 6254 of the Act. The provisions of that section pertinent to this analysis are as follows:

“Except as provided in Section 6254.7, [concerning air pollution data], nothing in this chapter shall be construed to require disclosure of records that are:

“.....

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

“.....

(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;

“.....

“(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;

(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

“.....

“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.”

Applying the Act to concealed firearm permit records of the sheriff, we will consider first any records, the disclosure of which is prohibited by law. (§ 6254(k).) Penal Code section 11142 prohibits the furnishing of state summary criminal history information (“rap sheet”) to persons not authorized to receive it and makes violation of that section a misdemeanor. Thus the sheriff is prohibited from allowing public inspection of any state summary criminal history information in his concealed firearm permit records.

Next, we consider the records of the investigation made regarding an applicant’s qualifications and fitness to have a concealed firearm permit. We note preliminarily that the Court of Appeal has held that a sheriff has a duty to make an investigation and determination, on an individual basis, on every application under section 12050.” (*Salute v. Pitchess, supra*, 61 Cal. App. 3d at p. 561.) Section 6254(f) exempts from public disclosure investigation files of licensing agencies. (*Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 650.) Thus the records the sheriff compiles or obtains in his

investigation of an application for a concealed firearm permit are exempt from public disclosure by section 6254(f). This would include the record of any interviews with the applicant or others regarding the applicant's qualifications and fitness to have a concealed firearms permit. It would also include any information received from the California Department of Justice pursuant to Penal Code section 12052, including information other than state summary criminal history information ("rap sheet"). It would include any other documents or other records the sheriff obtains in his investigation of the application for a concealed firearm permit which are reasonably related to the qualifications or fitness of the applicant for such a permit. However, merely placing information in such files does not make it confidential. (See 53 Ops. Cal. Atty. Gen. 136, 150 (1970).)

While subdivision (f) authorizes the sheriff to withhold certain investigatory records, it should be noted that the last sentence of section 6254 also authorizes him to disclose them to the public. (See 62 Ops. Cal. Atty. Gen. 402 (1979).) (Op. No. 79-502.) However, the sheriff may not select who may see such files. Once he permits inspection by one person who does not have legal access to such files, they become open to public inspection. (*Black Panther Party v. Kehoe, supra*, 42 Cal. App. 3d 645 at pp. 655-657.)

Finally we consider the application for a concealed firearm permit and the record of a permit issued thereon. The application must state the name of the applicant and his or her occupation, residence and business address, age, height, weight, color of eyes and hair and the reason for desiring a permit. Any permit which is issued must contain the same information plus a description of the weapons authorized to be carried. (Pen. Code, § 12051.)

As amended by chapter 1838, Statutes of 1957, Penal Code section 12053 provided that a record of a concealed firearm permit issued "shall be maintained in the office of the licensing authority *which shall be open to public inspection.*" The underlined words were deleted by chapter 371, Statutes of 1969, section 43, the year following enactment of the California Public Records Act. The Legislative Counsel's Digest of Assembly Bill No. 2294 which became chapter 371 states simply: "Revises various provisions of law regarding certain public records with respect to the California Public Records Act." We conclude that the Legislature intended that public inspection of the records of concealed firearms permits required to be kept by Penal Code section 12053 was to be governed by the Act following the effective date of chapter 371 rather than by an express provision in section 12053 and that chapter 371 was not intended to eliminate any public inspection of concealed firearm permit records.

In applying the Act to the information contained in the record of a concealed firearm permit (and the application therefor) we note the possible application of subdivisions (c) and (f) of section 6254 and of section 6255. Subdivision (c) provides an exemption from

public disclosure of “[p]ersonnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of privacy.” Are the application and record of permit prepared in respect to concealed firearm permits files “similar” to personnel or medical files and do they contain information, the disclosure of which would constitute an “unwarranted” invasion of privacy? We think not. We noted in 53 Ops. Cal. Atty. Gen. 136, 147, *supra*, that generally speaking medical information is especially personal. So also is the information in a typical personnel file. On the other hand, the information contained in the application and record of permit for a concealed firearm permit is essentially descriptive information needed to identify the applicant which is generally known by acquaintances and would not be the kind of information a person would normally conceal from others. At any rate we conclude that knowledge of such descriptive information would not constitute an “unwarranted” invasion of the applicant’s privacy, particularly in light of the fact that for 12 years prior to 1970 Penal Code section 12053 expressly provided that the records of permits for concealed firearms were open to public inspection.

An argument may be made that the application for a concealed firearm permit is the starting point of any investigation of the applicant’s qualifications and fitness for a permit, and is therefore part of the investigative file and thus subject to the exemption from disclosure set forth in subdivision (f) of section 6254. An application is the starting point for a permit investigation in the same way that a complaint is the starting point of many criminal investigations. Had the Legislature intended to include applications within the scope of investigation records exempt from public disclosure under subdivision (f) it would have specifically mentioned applications in the statute as it did complaints. Moreover, an application for a concealed weapons permit prepared by the applicant is not a record of an investigation “*conducted by*” a law enforcement agency and thus does not come within the language used in subdivision (f). Accordingly, we conclude that the applications for concealed firearms permits are not exempt from public disclosure by subdivision (f) of section 6254.

Finally we must consider the application of section 6255 to the applications and records of permits for concealed firearm permits. It is conceivable that in an exceptional situation the sheriff may be able to demonstrate that the public interest served by not making such records public clearly outweighs the public interest served by disclosure of the records. Thus if a jeweler applied for a concealed weapons permit for protection against robbery when transporting valuable jewelry between his shop and his home to repair or work on at night, a sheriff might reasonably conclude that the public interest in protecting the jeweler against such robberies *clearly outweighs* the public interest in making the jeweler’s identity, reason for desiring the permit, and his home and business address open to public inspection. Absent information contained in the application or record of permit for a concealed weapons permit by which the sheriff can demonstrate that the public

interest served by not making such records public clearly outweighs the public interest in their disclosure pursuant to section 6255, we conclude that such records are open to public inspection under the Act.
