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State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-908
	:	
of	:	<u>MAY 29, 1981</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Jack R. Winkler	:	
Assistant Attorney General	:	
Robert D. Milam	:	
Deputy Attorney General	:	

The Honorable Richard Lehman, Member of the California Assembly, has requested an opinion on a question we have phrased as follows:

When may tape recordings of radio and telephone calls to the police department be destroyed where the purpose of the tapes is to have a record of accident reports, the times of police and ambulance responses, and for use in internal affairs investigations?

CONCLUSION

Tape recordings of radio and telephone calls to the police department made to have a record of accident reports, the times of police and ambulance responses, and for use in internal affairs investigations are made for the purpose of preserving their informational content for future reference and therefore may not be destroyed until: (1)

they are at least two years old, and (2) destruction is authorized both by resolution of the city council and by the written consent of the city attorney.

ANALYSIS

We are advised that many California police departments make tape recordings of the messages received and transmitted by department radios and telephones though no law requires such recording. We are asked when such recordings may be destroyed.

Two statutes govern the destruction of city records and a careful analysis of their provisions is necessary to respond to the question. Government Code section 6200 provides:

“Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person to do so, is punishable by imprisonment in the State prison not less than one nor more than 14 years.”

Government Code section 34090 provides:

“Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

“This section does not authorize the destruction of:

“(a) Records affecting the title to real property or liens thereon.

“(b) Court records.

“(c) Records required to be kept by statute.

“(d) Records less than two years old.

“(e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

“This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.”

We recently had occasion to consider whether tape recordings of city council meetings made by the city clerk to facilitate preparation of the minutes were “records” within the meaning of sections 6200 and 34090. We concluded they were not in an opinion published in 64 Ops. Cal. Atty. Gen. 317 [Opn. No. 80–1006]. In that opinion we concluded:

“To summarize, we conclude that a ‘record’ within the meaning of sections 6200 and 6201, as interpreted by judicial decisions, is properly defined as a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officers duties and was made or retained for the purpose of preserving its informational content for future reference.”

Turning to the tape recordings referred to in the question, we must look not only to the informational content of the recordings but also to the purpose for which they were made and the manner of their use to determine whether they are public records within the meaning of section 6200. If they are such public records they may not be destroyed except in accordance with the requirements of the statute, section 34090 in the case of city records. The mode prescribed is the measure of the power. (37 Ops. Cal. Atty. Gen. 307, 310 (1974); *People v. Zamora* (1980) 28 Cal. 3d 88, 98.)

We are advised that the purpose of making the tape recording of the police telephone and radio calls contemplated in the request was to have a record of accident reports, the times of police and ambulance responses to such reports and for use in internal affairs investigations. Such recordings clearly contain information which is convenient if nor necessary to the discharge of official duty.

It also appears that the recordings were both prepared and retained by public officers or employees for the purpose of preserving the informational content of the telephone and radio communications with the police department for future reference. Their purpose was to constitute the record of certain events and not merely to facilitate the

preparation of a written record as in the case of the tape recordings of city council meetings in our opinion referred to above. We conclude that such tape recordings are public records within the meaning of section 6200 and may not be destroyed except as provided by section 34090. Section 34090 provides that such records may not be destroyed if they are less than two years old and not thereafter unless their destruction is authorized by both a resolution of the city council and the written consent of the city attorney.
