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OFFICE OF THE ATTORNEY GENERAL  
State of California

JOHN K. VAN DE KAMP  
Attorney General

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OPINION	:	No. 83-503
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of	:	<u>SEPTEMBER 15, 1983</u>
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THE HONORABLE ROBERT H. PHILIBOSIAN, DISTRICT ATTORNEY, LOS ANGELES COUNTY, has requested an opinion on the following question:

Must provisions of the California Public Records Act which except from public disclosure certain law enforcement intelligence and investigatory records be interpreted to substantially conform with federal court interpretations of similar provisions in the federal Freedom of Information Act?

CONCLUSION

Provisions of the California Public Records Act which except from public disclosure certain law enforcement intelligence and investigatory records need not be interpreted to substantially conform with federal court interpretations of similar provisions in the federal Freedom of Information Act. However, the history of the federal act and the

federal court decisions interpreting it are used as extrinsic aids in interpreting the California provisions.

## ANALYSIS

Government Code<sup>1</sup> section 6254, subdivision (f), a part of the California Public Records Act ( 6250 et seq., hereafter PRA), sets forth descriptions of certain law enforcement records which are not subject to public disclosure under the provisions of the act. In relevant part, this provision excepts from public disclosure:

"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 . . . ."

In *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, the California Supreme Court determined that the term "intelligence information" as used in section 6254, subdivision (f), may not be construed so broadly as to preclude disclosure of all information relating to criminal activity or so narrowly as to compel disclosure of confidential information. The court gave the term a meaning which it derived from an examination of the history of the federal Freedom of Information Act. (5 U.S.C. § 552 et seq., hereafter FOIA.)

At the outset, the court observed that the PRA was modeled on the FOIA and that the "judicial construction and legislative history of the federal act serve to *illuminate* the interpretation of its California counterpart." (*Id.* at p. 447; emphasis added.) The court noted that the FOIA as originally enacted in 1967 exempted investigatory records compiled for law enforcement purposes and that a series of federal court decisions construed the exception as covering all documents in federal law enforcement investigatory files. (*Id.* at p. 448.) Consequently, the court explained, Congress amended the FOIA in 1974 to narrow and clarify the exemption. (*Id.* at p. 448.) As so amended, FOIA limited the investigatory records exception to situations where production of such records would interfere with enforcement proceedings; deprive a person of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of personal privacy; disclose the identity of a confidential source or disclose confidential information from a confidential source

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<sup>1</sup> Unless otherwise indicated, all statutory references will be to the provisions of the Government Code.

compiled in the course of a criminal investigation or a national security intelligence investigation; disclose investigative techniques and procedures; or endanger the life or physical safety of law enforcement personnel. (*Id.* at pp. 448-449.)<sup>2</sup> This amendment, according to the court, reinstated the original congressional intent of the FOIA. (*Id.* at 449.) The court then reasoned that "since the California law was modeled upon that original act, we may use the amendments to *guide* the construction of the California Act." (*Id.* at p. 449; emphasis added.)

The court concluded that the intelligence information provision in section 6254, subdivision (f), did not exempt "all information which is 'reasonably related to criminal activity.'" (*Id.* at p. 449.) However, the intelligence information exception did not require disclosure of personal identifiers (e.g., names, aliases, addresses, telephone numbers and "information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"), confidential sources and information supplied in confidence relating to criminal activity. (*Id.* at pp. 450 and 452.) Moreover, as to nonexempt information, under section 6255<sup>3</sup> the burdens and costs of disclosing such may be balanced against the public interest to be served by disclosure. (*Id.* at pp. 452-454.) While recognizing that section 6255 has no counterpart in the FOIA, the court nevertheless concluded that an administrative burden of producing the requested records may in a particular case outweigh the public interest in their disclosure. (*Id.* at pp. 452-454.)

We are asked, in view of *American Civil Liberties Union v. Deukmejian*, whether section 6254, subdivision (f), as it relates to law enforcement intelligence and investigatory records, must be interpreted to substantially conform with federal court interpretations of similar provisions in the FOIA. In our view, there is no *requirement* that such federal decisions be followed.

There is a familiar rule of statutory construction whereby guidance is sought from parallel statutes enacted in another jurisdiction. As stated in *Sutherland Statutory Construction*, 4th ed., volume 2A, section 52.02:

"When the legislature of a state adopts a statute which is identical or similar to one in effect in another state or country, the courts of the adopting state usually adopt the construction placed on the statute in the jurisdiction

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<sup>2</sup> See 5 U.S.C. § 552(b)(7).

<sup>3</sup> 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."

in which it originated. . . . The general rule also applies to make judicial and administrative interpretation of federal statutes useful in construing state statutes copied from federal acts. A common example occurs when state tax laws are modelled after the Federal Internal Revenue Code. . . ." (Fns. omitted.)

This rule was applied in *Kaplan's Fruit and Produce Co. v. Superior Court* (1979) 26 Cal.3d 60, 65:

"Since the National Labor Relations Act (29 U.S.C. § 151 et seq.) served as a model to the [California Agricultural Labor Relations Act], decisions interpreting the national act are persuasive in construing the California law."

(See also *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* (1971) 4 Cal.3d 842, 852-853 (state and federal antitrust laws); *Scripps Etc. Hospital v. Cal. Emp. Com.* (1944) 24 Cal.2d 669, 676-678 (state and federal unemployment insurance laws).)

However, courts are not compelled to follow this rule. A federal judicial decision rendered after the adoption of a federal statute by this state is not binding on the courts of this state. (*Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387.) As explained in *Meanley v. McColgan* (1942) 49 Cal.App.2d 203, 209:

"The above decisions of the United States Supreme Court are, of course, not binding on this court as to the proper interpretation of the state statute. Although the state statute was copied from the federal statute, the decisions having been rendered subsequent to such adoption constitute but argumentative authority, and are not binding authority as to the proper interpretation of the state statute. However, such decisions of the highest court in the land are obviously entitled to great weight in interpreting identical language appearing in a state statute. There is a strong public policy favorable to interpreting similar statutes dealing with the same subject matter in a similar fashion."

In summary, California courts may interpret provisions of the PRA by drawing upon federal court decisions construing similar provisions in the FOIA. Looking for illumination and guidance from parallel federal law, however, is but one extrinsic aid to the interpretation of a California statute. Other rules of statutory construction may point a California court in a direction quite the opposite of that of the federal law and the judicial interpretations thereof. (See *Estate of Moore* (1955) 135 Cal.App.2d 122, 134.) Furthermore, future amendments to both laws may demonstrate distinct changes in

legislative intent as to the respective scopes of the laws. (See *Ocean Acc. Etc. Co. v. Industrial Acc. Com.* (1916) 173 Cal.313, 317.)

Accordingly, we conclude that provisions of the California Public Records Act which except from public disclosure certain law enforcement intelligence and investigatory records need not be interpreted to substantially conform with federal court interpretations of similar provisions in the federal Freedom of Information Act. However, the history of the federal act and the federal court decisions interpreting it are used as extrinsic aids in interpreting the California provisions.

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