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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

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No. 81-613

OCTOBER 7, 1981

THE HONORABLE DENNIS A. BARLOW, COUNTY COUNSEL,
YUBA COUNTY, has requested an opinion on the following question:

May a city police department allow public inspection of a written report filed by a county welfare fraud investigator regarding the failure of a named individual to receive food stamps that had been mailed to him?

CONCLUSION

A city police department may not allow public inspection of a written report filed by a county welfare fraud investigator regarding the failure of a named individual to receive food stamps that had been mailed to him.

ANALYSIS

The Legislature has enacted a statutory scheme (Welf. & Inst. Code, §§ 18900–18919) enabling public aid recipients to receive food stamps under the federal Food Stamp Program (7 U.S.C. §§ 2011–2027).

The federal program is operated under the following congressional declaration of policy:

“It is hereby declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households. Congress hereby finds that the limited food purchasing power of low-income households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation’s agricultural abundance and will strengthen the Nation’s agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”

We are informed that an increasing number of complaints have been made by food stamp recipients concerning the failure to receive the stamps that had been mailed to them. In one county the procedure is for the recipient to be interviewed by a county welfare fraud investigator who in turn submits a written report to the local police department concerning the loss of the stamps.

The question presented for analysis is whether the report filed by the welfare fraud investigator may be disclosed to the public by the police. We conclude that it may not.

The general rule in California is that every person has the right to inspect any public record in the custody of any state or local agency. Under the California Public Records Act (Gov. Code § 6250–6265;¹ hereafter “PRA”), the Legislature has recognized “that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (§ 6252; see *Northern Cal.*

¹All section references prior to footnote 2 are to the Government Code unless indicated otherwise.

Police Practices Project v. Craig (1979) 90 Cal. App. 3d 116, 120; *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 942.) Subdivision (a) of section 6253 states, “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. . . .”

It is clear that the reports in question constitute “public records” (§ 6252, subd. (d); see *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 649–650) held by a “local agency.” (§ 6252, subd. (b).) The PRA does not require, however, all public records to be disclosed, nor does it prohibit disclosure of any public record; the provisions of the PRA are permissive or conditional only. (See *Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d 931, 941; *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d 645, 656–657.)

The PRA allows an agency to withhold any public record if “the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.” (§ 6255, see *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d 645, 651–653, 657–658.)

On the other hand, although the PRA “exempts” certain categories of public records from required disclosure, the specified “exemptions” are not “to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection. . . .” (§ 6254.)

Two of the exemption categories merit analysis. Under subdivision (f) of section 6254, an agency need not disclose:

“*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.” (Italics added.)

Accordingly, the report of the welfare fraud investigator at issue herein may, but need not, be withheld from public inspection under the provisions of section 6254, subdivision (f). (See *Black Panther Party v. Kehoe*, *supra*. 42 Cal. App. 3d 645, 654; see also *Frankel v. Securities & Exchange Commission* (2d Cir. 1972) 460 F.2d 813, 817–818; *Bougas v. Chief of Police of Lexington* (1976) 371 Mass. 59 [354 N.E.2d 872, 876–877].)

The other pertinent specified category of public record that may be withheld from public disclosure under the PRA is found in subdivision (k) of section 6254 as follows: “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.” Hence, this provision of the PRA directs attention to laws outside its own scheme to determine whether disclosure of a record is prohibited.

Under the Information Practices Act of 1977 (Civ. Code, §§ 1798–1798.76), the Legislature has adopted an elaborate procedure regulating the collection, maintenance, and disclosure of personal and confidential information concerning California citizens. This legislation, however, is limited to the maintenance of records by state agencies (Civ. Code, § 1798.3, subd. (d)), not local entities such as police departments, and in fact allows disclosure when made pursuant to the PRA. (Civ. Code, § 1798.24, subd. (g).) We must therefore look elsewhere for a possible prohibition against disclosure of the welfare fraud investigation report in question.

The state legislation implementing the federal Food Stamp Program contains the following provision. “The provisions of Section 10850 of this code, relating to disclosure of information regarding public assistance recipients, shall apply to information obtained under this chapter.” (Welf. & Inst. Code, § 18909)² Does a report concerning the failure of a recipient to receive food stamps that have been mailed to him contain “information obtained under the chapter”?

As will be explained subsequently, we believe that the welfare fraud investigation report would contain information regarding the administration and possible

²All section references hereafter are to the Welfare and Institutions Code unless indicated otherwise.

enforcement of the state statutory scheme implementing the federal Food Stamp Program. The primary purpose of the report would be to locate the food stamps that had been (presumably) mailed. Not all explanations would be criminal in nature. In any event, those stamps that could not be located would require replacement. Information forming the basis of the investigator's report would thus appear to be, broadly speaking, "information obtained under the chapter" necessary for its proper implementation.

We thus turn to the provisions of section 10850 to resolve the issue at hand. The statute provides:

"(a) Except as otherwise provided in this section, *all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services* for which grants-in-aid are received by this state from the United States government *shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of such program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program.* The disclosure of any information which identifies by name or address any applicant for or recipient of such grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

"(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and such lists or any other records shall be released when requested by any county welfare department or the State Department of Social Services. Such lists or other records shall only be used for purposes directly connected with the administration of public social services. Except for such purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient

"Any county welfare department and the State Department of Social Services shall provide any governmental entity which is authorized by law to conduct an audit or similar activity in connection with the administration of public social services, including any committee or legislative body so

authorized, with access to any public social service applications and records described in subdivision (a) to the extent of such authorization. Such committees, legislative bodies and other entities may only request or use such records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of the public social services.

“However, this section shall not prohibit the furnishing of such information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating the provisions of this subdivision is guilty of a misdemeanor.

“(c) The State Department of Social Services shall inform the Department of Motor Vehicles of the names, birth dates, and addresses of all applicants or recipients of aid to the blind. The Department of Motor Vehicles, upon receipt of such information, shall inform the State Department of Social Services of any such applicant or recipient of aid to the blind who holds a valid California driver’s license.

“(d) The State Department of Social Services may make rules and regulations governing the custody, use and preservation of all records, papers, files and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that such research will not result in the disclosure of the identity of applicants for or recipients of public social services.

“(e) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, any official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

“(f) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office or against any county or state welfare worker while involved in the administration of public social services. Such criminal acts shall include only those which are in violation of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant’s or recipient’s name, physical description, and address.

“(g) *The provisions of this section shall be operative only to the extent permitted by federal law* and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled “Basic Health Care,” and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.” (Italics added.)

Although several provisions of section 10850 appear at first glance to be applicable to the situation presented, a closer examination reveals only two possibly relevant subdivisions. We do not have disclosure “to any committee or legislative body,” and a welfare investigation report may not reasonably be considered to be a “list of persons receiving public social services.” Hence, the issue is reduced to whether maintenance of the investigator’s report would be “in connection with the administration” of the federal Food Stamp Program under subdivision (a). (See *Haskins v. San Diego County Dept. of Public Welfare* (1980) 100 Cal. App. 3d 961, 966–967; *Jonon v. Superior Court* (1979) 93 Cal. App. 3d 683, 690–692)

Subdivision (a) appears to differentiate, however, between “administration” on the one hand and “investigation, prosecution, or criminal or civil proceeding” on the other hand, with the investigator’s report clearly within the latter category. Moreover, we note that according to the court in *Jonon v. Superior Court, supra*, 93 Cal. App. 3d 683, 692, the provisions of section 10850 are to be construed in favor of disclosure.

It is also the rule, however, that in construing a statute which “is theoretically capable of more than one construction we choose that which most comports with the intent of the Legislature.” (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 859.)

Here, the purpose of the disclosure prohibitions is to protect the right of privacy of the public aid recipient. (*In re Lynna B.* (1979) 92 Cal. App. 3d 682, 705; 62 Ops. Cal. Atty. Gen. 798, 805 (1979).) A distinction may be drawn between reporting to the police the failure to receive food stamps and reporting a missing television set.

More significantly, the disclosure prohibitions of section 10850 must be viewed in light of its subdivision (g), which states, “the provision of this section shall be operative only to the extent permitted by federal law. . . .” While this language is somewhat ambiguous, it discloses the Legislature’s intent to comply with prerequisites set by the federal government for federal aid assistance programs. (See *Jonon v. Superior Court*, *supra*, 93 Cal. App. 3d 683, 694; 62 Ops. Cal. Atty. Gen. 711, 716 (1979); 62 Ops. Cal. Atty. Gen. 494, 502 (1979).)

Federal law requires states participating in the federal Food Stamp Program to provide “safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter.” (7 U.S.C. § 2020, subd. (e)(8).) The “regulations issued pursuant to this chapter” also specify that states participating in the program are to establish the following requirement. “Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations. . . .” (7 C.F.R. § 272.1, subd. (c)(1).)

Although federal law has thus directed states to restrict use or disclosure of information to the “administration or enforcement” of the Food Stamp Program, has the Legislature done so in section 10850 (as made applicable by section 18909)?

We cannot “redraft” section 10850 to bring it in line with the federal restrictions. (See *Jonon v. Superior Court*, *supra*, 93 Cal. App. 3d 683, 694.) We cannot “construe” section 10850, however, in a manner that would conflict within federal law if a construction of the statute would allow harmony between the two statutory schemes. (62 Ops. Cal. Atty. Gen. 798, 803 (1979); see *Haskins v. San Diego County Dept. of Public Welfare*, *supra*, 100 Cal. App. 3d 961, 967–968.)

Reading section 10850 in conjunction with federal law (see *Pearson v. State Social Welfare Board* (1960) 54 Cal. 2d 184, 214), we believe that a welfare fraud investigator's report concerning an individual's failure to receive food stamps that were mailed to him would be a record "in connection with the administration of" the federal Food Stamp Program. (§ 10850, subd. (a).) As such, the record is confidential, not open to public inspection, and may only be viewed by those carrying out the administration or enforcement of the program's requirements. (See *Haskins v. San Diego County Dept. of Public Welfare*, *supra*, 100 Cal. App. 3d 961, 969, 971; *Jonon v. Superior Court*, *supra*, 93 Cal. App. 3d 683, 693; 60 Ops. Cal. Atty. Gen. 314, 318–319 (1977).)

In answer to the question presented, therefore, we conclude that a city police department may not allow public inspection of a written report filed by a county welfare fraud investigator regarding the failure of a named individual to receive food stamps that were mailed to him.
