

February 04, 2014

City of Tracy City Council
333 Civic Center Plaza
Tracy, CA 95376

Sirs:

During the January 7 City Council meeting this Council expressed an interest in clarifying the law and policy applicable to the Tracy Police Department's (TPD) practice of secretly recording interviews with persons who are suspected of no crime, while they are in their own homes and have every expectation of privacy.

California's 1967 Privacy Act (Penal Code §§ 630 et seq.) requires that all parties to a communication must consent to its recording – violation of this Act is a criminal offense. Although an exemption was provided for law enforcement personnel, the intent of the exemption is clearly spelled out: "The Legislature recognizes ... a legitimate need to employ modern listening devices and techniques *in the investigation of criminal conduct and the apprehension of lawbreakers.*" Similarly, pertinent case law permitting this practice applies to situations where the recordings are made "*in the course of an official investigation of criminal activity.*" (People v. Carbonie 48 Cal.App.3d 679, 685). There is no support in statute or case law for surreptitiously recording citizens in the course of activities that do not involve investigation of criminal conduct.

TPD policy #450, developed by an independent risk management firm, likewise permits surreptitious recordings "*during the course of a criminal investigation.*" Once again, there is nothing to support the surreptitious recording of citizens in the course of activities that do not involve criminal conduct. Surreptitious recording of other department members, however, is strictly prohibited. In light of the practice of recording the average citizen, this amounts to a two-fold violation of Article 1, Section 7 of the California Constitution – the TPD has assumed both privileges (of recording others) and immunities (of not being recorded themselves) that are not granted on the same terms to all citizens.

In summary, there is no apparent basis in statute, case law or policy to support a generic secret recording practice. In light of its potential criminality, if the Tracy Police Department believes such a practice is justified they need to provide the basis for this belief. Police Chief Gary Hampton has failed to respond to a policy complaint on this issue for over two years. If he cannot justify and will not abandon this practice, then this Council must intervene to protect the fundamental, constitutional and statutory privacy rights of the people of Tracy.

Through this letter I am specifically requesting that the City either justify or cease this fundamental invasion of privacy. The members of this Council have sworn a personal oath to uphold the laws and support the Constitution of the State of California.

Regretfully,



Paul Miles
1397 Mansfield St., Tracy

e-cc: San Joaquin County District Attorney
California Attorney General's Office
Central San Joaquin Valley Risk Management Authority
South San Joaquin Co. Risk Management Authority
Assembly member Susan Eggman
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San Joaquin County Council of Governments
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