

2017-2018 GRAND JURY REPORT

Human Resources Department Grand Jury Secrecy

Background

Riverside County Human Resources

The Riverside County Human Resources Department (HR) employs staff who perform a variety of functions and services for Riverside County (County) in over 1,500 different job classifications and oversees approximately 21,200 employees Countywide. Some of the areas that HR supports are: Return-To-Work Program, Risk Management, Safety Office, Temporary Assignment Program (TAP), Medical Assistance Programs (MAP), Worker's Compensation and Employee Relations Division. The Department's responsibilities also include representing the County in grievance and disciplinary arbitration hearings, as well as conducting investigations into allegations of employee misconduct. The County must enforce provisions of Title VII-Civil Rights Act of 1964, §7, U.S.C. §2000e, *et seq.* (1964) against unlawful employment practices.

Grand Jury Secrecy

Except under limited circumstances, proceedings before a grand jury must be conducted in utmost secrecy as required by California Penal Code (PC) §924.2. The District Attorney or his/her deputy may be present at discussions between grand jurors, or jury panel sessions for the purpose of giving information or advice, and to interrogate witnesses whenever the district attorney deems it necessary. Except when ordered to do so by the Court, a juror must not disclose any evidence/information received by the grand jury, what any juror has said, or in what manner any juror has voted on a matter before the grand jury. Anything that occurs, or is presented or spoken by any grand juror, or any witness within the walls of the grand jury chambers, committee rooms, or the panel room on any matter before the grand jury, is subject to the secrecy requirements defined by law. All grand jurors are administered an oath as stipulated in PC §911:

The following oath shall be taken by each member of the grand jury: "I do solemnly swear (affirm) that I will support the Constitution of the United States and the State of California, and all laws made pursuant to and in conformity therewith... Furthermore, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, nor the manner in which I or any other grand juror

may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court.”

Grand jury secrecy is vital to the jurisprudence system as it protects privacy and reputations of those who may be investigated but ultimately not charged. In addition, it gives grand jurors the assurance that whatever occurs, whatever is said to or by a grand juror, will remain secret. This imperative is not limited to a juror’s current term of service but extends to all previous and current grand jurors in perpetuity. California law goes on to provide a penalty for violating a grand juror’s oath and charge. PC §924.1(a) states:

Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury has said, or in what manner he or any other grand juror has voted on a matter before them, is guilty of a misdemeanor.

To ensure that grand jury proceedings are secret, PC §924.2 requires:

Each grand juror shall keep secret whatever he himself or any other grand juror has said, or in what manner he or any other grand juror has voted on a matter before them.

To assist jurors in complying with secrecy, PC §924.3 reads in part:

A grand juror cannot be questioned for anything he may say or any vote he may give in the grand jury...

This provides jurors the privilege and authority of refusing to be questioned concerning grand jury matters.

During the course of an HR inquiry, the Riverside County Grand Jury (Grand Jury) became aware of alleged breeches of grand jury secrecy as outlined in PC §924 *et seq.*

Methodology

Interviews:

1. Eleven former grand jurors in the presence of the Assistant District Attorney (ADA) or Deputy District Attorney (DDA)

2. Associate Management Analyst from the Riverside County Executive Office (Executive Office)
3. HR Director
4. HR Division Manager – Employee & Labor Relations Division
5. HR Principal Resources Analyst – Employee & Labor Relations Division
6. Private Investigator (PI)
7. ADA, County of Riverside

Documents Reviewed:

1. HR Mission Statement
2. HR Job Description, Salary History and Range of Employee
3. Article 12, §1202 (Cause for Action) from Resolution No. 2017-110 (“*A Resolution of the County of Riverside and Other Agencies Providing Salaries and Related Matters for Exempt Management, Management, Confidential and Other Unrepresented Employees*”)
4. Training and frequency requirements of County Employees
5. HR Employee Handbook
6. Riverside County Board of Supervisors (BOS) Policy C-23: *Disciplinary Process*
7. Riverside County BOS Policy C-25: *Non-Discrimination and Anti-Harassment*
8. Letters from prior Grand Jurors submitted to HR and the prior Presiding Judge of Riverside County Court Superior Court
9. Confidential Grand Jury roster for the 2016-17 term and given to the PI from a former Grand Juror
10. Roster from the 2017-18 term provided to the PI by Executive Staff
11. HR Disciplinary Process Manual – last updated May 29, 2016
12. 2014-2015 Grand Jury Report, *Riverside County Office of County Council*
13. *County of Riverside Administrative Investigation*
14. Government Code §27642 – *County Counsel*
15. Penal Code §§888-945 – *Grand Jury Proceedings*
16. Various emails between PI and HR staff/Executive Office/Grand Jury/County Counsel, including:
 - Email dated October 26, 2017 (document number: 00313)
 - Email dated December 11, 2017 (document number: 00301)
 - Email dated December 20, 2017 (document number: 00296)
 - Email dated March 2, 2018 (document number: 00200)

Audio Recordings and Transcription of Interviews:

1. Recordings of the PI investigative interviews

Findings

Violation of Grand Jury Secrecy

1. On August 3, 2017, in response to a request from the Riverside County HR Director, the Grand Jury Foreperson, Grand Jury Foreperson *pro tem*, and the Assistant District Attorney (ADA) met with the HR Director and a Deputy Director in Grand Jury chambers. The HR Director stated that a previous Grand Juror, and an anonymous person, had filed a complaint containing certain allegations of misconduct. The HR Director proceeded to inform those present that he was planning to investigate a County employee (EMPLOYEE) for misconduct.

Since the complainant was a previous Grand Juror, the ADA informed all those present that, as the Grand Jury's legal advisor, if any Grand Jurors were to be interviewed, the ADA must be present. This was to ensure that no intimidating actions or undue pressure was applied to violate Grand Jury secrecy, or that inappropriate information was disclosed.

HR proceeded with their investigation by hiring a Private Investigator (PI) on September 12, 2017. He was informed, via email, that he was to investigate the sole allegation of a previous Grand Juror. However, within days, at the request of the PI, HR explicitly agreed to expand the investigation beyond its original scope. With the help of HR, the unfettered PI (now a contracted agent of the County) interviewed at least eight prior or current Grand Jurors.

Even though the ADA had directed HR that he was to be present during all interviews with any prior or current Grand Jurors, the PI proceeded to interview at least eight prior or current Grand Jurors without the presence of the ADA. During these interviews, the PI questioned Grand Jurors about what was said, who it was said by, what matters were pending before the Grand Jury, and how they voted relative to the matters pending. This is in direct violation of PC §924.

Hiring a Private Investigator

2. HR Divisional Manager contacted an outside attorney, who occasionally works for the County, for a recommendation to hire a PI. The reason stated for hiring an outside PI was due to the perceived sensitivity of the investigation. The HR Divisional Manager was not confident the in-house investigators could conclude the investigation in less than 120 days. The HR Divisional Manager also received instructions from the HR Director to complete the investigation within 30 days.

The PI was hired with the approval of the HR Director with only a phone call and an email confirmation. There was no formal agreement or confirmation letter to define the scope of the investigation, the amount of time, maximum billing amount, or other covenants between the parties. With no formal contract between the County, and without proper hiring documentation and no specific direction, the PI apparently had free reign and complete authority to act with no oversight.

When the Grand Jury interviewed the PI, he stated he did not feel he needed to provide a confirmation letter defining the scope or his understanding of the County's expectations. The PI stated he could base his scope of investigation on his own interpretation of the allegations.

Comprehensive Investigation

3. The PI conducted his investigation by interviewing the Grand Jurors who had lodged complaints, or Grand Jurors referred by those interviewed. The Grand Jurors, in their statements to the PI, expressed animus against the EMPLOYEE. The PI was made aware of other Grand Jurors who may have provided a different interpretation, however, the PI chose not to seek out potential exculpatory evidence.

An email dated December 19, 2017, from the PI to the HR Principal Analyst stated that a particular witness has animosity toward the EMPLOYEE making the motivation of this witness questionable. The PI stated that he chose to believe this witness any way.

In an email dated October 26, 2017, from the PI to the HR Division Manager and Employee and Labor Relations Division, the PI states in part:

...I believe it's important to understand that only five Grand Jurors have been interviewed. It sounds like there are a few Grand Jurors who have served several terms over the years, and who may be advocating for EMPLOYEE with a different take on EMPLOYEE behavior. [sic]

An email from the HR Principal Analyst dated December 20, 2017 addressed to the PI, states in part:

When you send me a revised draft of your report, could you send it in Word please? This will make it easier for ... and I... to communicate with each

other re any further recommended edits or comments any of us may have re the report... We would not finalize any tracked changes without sharing them with you first, as we, and I'm sure you, would not want a situation down the road where you are testifying about your investigation, and someone shows you something in the report that you don't recognize or agree with. That wouldn't be good for anyone... [sic]

The PI's response in part:

...But again, given the assortment of other inappropriate comments I don't know that it was necessary to include this one as well, (but I'm happy to do so if you'd like)...

Failure to Properly Protect Employee Rights Under Investigation

4. In the letter from the Deputy County Executive Office to EMPLOYEE informing EMPLOYEE about the ongoing investigation, EMPLOYEE was instructed to cooperate with the investigator. This letter states in part:

...In order to preserve the confidentiality of the investigation, you are not to discuss the investigation with anyone other than your representative, legal counsel, or the Private investigator. If you are unsure whether a comment or discussion would be a violation of this directive, you must first contact Mr. ... for guidance... [sic]

HR Policy Requires Progressive Discipline

5. HR policy (Disciplinary Process Manual) stipulates that progressive disciplinary steps (from least to most severe), should be followed and implemented in relation to the alleged offenses being substantiated and supported. When there is a continued pattern of the employee failing to comply with a policy or a directive, then a more serious penalty may need to be imposed. This progressive disciplinary history must be clearly documented by the employee's supervisor. The disciplinary penalty imposed should be appropriate in relation to the offense committed – starting with the least severe.

The evidence developed by the PI did not confirm the initial allegation. The underlying incident, as discovered by the PI, had been handled appropriately. The PI then proceeded to search for other allegations. These complaints made, and corroborated, by the

shared testimony of a few disgruntled Grand Jurors, were then used to pile on the allegations against EMPLOYEE, in order to establish the case to terminate EMPLOYEE without progressing through the normal disciplinary steps.

No Provision to Inform Employee They Are Under Investigation

6. There is no provision or policy to inform an employee that they are under investigation unless they are employed as a peace officer or they have been placed on administrative leave.

Breach of Confidentiality of Grand Jury Information

7. Other than their names, the Grand Juror's personal information is confidential and shall not be disclosed except by order of the Presiding Judge.

The Executive Office staff, HR staff, along with a prior Grand Juror, breached this confidentially by providing home addresses and other personal contact information to the PI. The PI used this information to contact current and past Grand Jurors by phone, and/or visiting their residences, in an attempt to gather investigative material for the case he was building against EMPLOYEE. The PI even went as far as to interview a Grand Juror's neighbor.

Grand Jury Subpoenas

8. The Grand Jury subpoenaed the HR Director and PI to appear and produce documents to assist the Grand Jury in its investigation. The HR Department contacted County Counsel. County Counsel elected to file a motion to quash or modify these subpoenas. County Counsel further contacted the PI instructing him not to comply with the subpoena. Upon receipt of this motion, the Grand Jury sent a letter to County Counsel requesting his office provide legal representation for the Grand Jury. The Grand Jury did not receive a response from County Counsel. The County then hired an attorney to represent the contracted PI.

The Grand Jury appeared before the Court to defend its subpoena without representation. The Court questioned why County Counsel was not providing representation to the Grand Jury as required under California Government Code §27642. County Counsel did not provide an answer acceptable to the Court.

Recommendations

**Riverside County Board of Supervisors
Riverside County Human Resources**

Violation of Grand Jury Secrecy

1. HR shall comply with PC §924 *et seq.*, in any and all dealings with the Grand Jury. HR shall add a new policy that defines how the HR Department will work with the Grand Jury in matters which impact Grand Jury secrecy, including compliance with any and all requirements specified by the Grand Jury and/or the County District Attorney's Office.

Hiring a Private Investigator

2. Hiring an outside investigator instead of using an in-house investigator, if based on sound reasoning and justification for doing so, shall include proper hiring documents. These documents should include a hiring letter which should include the scope of the investigation, length of the investigation, operational parameters, client expectations and maximum bill rate for such services. This process then becomes a binding contract clearly defining the duties, responsibilities, obligations and legal requirements of the parties.

Comprehensive Investigation

3. By allowing HR to make changes to his investigative report and not seeking out exculpatory evidence, the PI, and by inference HR, has demonstrated their conformational bias toward this investigation. All future investigations should be conducted by HR in a fair, unbiased, neutral manner, without any preconceived prejudice. This will ensure the entire investigation is conducted ethically and professionally, and any disciplinary outcome is weighted with both aggravating and mitigating factors in reaching a fair and equitable disciplinary decision. Both aggravating and mitigating factors must be part of a comprehensive investigatory report for a balanced account of the circumstances.

Failure to Properly Protect Employee Rights Under Investigation

4. As an "unrepresented confidential" employee with property rights to the job but no representation, EMPLOYEE's only recourse was to hire an attorney, or per EMPLOYEE's supervisor, seek guidance from the very person conducting the investigation, an obvious conflict of interest. An employee under such circumstances should be given a neutral, unbiased avenue to seek assistance or advice. An employee should never be forced to seek advice from the investigator.

HR Policy Requires Progressive Discipline

5. HR shall comply with its policy of *Progressive Discipline* by using and documenting offenses alleged against an employee, by the employee's supervisor.

No Provision to Inform Employee They Are Under Investigation

6. County employees who are being considered for termination should be given notice when an investigation begins. Policy should be revised to add this provision. Employees deserve the respect and dignity of such protection as members of the workforce for the County.

Breach of Confidentiality of Grand Jury Information

7. Confidential information pertaining to Grand Jurors shall not be disclosed.

Grand Jury Subpoenas

8. Pursuant to California Government Code §27642 and PC §925, the BOS should create and publish a policy instructing County Counsel to fully cooperate with the Grand Jury in its legal requirement to inquire into all County departments.