260.0080

(916) 445-4588

October 13, 1983

Mr.
Santa Cruz County Assessor
701 Ocean Street
Santa Cruz, CA 95060

Dear

This is in response to your letter of August 22, 1983, requesting my opinion as to whether personnel from the Building Inspections Division of the County Planning Department may have access to your appraisal files for purposes of enforcing county ordinances with respect to the regulation of construction of buildings. Your county counsel has advised that the Building Inspections Division can have access to your files, since it is a law enforcement agency entitled to an exception from the prohibition against disclosure contained in Section 408 of the Revenue and Taxation Code. For the reasons stated hereinafter, I cannot agree with the county counsel's conclusion. In my opinion, you cannot disclose information in your files to the Planning Director for purposes of enforcing county ordinances respecting the construction of buildings.

There is a general common law policy against the disclosure of information gathered for tax collection and assessment purposes. There is a public purpose to promoting full disclosure from taxpayers. Since taxpayers are under compulsion of law to provide the information for the particular purpose of taxation, public policy is against revealing the required information. Inspection is permitted only if it is necessary in the administration of tax law. Thus, in In re Valecia Condensed Milk Co. (1917) 240 Fed. 310, cited with approval in Franchise Tax Board v. Superior Court (1950) 36 Cal. 2d 550, a bankruptcy referee could not compel the secretary of the Wisconsin Tax Commission to disclose information on income tax returns which were prohibited from disclosure by a state confidentiality statute.

From a common law point of view, then, there would be a presumption that building inspectors could not receive

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information from the assessor's files for purposes of administration of the Building Code, just as the bankruptcy judge could not get information from income tax returns for purposes of enforcing the bankruptcy laws.

In California, the common law policy is reflected in specific statutory provisions. Section 408 of the Revenue and Taxation Code provides a general prohibition against disclosure of information provided to assessors, and you can disclose information in your files not required by law to be kept or prepared by you only to those persons who meet a specific exception to the non-disclosure requirements. Since neither county planning directors nor county building inspectors are enumerated in the statute, the disclosure can be made, if at all, only under one of the other exceptions.

The history of Section 408(c) illustrates a legislative preference to provide for specific enumeration of those agencies which can have access to the assessor's records. Originally, law enforcement agencies, grand juries, boards of supervisors and the State Board of Equalization were enumerated. The State Controller was specifically added in 1974 (Stats. 1974, Ch. 1107) and inheritance tax referees in 1978 (Stats. 1978, Ch. 1338). Accordingly, in Opinion 69/135, (52 Ops.Cal.Atty.Gen. 194) the Attorney General of the State of California concluded that unless specifically authorized inheritance tax appraisers did not have the authority to examine the assessor's records in exercising their duties in the administration of the inheritance tax law. The Attorney General observed: "While the exchange of information between state and local officials may serve the public interest, and has been encouraged by legislative sanctions in many instances, the records in question are confidential and are governed by limited statutory provisions for disclosure which are not clearly applicable to inheritance tax appraisers. Until the Legislature provides for the disclosure to this particular class, the records in question may not be opened to them." (52 Ops.Cal.Atty.Gen. 194, 196)

Until the Legislature specifically includes building inspectors within the exceptions, I do not believe that they are entitled to inspect the assessor's records.

The county counsel argues that the Planning Director, when exercising his duty as building inspector, should be considered a law enforcement agency and entitled to inspect the records pursuant to the law enforcement agencies exception. In furtherance of that view, he cites Section 13.10.270 of the Santa Cruz County Code authorizing the planning director to

enforce zoning ordinances by arresting a person without a warrant. I attempted to find Section 13.10.270 of the Santa Cruz County Code in the State Law Library, but was unable to do so. However, Section 12.04.140 gives the building official (which is defined to be the planning director) and his delegated subordinates authority to arrest persons without a warrant when they have reasonable cause to believe that the person has committed an infraction in their presence which is a violation of any of the provisions of the chapter relating to building regulations. This authority is granted pursuant to Section 836.5 of the Penal Code.

I have doubts whether this provision of the Santa Cruz County Code is valid, since Section 836.5 of the Penal Code gives the counties authority to adopt ordinances allowing county officers to arrest for a misdemeanor, not for an infraction. But even assuming the ordinance is valid, I do not believe that building inspectors or planning directors are law enforcement agencies within the usual meaning of the term.

As pointed out in the county counsel's opinion, there is no specific definition of law enforcement agency; and, therefore, we must look to other sources for such a definition. Two such sources are cases defining law enforcement for purposes of the California Public Records Act and the Federal Freedom of Information Act, which are cited in the county counsel's opinion. Neither of these Acts apply to this situation, because Section 408 would be a specific exception to the Public Records Act pursuant to Section 6254(k) of the Government Code and the Freedom of Information Act applies only to federal agencies.

While such decisions are not controlling, they are of interest in determining what is a law enforcement agency. Of the two lines of cases, the state cases are of greater interest since they represent the California view on what is strictly a California issue. I should note that the decisions with respect to those laws deal with the converse of what we are concerned with here. Those laws are intended to permit public disclosure except when law enforcement is involved. Here we prohibit disclosure unless it is for law enforcement purposes. The public policy would be in favor of disclosure in the former; against disclosure in the latter. Thus, in State of California ex rel. Division of Industrial Safety v. Superior Court, (1974) 43 Cal.App. 3d 778, the court concluded that the Division of Industrial Safety was not entitled to prevent access to its records, because it was not a law enforcement agency. The court noted that:

> The adjective 'law enforcement' refers to law enforcement in the traditional sense--that is, to the enforcement of penal statutes, etc.. every administrative agency in state government enforces one or more statutes and in the course of such enforcement conducts investigations, and as an incident thereto, compiles investigatory files. Surely the Legislature did not intend to include within the official information privilege all of such files because, if it did, the exception of non-disclosure would swallow the general policy of disclosure enunciated in the preamble of the California Public Records Act. (43 Cal. App. 3d 778,784)

If the Division of Industrial Safety, which has broad powers to conduct investigations, promulgate rules and regulations, issue and enforce orders and issue special orders to correct health and safety hazards, is not a law enforcement agency, it is hard to believe that the Santa Cruz County Planning Department is.

I believe the county counsel's reliance on State Board of Equalization v. Watson (1968) 68 Cal. 2d 307 is misplaced. It must be remembered that the State Board of Equalization is specifically enumerated in Section 408(c). Further, the Board's role was to investigate the activities of the assessor as part of the tax reform program. In my view, the court in Watson was concluding only that the right of the State Board to inspect records as part of an investigation of the assessor's office inspection, was an essential part of the tax reform program, and had to be respected. There was a specifically enunciated public interest in permitting inspection in that case. I see no parallel interest here.

In conclusion, it is my opinion that unless and until the Legislature specifically permits inspections by planning directors or building inspectors, those agencies may not have access to the assessor's files.

Very truly yours,

Lawrence A. Augusta
Assistant Chief Counsel

LAA:jlh

bc: Messrs. Adelman, Gustafson, Walton
Legal Section