MEMORANDUM OF LAW

DATE: April 9, 1987

TO: Steve West, Property Department
FROM: City Attorney
SUBJECT: Public Records Act - Foreign Trade Zone - Names of Prospective Users

By memorandum dated November 25, 1986, copy attached, you indicated that your division is in the process of completing an application for a foreign trade zone. Apparently, owners of properties proposed to be included in a foreign trade zone have informed you of the proposed users of the properties once they are developed. You asked whether the names of the proposed users are a matter of public record and at what point they must be disclosed to the public.

Attached for your information and file is a copy of the California Public Records Act.

As a general rule, all documents submitted to a governmental agency for retention by the agency are public records which must be made available for public review upon request. The exceptions are listed in Government Code Section 6254. Also Section 6255 states as follows:

> 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. (Emphasis ours.)

A review of Section 6254 leads to a conclusion that none of the specific exemptions appears to apply to documents received by you identifying the names of proposed users of foreign trade zone properties.

However, you will note that the definitions of "public records" as contained in Section 6252(d) only includes written information "prepared, owned, used or retained" by a local agency. Therefore, oral communications relating to proposed users do not result in the creation of a "public record" unless a document relating to such oral communication is prepared by your office.

Furthermore, the above emphasized language in Government Code

Section 6255 indicates that, even though there is no specific exemption for a public record, an agency may withhold a record if the facts in a particular instance support a conclusion that "the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

In conclusion, based upon our understanding that the names of future proposed users of foreign trade zoned properties may, for a variety of reasons, be desired to be kept confidential by the proposed users themselves, in such instances, oral communications may be utilized or, if some great necessity can be clearly shown to keep the names of proposed users confidential, the provisions of Section 6255 may be utilized. It does not appear, in the absence of facts to support confidentiality under Section 6255, that the mere request by proposed users that their names be kept confidential would support a determination that written documents retained by the City with such names of proposed users may, in fact, be kept confidential.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

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Attachments 2
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