4-01/020.65 - Assertion of Government Privilege

The County, and any other public entity, has a privilege to refuse to disclose certain official information/records when the privilege is claimed. The following is information that may be classified as privileged, and under which Evidence Code Section or Government Code Section the assertion is to be applied.

Government Code Sections 7923.600, 7927.200, 7927.500, and 7927.700

- Records that are preliminary drafts, notes, or Department memoranda (interagency or intra agency) which are not retained by this Department in the ordinary course of business and when the public interest in withholding clearly outweighs the disclosure;
- Records pertaining to pending litigation to which this Department is a party;
- Any personnel, medical, or similar file when the disclosure would constitute an unwarranted invasion of personal privacy; and/or
- Records of complaints, intelligence information, or security procedures.

The Department has experienced a certain degree of success in asserting privileges for the above information/records under Section 7923.600, 7927.200, 7927.500, and 7927.700 of the Government Code; however, the following situations under Sections 1040 and 1041 of the Evidence Code requires sound judgment by Department personnel, as the courts often make dismissal of the case the price of assertion.

Evidence Code Section 1040

- Information acquired in confidence by a public employee, if the privilege is claimed by an authorized person, and:
  - Disclosure is forbidden by State or Federal law; or
  - Need to preserve the confidentiality of the information outweighs the necessity of disclosure;
- No privilege may be claimed if consent to disclose has been obtained from an authorized person.

Evidence Code Section 1041

- To refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of law and to prevent another from disclosing such identity if:
  - Disclosure is forbidden by federal or state law; or
  - The need to preserve the confidentiality of his identity outweighs the necessity for disclosure.
- No privilege may be claimed if the consent to disclose has been obtained from an authorized person or the informer.

This procedure in no way eliminates the writing of confidential reports as outlined in section 4-01/020.60.

If assistance or information is necessary in asserting the privilege, personnel should contact the Legal Advisory Unit, (refer to MPP section 3-09/210.00).

Any member may request that certain documents/reports be classified as containing privileged information; however, only Watch Commanders or permanent Lieutenants and ranks above shall classify or declassify.