

MEMORANDUM

TO: Members, Criminal and Juvenile Delinquency Panels, and Investigators
Appointed for *pro se* Defendants

FROM: Julie Traun
Indigent Defense Administration, BASF

RE: Standing Order Regarding Production of 9-1-1 and CAD Records from the
San Francisco Department of Emergency Management in Criminal and
Juvenile Delinquency Cases

DATE: November 28, 2007

Effective December 1, 2007, the Superior Court has ordered the Department of Emergency Management (DEM) to produce unredacted 9-1-1 and CAD records when subpoenaed in criminal and delinquency cases pursuant to a newly issued Standing Order. The Superior Court's Standing Order is attached. It applies to all SDTs served on or after December 1, 2007.

Please note that all defense counsel - and in the case of *pro-se* defendants, all appointed investigators – must comply with several procedural specifications in preparing and serving the SDT. In addition, all attorneys, investigators and their agents are subject to several protective orders specified in the Order. Therefore, please read the Order very carefully and be certain to fully comply with all parts of the Order.

Where counsel and/or an investigator is appointed, the records are available at no cost provided the declaration made in support of the subpoena duces tecum states that the court has appointed counsel and/or the investigator based upon a finding of the defendant's/minor's indigency. Appointed counsel and/or investigators will not be reimbursed for the cost of production of 9-1-1 and CAD records for failure to so notify DEM.

Appointed counsel and investigators are invited to report to BASF/IDA regarding implementation of this order, its effectiveness and/or any problems encountered with the Order. Representatives from BASF/IDA, the City Attorney, Public Defender, District Attorney and DEM will review the Order's effectiveness in ninety (90) days, and therefore all comments are welcome at BASF/IDA. Please direct them to Julie Traun, 782-9000, extension 8784 or jtraun@sfbar.org.

Superior Court for the State of California
In and For the City and County of San Francisco

Standing Order Regarding Production of 9-1-1 and CAD Records from the
San Francisco Department of Emergency Management
in Criminal and Juvenile Delinquency Cases

IT IS HEREBY ORDERED that in all criminal and juvenile delinquency cases, production of 9-1-1 and computer aided dispatch (“CAD”) records from the San Francisco Department of Emergency Management (“Department”) shall be conducted as specified below.

1. Defense counsel shall serve a lawfully issued subpoena duces tecum (“subpoena”) on the Department. The subpoena must include the following:
 - a. A declaration from counsel, providing a description of the records sought and good cause for production of the subpoenaed records. The Department shall not disclose the declaration or any information contained in the declaration to any prosecutorial agency or employee; and
 - b. At least the first page of the police report for the incident to which Department records relate.
2. If a subpoena lacks the required declaration and the initial page of the police report, service shall be deemed ineffective and the Department is not required to comply with the subpoena or produce records. The Department shall notify defense counsel by phone when a subpoena fails to comply with the requirements of this Order.
3. The subpoena shall provide at least five (5) court days notice to the Department before the “Court Hearing Date” specified in the subpoena.
4. Upon proper service of a subpoena that conforms to the requirements of this Order, the Department shall submit the following to the Clerk of the Court:

- a. A copy of the subpoena and the declaration from defense counsel;
- b. A true, legible and durable unredacted copy of all the records described in the subpoena; and
- c. A declaration of the duly authorized Custodian of Records that complies with the requirements of Evidence Code section 1561.

5. The Department shall produce the materials specified in paragraph 4 by the “Court Hearing Date” specified in the subpoena, as long as that date is at least five (5) court days after service of the subpoena. If the Hearing Date set in the subpoena does not provide the required notice, the Department may take up to five (5) court days to produce the records.

6. If the Department produces the items identified in paragraph 4 above, the Custodian of Records need not appear at Court pursuant to any request for appearance in the subpoena.

7. The Court may order an *in camera* hearing to determine whether the defense is entitled to receive any record or portion of any record produced by the Department where the record or portion of the record relates to a person or entity other than the defendant.

8. All records produced by the Department, as well as the information in those records, are subject to the following protective order:

- a. Except as provided in subparagraph (b) below, defendant’s attorney may not disclose or permit to be disclosed to the defendant, members of the defendant’s family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed in the records, unless specifically permitted to do so by the Court after a hearing and a showing of good cause.
- b. Notwithstanding subparagraph (a), defendant’s attorney may disclose or permit to be disclosed the address or telephone number

of a victim or witness to persons employed by the attorney or to persons appointed by the Court to assist in the preparation of a defendant's case, if that disclosure is required for that preparation. The attorney shall inform any persons provided this information that further dissemination of the information is prohibited.

- c. If the defendant is acting as his or her own attorney, the Court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the Court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the Court.
- d. Before interviewing, questioning or speaking with a victim or witness whose name is disclosed in the records, a person described in subparagraphs (a), (b) and (c) above must first clearly identify himself or herself, identify the full name of the agency by whom he or she is employed, and identify whether he or she represents, or has been retained by, the prosecution or the defendant. If the interview takes place in person, he or she shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.
- e. Defendant's attorney, any individuals employed by defendant's attorney, any persons appointed by the Court to assist in defendant's case, and any other defense agents (collectively, "defendant's agents") may use, copy and disseminate the records and the information in those records only in the preparation, trial

and appeal of the criminal case in which the subpoena is served. Defendant's agents shall not use, copy or disseminate the records or the information in those records in any other proceeding or for any other purpose.

9. Willful violation of paragraphs 8(a), 8(b), or 8(c) by defendant's attorney or by defendant's agents may subject that person to criminal prosecution.

10. The Court acknowledges that the Department reserves the right to move to quash a subpoena on any legal ground.

11. If a case is resolved before the Hearing Date specified in the subpoena and/or defense counsel no longer needs the records sought by the subpoena, defense counsel shall promptly contact the Department Custodian of Records to withdraw the subpoena and confirm that the Department does not need to produce records to the Court.

12. This Standing Order shall be effective on December 1, 2007.

Dated: _____

Judge of the Superior Court