

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

479



FROM: Executive Office

SUBMITTAL DATE:
September 12, 2006

**SUBJECT: Response to the Grand Jury Report: Riverside County Sheriff's Department,
Executive Staff**

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding Riverside County Sheriff's Department – Executive Staff.
- 2) Direct the Clerk of the Board to immediately forward the attached response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On July 11, 2006, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding the Riverside County Sheriff's Department – Executive Staff.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days. In addition, as an independently elected official, the Sheriff has transmitted his response to the Grand Jury's findings and recommendations. The Executive Office concurs with the Sheriff's response.

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Departmental Concurrence

FINANCIAL DATA

Current F.Y. Total Cost: \$ N/A
 Current F.Y. Net County Cost: \$
 Annual Net County Cost: \$

In Current Year Budget:
 Budget Adjustment:
 For Fiscal Year:

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE.

County Executive Office Signature

Dep't Recomm.:
 Per Exec. Ofc.:
 Consent
 Policy

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Superior Court of California
County of Riverside

5 In the matter of,)
6 2005-06 Grand Jury Report) Case No.: 2005-06 Grand Jury Report
7) Riverside County Sheriff's Department
8 Riverside County Sheriff's Department,) Executive Staff
9 Respondent,)
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To the presiding Judge of the Superior Court
Response to Grand Jury Report

11 Pursuant to California Penal Code Section 933 et. seq., this shall serve as the official
12 response by the Riverside County Sheriff's Department to the Grand Jury Report entitled "2005-
13 2006 Grand Jury Report: Riverside County Sheriff's Department Executive Staff" dated June 26,
14 2006. For the purpose of identification, since more than one report was issued on the same day,
15 the primary subject matter of this Grand Jury Report is the payroll practices of pre-selected
16 executive staff members who were focused on by the Grand Jury. The responses contained
17 herein are limited to those of the Riverside County Sheriff's Department and are not intended, by
18 implication or otherwise, to be a response by Human Resources, the Auditor-Controller, the
19 Board of Supervisors, or the County of Riverside.

20 **Background**

21 Due to the extremely brief and vague nature of the Grand Jury Report and in an attempt
22 to present a full and more complete understanding of the circumstances that give rise to this
23 report as well as provide the reader with a better understanding as to the position of Respondent,
24 it is necessary to provide some additional background information prior to responding to the
25 specific findings and recommendations contained in the report. Respondent would have preferred

1 the opportunity mandated in Penal Code § 933.05(e) to meet with the Grand Jury and clarify
2 some of the factual errors and misunderstandings that ended up in this report and is hopeful that
3 in future inquiries this opportunity will be afforded.

4 This response will be limited to the comments contained in the Grand Jury report that
5 pertain to matters within the purview of Respondent. Since the Grand Jury Report focuses its
6 review on the pre-selected members within the Executive Staff, this response will likewise be so
7 limited. This limited response, however, should in no way be interpreted to imply that it is the
8 Respondent's position that there are no other similar practices or similarly situated individuals in
9 other departments within the County of Riverside.

10 Prior to May of 2001, the County of Riverside operated on a negative-reporting payroll
11 system. Under this system, payroll was instituted on a pre-established work schedule and
12 adjusted only for changes. Employees were not required to submit Payroll Activity Reports
13 unless they had used reportable time such as annual leave time, sick leave time, holiday time or
14 similarly accrued time. In May of 2001, this system was changed with the adoption of People-
15 Soft electronic payroll system. This new system changed from a negative-reporting system to a
16 positive-reporting system. Under the new system, every employee is now required to complete a
17 Payroll Activity Report for each pay period regardless of whether they used any other reportable
18 time. Any employee failing to complete this report would not be compensated.

19 Many serious problems were presented with the adoption of this new payroll system,
20 among them the underlying issue giving rise to this Grand Jury Report. The People-Soft system
21 is built on the concept of an hourly-rate of compensation and works acceptably for FLSA non-
22 exempt (hourly) employees. The County of Riverside, and the Riverside County Sheriff's
23 Department, quickly learned, however, that the system does not adequately address the real-life
24 working conditions of FLSA exempt employees who pursuant to federal law are salary based. As
25 an example, if an exempt employee worked 85 hours rather than 80 hours in a single pay period,

1 the employee could not accurately complete their Payroll Activity Report. If they completed it
2 accurately, the system would not recognize them as exempt and pay them 85 hours rather than 80
3 hours. Likewise, the employee would underpay them if they reported 75 hours. As a result,
4 accounting personnel were forced to adjust the Payroll Activity Reports to meet the number of
5 hours expected by the People-Soft system as well as comply with FLSA laws to insure accurate
6 employee compensation.¹

7 Contrary to the implications of this Grand Jury Report, concern over this issue surfaced
8 long before the inception of this investigation. Almost immediately exempt employees became
9 concerned about submitting Payroll Activity Reports that were not reflective of actual hours
10 worked. Employees took a variety of approaches; while some simply complied with the requests
11 of the accounting staff and submitted the standard shifts, others continued to submit reports with
12 adjustments for actual time worked and allowed accounting staff to make the adjustments. Other
13 employees completed the standard shifts; however, included hand-written disclaimers on each
14 Payroll Activity Report that hours worked were not the same as hours indicated in the event
15 someone (such as this Grand Jury) questioned them regarding the discrepancies.

16 Similar and related concerns arose over the County policy for compensating exempt
17 employees within the applicable federal and state laws. For example, Resolution No. 2005-475
18 defines a working day as Monday through Friday and nowhere defines what a normal work shift
19 hours would be. Individuals which are the focus of this Grand Jury Report are public safety
20 employees and are required to and are available 24-7. These specific employees were often
21 requested to adjust their shift-hours, days off, and work schedules on a daily basis to
22 accommodate the needs of the Department and meet the demands of their responsibilities.
23 Several of these individuals, including the two singled-out by this Grand Jury, were entrusted
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25 ¹ 29 C.F.R. 541 et. seq.

1 with major Departmental responsibilities that demanded far in excess of a standard 40-hour/5-
2 day work week. Again, the People-Soft system was unable to accommodate the actual shift hours
3 and schedule changes worked by these employees and Resolution 2005-475 (and previous
4 resolutions) identifies them as FLSA exempt employees specifically exempting them from
5 overtime compensation of any type. As a result, the hours reflected on the Payroll Activity
6 Reports were not representative of the actual hours worked. Respondent provided for allowances
7 to those employees who were requested to change from the standard schedule (Monday through
8 Friday) by allowing for schedule adjustments where possible. For reasons already stated, these
9 changes may not be reflected in the employee's Payroll Activity Report. Although this
10 information was provided to the Grand Jury, their Report failed to consider the impact of federal
11 law or the limitations of the People-Soft payroll system utilized by the county.

12 Additionally, in December of 2003, (and updated on August 17, 2005) Respondent
13 adopted a standard operating procedure that addressed this specific issue for exempt employees
14 assigned to Sheriff's Administration. The procedure required employees to reflect on their
15 Payroll Activity Report time off when the employee was absent for one or more regular work
16 days. This procedure standardized the practice and established a baseline that affected employees
17 could use for consistency and ensured compliance with FLSA recordkeeping² and compensation
18 requirements.³ To date, the People-Soft payroll system utilized by the County of Riverside has
19 proven inadequate to appropriately address FLSA exempt employees. In recognition of this
20 issue, the County Executive Officer on March 16, 2006, issued a policy that attempts to address
21 this problem.⁴

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23 ² 29 C.F.R. 516.3

24 ³ 29 C.F.R. 541 et. seq.

25 ⁴ Memorandum dated March 16, 2006 to Department Heads from Larry Parrish, County Executive Officer modifying the accounting process for exempt employees. This memorandum eliminates the daily time accounting requirement.

1 It may also prove helpful at the onset to inform the reader and this court that at no time
2 has the Grand Jury made inquiry of Respondent concerning the nature of the investigation or the
3 concerns to which they are investigating. Respondent believes that had this opportunity been
4 afforded, many of the errors and misrepresentations within this Report may have been avoided.
5 Finally and not without significance, Respondent has learned that this investigation was
6 prompted by a complaint filed by a former and disgruntled employee who has made it known his
7 dislike for the targeted individuals of this investigation. This employee was motivated to the
8 point where he illegally and without authorization accessed and removed official records of the
9 Department. While this fact has little direct relevance to this Grand Jury investigation (except
10 where noted), it sheds much light on the underlying tone with which this investigation was
11 initiated and provides a certain clarity as to the final conclusions reached.

12 It is with this general background and information that Respondent provides the
13 following responses to the Grand Jury Report.

14 **Grand Jury Finding #1**

15 The County of Riverside has an Annual Leave redemption policy, referred to as "buy
16 down," for employees who are entitled to this benefit. Each calendar year they are permitted to
17 submit two requests for payment, not to exceed a combined total of 160 hours. The first 80 hours
18 may be redeemed on an employee's signature. Due to budgetary limitations, any additional hours
19 up to a maximum of 80 must have agency/department head approval.

19 **Riverside County Sheriff's Department**

20 **Response to Grand Jury Finding #1:**

21 The Respondent agrees with this finding. This finding merely recites existing language
22 contained in County Resolution No. 2005-475 Article 6 Section 704 B which provides:

23 An employee, other than an agency/department head, who accrues Annual Leave
24 pursuant to the provisions of this Resolution, may request to receive pay in lieu of
25 up to eighty (80) hours of Annual Leave per calendar year. Upon approval of
his/her agency/department head, such employee may receive pay in lieu of an
additional eighty (80) hours of Annual Leave during the same calendar year

1 provided, however, that no employee shall receive pay in lieu of more than 160
2 hours of Annual Leave in any calendar year.

3 Similar language is contained in previous resolutions and/or agreements and was
4 effective for Management, Confidential and Unrepresented members in July of 1998; Sheriff's
5 Executive Staff (Undersheriff, Assistant Sheriff, Chief Deputy) in February of 1999; and LEMU
6 members in July of 2003.

7 **Grand Jury Finding #2**

8 **Riverside County Sheriff's Department**

9 The Grand Jury subpoenaed and received payroll and annual leave records of the sworn
10 Executive Staff for the years 2000 through 2005, with the exception of some records. The
11 Sheriff's Department custodian of records was unable to locate the year 2000 records for
employees with the last name beginning with the letter "L."

12 **Response to Grand Jury Finding #2:**

13 The Respondent disagrees partially with the finding. The Grand Jury did in fact subpoena
14 and received payroll and annual leave records of pre-selected members of the sworn Executive
15 Staff for the stated years. While the storage box containing the 2000 records including names
16 beginning with "L" was not immediately located, it was located the following week and this
17 information provided to the Grand Jury. The Grand Jury Report fails to acknowledge this fact.

18 The Grand Jury Report also glosses over a rather important fact. The only records sought
19 were the records of six specifically targeted individuals. An objective investigation interested in
20 examining the payroll practices of this or any other County department should not limit the
21 examination to pre-determined records of select individuals. The Report implies that a
22 comprehensive examination, "with the exception of some records" was conducted when in fact
23 the review was merely a targeted attack on specific members of the Executive Staff lodged by a
24 discontented former employee. During the time frame specified, there were a total of 21
25 individuals who made up the Executive Staff; the Grand Jury examined the records of only 6

1 individuals. This limited review fails to establish a credible foundation necessary for making
2 such broad and sweeping conclusions as contained in the Report.

3 Also of note and omitted from this report is the fact that the Grand Jury was made aware
4 of the fact that the trustworthiness of these records had been compromised. Respondent had
5 become aware that the individual who had raised this issue with the Grand Jury had illegally
6 accessed and removed some or all of these records. As such, the Custodian of Records was
7 unable to attest to the validity of the records produced.

8 **Grand Jury Finding #3**

9 Payroll Activity Reports (RSD Form 344) provided by the Sheriff's Department revealed
10 that until the start of this Grand Jury investigation, only a limited number of Executive Staff
11 reported annual leave usage.

12 **Riverside County Sheriff's Department**

13 **Response to Grand Jury Finding #3:**

14 The Respondent disagrees partially with this finding. The first and patently obvious
15 problem with this finding is the fact that the Report is silent as to when the investigation began
16 and incorrectly assumes that Respondent not only knew, but acted on this information. As of this
17 writing, Respondent can only assume that the investigation began sometime during the seating of
18 this particular Grand Jury, fiscal year 2005-2006.

19 This finding also makes an improper implication that the practice of reporting Annual
20 Leave usage changed upon becoming aware of the investigation. Not only is the implication
21 improper, it is factually inconsistent. While it may be pointing out the obvious, Grand Jury
22 investigations are conducted in secret, and the Grand Jury has never provided Respondent with
23 any notice regarding the focus of their investigation. The first hint to Respondent that the Grand
24 Jury was making inquiry into certain payroll records and/or practices was the service of the
25 above referenced subpoena for payroll records. These documents were promptly gathered and

1 policy. First, both practices referred to are permitted by County policy. Resolution 2005-475
2 (and previous resolutions) provide for accrual and usage of Annual Leave time as well as the
3 "Buy Out" provision. Both of these provisions are exercised by employees throughout the
4 County system on a regular basis. Further, it should not be inferred that employees who do not
5 utilize Annual Leave time in a given year did something improper.

6 **Grand Jury Finding #5**

7 The lack of proper documentation creates the appearance of impropriety with respect to
8 the use of public monies. Payroll Activity Reports revealed:

- 9 • Unsigned payroll sheets
- 10 • Multiple predated payroll sheets, some of which were submitted months later
- 11 • No supervisor signature and/or signature date
- 12 • Approval of own Payroll Activity Reports, and no leave time annotated, except
13 for approved holidays.

14 **Riverside County Sheriff's Department**

15 **Response to Grand Jury Finding #5:**

16 Respondent agrees with the finding.

17 **Grand Jury Finding #6**

18 A January 2006 scheduled countywide internal audit on Management Leave Analysis
19 (annual leave) for internal controls was cancelled.

20 **Riverside County Sheriff's Department**

21 **Response to Grand Jury Finding #6:**

22 This finding does not pertain to matters under the control of Respondent.

23 **Grand Jury Recommendation #1**

24 Sheriff's Department Executive Staff adhere to General Orders 205.03-205.07, which
25 detail duty time and the proper documentation of leave reports.

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1 **Riverside County Sheriff's Department**

2 **Response to Grand Jury Recommendation #1:**

3 This recommendation has been implemented. The General Orders Sections listed provide
4 the following:

- 5 205.03 The Department shall keep complete and detailed records regarding the
6 attendance and pay status of each employee.
7 205.04 Supervisors shall ensure that the provisions of the Family Medical Leave
8 Act (FMLA) are followed.
9 205.05 Department members shall report for duty promptly and properly at the
10 time specified by their supervisors.
11 205.06 Department members who find that they cannot report for duty, for any
12 reason, shall personally notify their supervisor prior to the start of the work
13 shift, or as soon as possible. Failure to not properly absent one's self from
14 duty shall be deemed misconduct.
15 205.07 A Department employee shall be responsible for proper documentation of
16 leave reports. A leave report shall be filed with an employee's immediate
17 supervisor no later than one working day after the employee's return to
18 duty from use of sick time. A leave report shall be filed with an
19 employee's supervisor prior to the use of vacation, holiday time,
20 compensation time off and military leave time.

21 With the exception of the occasional ministerial errors mentioned above regarding Grand
22 Jury Finding No. 5, Respondent has implemented this recommendation. With regard to the
23 ministerial errors, Respondent has further refined the procedures for processing Payroll Activity
24 Reports in an attempt to reduce these errors. This notwithstanding, Respondent believes that the
25 Grand Jury Report has failed to establish any credible evidence that the Executive Staff members
referred to have breached the listed General Orders sections.

Grand Jury Recommendation #2

Sheriff's Department Executive Staff adhere to Article 21, Sections 2101 and 2102 of
County Resolution 2005-475, which encourages the use of Annual Leave.

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1 **Riverside County Sheriff's Department**

2 **Response to Grand Jury Recommendation #2:**

3 This recommendation has been implemented. Contrary to the implications of the Grand
4 Jury, the Sheriff's Department Executive Staff comply with the referenced sections. The only
5 finding of the Grand Jury relevant to the cited sections established that not every Executive Staff
6 member has used Annual Leave time during a given calendar year. While Section 2102 states
7 that leave time "shall be encouraged," it is not required. Absence a legal requirement, the
8 Respondent, nor the Grand Jury, has the legal authority to compel employees to use their accrued
9 Annual Leave time. This same Resolution, in fact, takes this possibility into account by
10 providing a cap on the total number of hours that may be accumulated by the affected
11 employees. Such a consideration would likely not be necessary if employees were able to take
12 Annual Leave time every year.⁵

13 **Grand Jury Recommendation #3**

14 Executive Office develop and implement a policy governing the reporting of time, and
15 the recording of annual leave usage for exempt employees.

16 **Riverside County Sheriff's Department**

17 **Response to Grand Jury Recommendation #3:**

18 This recommendation does not pertain to matters under the control of Respondent.

19 **Grand Jury Recommendation #4**

20 Riverside County Board of Supervisors hire an independent forensic accounting firm to
21 audit timekeeping and annual leave records for the Sheriff's Department Executive Staff for the
22 years 2000 through 2005, and that these finding be made public.

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⁵ Resolution 2005-475 §2103

1 **Riverside County Sheriff's Department**

2 **Response to Grand Jury Recommendation #4:**

3 This recommendation does not pertain to matters under the control of Respondent.
4 Respondent, however, takes the position that the issues raised by this Grand Jury Report involve
5 County policies that not only affect the Sheriff's Department, but all County Departments that
6 have FLSA exempt employees. Any audit conducted should include all Departments. In addition,
7 any audit should be conducted within applicable statutory limitations.

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9 **Grand Jury Recommendation #5**

10 Auditor-Controller perform a follow-up comprehensive management Leave Analysis
11 audit of the Sheriff's Department Executive Staff every two years.

12 **Riverside County Sheriff's Department**

13 **Response to Grand Jury Recommendation #5:**

14 This recommendation does not pertain to matters under the control of Respondent.
15 Respondent, however, takes the position that the issues raised by this Grand Jury Report involve
16 County policies that not only affect the Sheriff's Department, but all County Departments that
17 have FLSA exempt employees. Any audit conducted should include all Departments. In addition,
18 any audit should be conducted within applicable statutory limitations.

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20 Submitted this 24th day of August, 2006,

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23 Bob Doyle, Sheriff-Coroner

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