

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

226



FROM: Executive Office

SUBMITTAL DATE:
June 2, 2015

SUBJECT: Response to the 2014-15 Grand Jury Report: Riverside County Information Technology Internal Audit Report

RECOMMENDED MOTION: That the Board of Supervisors:

- Approve with or without modification, the attached response to the Grand Jury's recommendation regarding Riverside County Information Technology Internal Audit Report. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, to the Presiding Judge and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: 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.

90dayf11responseRCITinIAudit06.15

Departmental Concurrence

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy X <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	
SOURCE OF FUNDS:				Budget Adjustment:	
				For Fiscal Year:	

C.E.O. RECOMMENDATION:

APPROVE

BY: 
George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.:

District:

Agenda Number:

3-12

**RESPONSE TO
2014-2015 GRAND JURY REPORT
Riverside County Information Technology
Internal Audit Report**

Following is the response of the Riverside County Information Technology (RCIT) to the above referenced Grand Jury Report. As the Grand Jury has chosen to reference the acts of the Riverside County Executive Officer, the Office of Riverside County Counsel and the Riverside County Auditor-Controller in its findings, this response has also been prepared on behalf of each of these County Officials and their departments.

FINDING NO. 1:

RCIT Non-Compliance

During the period July 1, 2012, through, June 30, 2013, the Auditor-Controller performed an internal audit of RCIT. The Internal Audit Report 2013-011 was completed and submitted to the BOS on November 26, 2014, and placed on the BOS agenda for January 06, 2015.

BOS Resolution No. 83-338 III C states in part:

...The head of a county entity audited will reply in writing to the Auditor-Controller to the specific audit findings and recommendations within 30 calendar days of receipt of the written findings and recommendations.

As of the date of this report, RCIT has not complied with a written response as mandated in BOS Resolution No. 83-338 III C. The Internal Audit Report 2013-011 indicated it would submit the audit report to the BOS without RCIT's written consent.

Response: Respondent partially agrees with this finding.

RCIT has submitted its response to Internal Audit Report No. 2013-011. While submittal was appropriately delayed as the position of RCIT Director was filled with an Interim Director pending recruitment and hiring of a permanent RCIT Director, and short staffed as well. The new RCIT Director came aboard on or about of May 4, 2015 and issued the RCIT written response on May 27, 2015, which is within 30 days of his assuming the role as RCIT Director. Considering the circumstances, the response to the Auditor-Controller Internal Audit Report, while not received within the timeframe set forth in Board of Supervisors Resolution No. 83-338, the submission was timely based upon the circumstances.

RECOMMENDATION NO. 1:

RCIT Non-Compliance

RCIT shall comply with Resolution No. 83-338 C and submit a written reply to the Auditor-Controller.

Response: RCIT agrees with this recommendation.

RCIT submitted its response to the Internal Audit Report to the Auditor-Controller on May 27, 2015.

FINDING NO. 2:

County Executive Officer Failure to Enforce

The County Executive Officer is not enforcing BOS Resolution No. 83-338 III C and BOS Policy A-33, Responses to All Audit Reports, requiring RCIT to reply in writing.

Response: Respondent wholly disagrees with the finding.

Respondent disagrees with the statement and inference that the County Executive Officer is not enforcing Board of Supervisors Resolution No. 83-338 and Board Policy A-33. The Grand Jury has provided no legitimate basis for such an overly broad assertion and finding. They have based their conclusion on the late filing of one department that was, as referenced above, without a permanent Director and short staffed during the time period that the Internal Audit Report was presented.

There are approximately 42 departments and agencies of the County of Riverside that are subject to audit by the Auditor-Controller. Yet, the Grand Jury's only justification for its finding is the late submittal of one department. It is the policy and practice that County Departments timely respond to internal audits. The Riverside County Executive Officer and his staff take all of their responsibilities seriously and carry them out judiciously and with the utmost consideration of the public trust.

RECOMMENDATION NO. 2:

County Executive Officer Failure to Enforce

The County executive Officer shall enforce Resolution No. 83-338 III C along with BOS Policy A-33 (see Attachment A).

Response: Respondent agrees with this recommendation.

The recommendation improperly suggests that the County Executive Officer has failed to exercise his duties in enforcing the referenced policy. The County Executive Officer has, and

will continue to enforce Resolution No. 83-338 III C and BOS Policy A-33. There has not been a lack of enforcement. One department's late submittal under the circumstances does not amount to "Failure to Enforce".

FINDING NO. 3:

County Counsel Interference

On January 21, 2014, The Riverside County Grand Jury (Grand Jury) requested RCIT to provide the Grand Jury with a copy of its written reply to the Internal Audit Report 2013-011. RCIT failed to comply and informed the Grand Jury verbally as well as facsimile from the RCIT Interim CIO, dated January 21, 2015, that the Office of County Counsel Riverside County (County Counsel) has advised them to have all Grand Jury requests and questions directed to RCIT in writing, for County Counsel to review all requests in advance.

California Penal Code §921 states in part:

The grand jury is entitled to free access...to all public records within the county.

California Penal Code §925 states in part:

The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county...

Response: Respondent wholly disagrees with the finding.

Respondent disagrees with the Grand Jury's statement that the Office of County Counsel's (County Counsel) instruction to its client that requests from the Grand Jury shall be in writing is somehow interference. The Grand Jury clearly does not fully understand the role of County Counsel, nor does it understand the limits of grand jury action.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See CA Government Code §§ 26526, 26529 & 27642) Also the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury maintains that they are "entitled to free access...to all *public records* within the county." (CA Penal Code §921) We do not disagree. However, the Grand Jury is not entitled to access to "*all*" records; *only access to public records*. One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client by requesting that a particular request be made in writing and that the request be reviewed by counsel so as to advise its client on compliance with the law is misguided and contrary to the County Counsel's

ethical and statutory duties to its client.. Expecting its client to fend for itself and not avail itself of counsel, would have been a dereliction of County Counsel’s responsibilities.

Each year, the County receives dozens of inquiries from the grand jury pertaining to its operations, programs and services. The grand jury often submits its requests in writing for information to the various county departments. There are dozens of site visits and release of information on County programs and services that never involve the County Counsel’s Office.

In this particular instance, County Counsel was contacted by the Acting RCIT Director who expressed concern regarding a request from the grand jury. We advised our client to request that the grand jury put its request in writing so that we may properly advise RCIT on compliance with the request. It is important to note that the grand jury was never denied access to information. The grand jury voluntarily declined to put its request in writing and abandoned its pursuit of the information.

Furthermore, this “Finding” is indicative of the Grand Jury’s misunderstanding of the role of County Counsel to represent its client, the County of Riverside and its constituent entities. Based upon the foregoing facts and circumstances, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-310, and 3-600 of the California Rules of Professional Conduct.

RECOMMENDATION NO. 3:

County Counsel Interference

County Counsel shall recognize the Grand Jury as an independent body, which operates autonomously, once impaneled.

To assist in the understanding of the civil functions, scope of responsibilities and powers of the Grand Jury, County Counsel shall complete additional training from the State of California, Office of the Attorney General on Sections 888-945 of the California Penal Code.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable.

The Recommendation is wholly without factual or legal basis. The grand jury simply objects to the County Counsel performing his ethical and statutory duties and responsibilities.

The implication that the County Counsel requires training on the provisions of CA Penal Code §§888-945 is wholly inappropriate based upon the foregoing discussion. Moreover, the attached PowerPoint Presentation entitled “*The Investigatory and Reporting Authority of Civil Grand Juries Acting in their “Watchdog” Capacity*” by Gregory P. Priamos, County Counsel which was used to train the Office of County Counsel attorneys, County Department Directors, and most recently, the California County Counsels’ Association, is evidence that the County Counsel has substantial expertise in this field and does not require any training. (See Attachment A).

Given that the role of the County Counsel's Office is an important one and one that should be explained in greater detail to the members of the grand jury, the County Counsel has committed to be involved in training the members of the new grand jury in July following empanelment pursuant to Penal Code section 914. The training will specifically address the role, statutory duties, and ethical obligations of the County Counsel as it relates to the representation of its client, the County of Riverside.

FINDING NO. 4:

Distribution of Audit Reports

The Grand Jury has not received Internal Audit Reports from the Auditor-Controller in several years.

BOS Resolution No. 83-338 II D states in part:

...Audit reports, except for request audits, shall be addressed to the head of the entity audited, with copies to the Board of Supervisors, Administrative Officer, District Attorney, and the Grand Jury. For requested audits, the report shall be addressed to the proper authority requesting the audit (unless a different addressee is desired by the requestor), with copies to the Board of Supervisors, Administrative Officer, District Attorney, and Grand Jury...

Response: Respondent agrees with the finding.

The Riverside County Auditor-Controller is committed to the responsible reporting of audits conducted and has in the past provided copies to the Grand Jury. Due to turnover of personnel in the Chief Internal Auditor position, the discontinuance of printing bound copies of audit reports, and the posting of audit reports on the Auditor-Controller's website the requirement was not enforced. The post audit procedures have been revised to ensure the proper distribution of Internal Audit Reports. Internal Audit staff will provide a copy of each audit report to the Grand Jury after the Board of Supervisors have taken action to receive and file.


RECOMMENDATION NO. 4:

Distribution of Audit Reports

In accordance with BOS Resolution No. 83-338 II D, the Auditor-Controller shall provide copies of all Internal Audit Reports to the Grand Jury.

Response: Respondent agrees with the recommendation.

The Riverside County Auditor-Controller Internal Audit Division will provide the Grand Jury a copy of Internal Audit Reports upon the Board of Supervisors acceptance of the Receive and File Form 11.



**THE INVESTIGATORY AND REPORTING
AUTHORITY OF CIVIL GRAND JURIES
ACTING IN THEIR
"WATCHDOG" CAPACITY**

Gregory P. Primos
County Counsel

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I. INTRODUCTION.

- One of the key functions of grand juries in California and elsewhere is to act in the capacity of a "watchdog" in investigating the operations and affairs of governmental agencies.
- The civil grand jury is an instrumentality of the courts of the state. (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1171).
- Civil grand jury proceedings are conducted in secret, subject to certain exceptions, in order to:
 - encourage hesitant witnesses to come forward voluntarily
 - encourage witnesses to testify fully and frankly
 - protect the reputation of those who may be unjustly accused during the course of an investigation. (*Goldstein v. Superior Court* (2008) 45 Cal.4th 218, 226-227).

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II. CONSTITUTIONAL AND STATUTORY BASIS FOR THE CALIFORNIA GRAND JURY SYSTEM.

- The California Constitution, from very early in the State's history, has recognized and required the establishment of grand juries in each county. The 1949 Constitution recognized grand juries in Article I, Section 8. Essentially, that same language now exists in Article I, Section 23. California courts, in a variety of contexts, have stated that California's constitutional recognition and requirement of a civil grand jury system finds its origin in the common law of England dating back hundreds of years.

(*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1170-71; *Unnamed Minority Members, et al., Grand Jury v. Superior Court* (1988) 208 Cal.App.3d 1344; *Daily Journal Corp. v. Superior Court* (1999) 20 Cal.4th 1117, 1122; *People v. Superior Court (Mouchpourab)* (2008) 78 Cal.App.4th 403, 427.)

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- California's statutory provisions concerning the formation, composition and functioning of grand juries are contained mainly within Title 4 of Part 2 of the Penal Code, Penal Code Sections 888 through 939.91.
- Sections 914 through 939.91 set forth the powers and duties of grand juries. General provisions are set forth in Section 914 through 924.6.
- Grand jury expenditures (Section 914.5).
- Selection of officers and determination of procedural rules (Section 916).
- Various inquiries within the grand juries purview (Sections 917, 918, 919, 920, 921, 922).
- Matters concerning grand jury secrecy. (Sections 924 through 924.6).

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- Section 925 authorizes examination of "the operations, accounts and records of the officers, departments, or functions of the county, including those operations, accounts and records of any special legislative district or other district in the county created pursuant to State law for which the officers of the county are serving in their ex officio capacity as officers of the districts."
- Section 927 authorizes grand juries to investigate and report upon the salaries of county officials.
- Section 928 authorizes grand juries to investigate and report upon the "needs" of county officers, including the abolition or creation of offices and equipment.
- Section 921, authorizes grand jury access to the public prisons, and to the examination of all public records within the county.

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- Sections 933 and 933.06 concern the preparation of grand jury final reports containing their findings and recommendations. Section 933(c) requires "agencies," including counties, successor agencies, housing authorities, and districts, to respond in writing to the grand jury report.
- This response is to be submitted to the Presiding Judge of the Superior Court no later than 90 days after the grand jury has submitted its report.
- The responding person or entity must indicate whether they agree, wholly disagree or partially disagree with the findings.
- The response must specify the portion of the findings that is disputed and an explanation of the reasons therefor.
- The response must also indicate whether the recommendations have been implemented, will be implemented, require further analysis, or will not be implemented.

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- Section 933.1 through 933.6 vest grand juries with investigative authority over other entities.
- Section 948.1 authorizes investigations of the books and records of successor agencies and housing authorities, as well as their "method" or system of performing the duties of such agency or authority."
- Sections 933.5 and 933.6 authorize investigations of the books and records (but not "operations") of, respectively, special purpose assessing or taxing districts and LAFCDs, and of certain private nonprofit corporations "established by or operated on behalf of a public entity."

- Section 934 gives grand juries the right to seek advice from the court, county counsel, district attorney and/or the Attorney General.
- Sections 986, 986.5 and 936.7 authorize grand juries to retain special counsel.
- Sections 937 through 934.3 allow the hiring of interpreters and stenographers.
- Sections 989 through 989.91 concern the conduct of grand jury proceedings.

- Section 939 provides:

"No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them."
- When a grand jury is questioning witnesses at a grand jury session, the presence of non-witnesses (including counsel for witnesses in civil proceedings) is prohibited unless that a witness may have caused present when testifying under oath before a civil grand jury. (See Penal Code 939.22.)
- A grand jury may admonish a witness not to disclose what the witness learns in the grand jury room, but cannot require the witness to execute an admonishment form.

- Section 939.1 authorizes grand juries, in limited circumstances, to meet openly if the court finds that the subject matter of the investigation affects the public welfare involving the alleged corruption, misfeasance or malfeasance in office or dereliction of duty of public officials or employees.
- Sections 939.2 and 939.4 authorize grand juries to issue subpoenas compelling attendance of witnesses, and administer oaths.
- Subpoenas must be signed by the District Attorney or Judge of the Superior Court.

III. **GENERAL PRINCIPLES LIMITING THE SCOPE OF THE INVESTIGATORY AUTHORITY OF CIVIL GRAND JURIES.**

A. **Grand Juries Have Only Those Powers Expressly Authorized by Statute.**

- Section 925 confers upon grand juries the discretion to (1) "examine the books and records" of a county, and (2) "investigate and report upon the operations, accounts, and records of the officers, departments, functions, and method or system of performing the duties" of a county.
- Courts have ruled that grand juries have no inherent investigatory authority, and that their only authority to investigate is as expressly granted by the legislature. (*Board of Trustees v. Leach*, *supra*, 258 Cal.App.2d at 285.)

- Nor do they possess other non-investigative powers beyond those expressly granted by statute. (*McClellin Newsom case*, *supra*, 44 Cal.3d at 1171-1172; 1975 *Grand Jury*, *supra*, 13 Cal.3d at 437; *Bd. of Ret. v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, 1191-1192.)
- Thus, cases have repeatedly limited grand juries' efforts to exercise investigatory and other powers beyond those expressly granted by statute. (*Allen v. Perry* (1984) 1 Cal.2d 607, 608-609).
- This authority is limited to procedural and operational matters, and is distinguishable from "substantive concerns involving the merit, wisdom, or expediency of . . . policy determinations." (78 Ops.Ca.Atty.Gen. 220 (1995).

IV. SPECIFIC LIMITATIONS ON GRAND JURIES' INVESTIGATIVE AUTHORITY.

A. Grand Juries May Not Compel The Disclosure of Information Protected by the Attorney-Client or Work-Product Privileges.

- The Attorney General has concluded that grand juries are not entitled to access to such information. (70 Ops.Cal.Atty.Gen 28 (1987).)
- The Attorney General opinion traces the history of the attorney-client privilege, including its applicability to government attorneys and officials.

- In concluding that the work-product privilege also applies in grand jury proceedings, the Attorney General relied upon the common law's recognition of the broad applicability of the specific work-product privilege; the application of the privilege by the federal courts to federal grand jury proceedings; the similarity, as recognized by the cases, between grand jury proceedings and pretrial discovery in which the privilege clearly applies by statute; and on the fact that "the various privileges found in the Constitution, statutes, and common law historically have been applied in grand jury proceedings." (*Id.*, at p. 34, citing *Branzburg v. Hayes* (1972) 408 U.S. 665, 688; *in re Sealed Case/Grand Jury Proceedings* 473 F.2d 840, 844.)

B. Grand Juries Are Not Entitled to Other Materials or Information Protected by Constitutional, Statutory or Common Law Privileges.

- The Attorney General's opinion concluding that grand juries may not obtain access to information protected by either the attorney-client or the attorney work-product privileges would apply with equal force to other privileges as well. (70 Ops.Cal.Atty.Gen. at pp. 33-37.)
- Right to Privacy (California Constitution, Article 1, Section 1)
- Medical Records (*Division of Medical Quality v. Gherardini* (1979) 89 Cal.App.3d 660, 680-683)
- Financial Records (Government Code Section 7476)
- Juvenile Records (Welfare and Institutions Code Sections 827 & 10850)
- Mental Health Records (Welfare and Institutions Code Section 5328)

- Under this rule, grand juries are not entitled to materials protected from disclosure by federal law, such as, for example, certain affordable housing subsidy/rental voucher information under Section 8. They similarly may not be entitled to access documents which are exempt from disclosure under the Public Records Act (Government Code Section 6254) although there is no case decision addressing this issue.
- However, the Attorney General has concluded that when a grand jury is conducting a civil "watchdog" investigation of a local police agency, the grand jury has the right to examine peace officer personnel records, including citizens' complaints, or information compiled from such records, without first obtaining issuance of a subpoena or court order. This opinion relies upon Penal Code Section 892.7(a) which grants an affirmative right for a grand jury to examine such personnel records without issuance of a subpoena or court order. (79 Ops.Cal.Atty.Gen. 185 (1996).)

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C. Grand Juries Are Not Entitled to Interfere with Day-to-Day Administrative Functions by Virtue of the Government Deliberative Process Privilege.

- Under the broad rule articulated by the Attorney General (70 Ops.Cal.Atty.Gen. 28, 33-37), one common-law privilege which would broadly limit grand jury access to public agency operations is the governmental deliberative process privilege, discussed in detail in Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325. In Times Mirror, the California Supreme Court held that the governmental deliberative process privilege protects government officials from being compelled under the Public Records Act to disclose information and materials reflecting the preliminary day-to-day operations, where such disclosure would "inhibit" routine meetings and "expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."
- Based on the opinion of the Attorney General, this common law governmental deliberative process privilege may apply with equal force to civil grand jury proceedings.

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V. MISCELLANEOUS ISSUES.

A. Subsequent Grand Juries May Continue an Investigation by a Previous Grand Jury.

- Penal Code Section 924.4 expressly authorizes one grand jury to transmit evidence and materials concerning its investigations to a subsequent grand jury. (See 72 Ops.Cal.Atty.Gen. 128.)

B. Subsequent Grand Juries Probably May Conduct Repeat Investigations of Issues Addressed by Previous Grand Jury Inquiries.

- Another commonly asked question about grand juries is whether subsequent grand juries may repeatedly conduct investigations concerning the same issues or departments after seemingly exhaustive investigation of such issues or departments by previous grand juries. No reported decision has addressed this point.

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• A more restrictive reading of Section 925 would be consistent with the common law limitations imposed on grand juries to act with "mature discretion," to avoid "fishing expeditions" (see Board of Trustees v. Leach, *supra*, 258 Cal.App.2d at 288-289), and attempts at "indiscriminate meddling with public or private affairs." (Samish v. Superior Court (1938) 28 Cal.App.2d 685, 688), and "not to roam at will . . . reporting on what it might view as shortcomings in distant locales." (1973 Grand Jury, *supra*, 13 Cal.3d at 487-488.)

• Recognizing the importance which has been attributed to the civil grand jury and its "watchdog" function (Goldstein v. Superior Court (2008) 45 Cal.4th 218, 226; 1973 Grand Jury, *supra*, 13 Cal.3d at 486), it would seem to be counterintuitive to conclude that future grand juries are forever precluded from addressing important local issues simply because one previous grand jury addressed the issue. This would seem especially true where a matter raised by a grand jury's investigation and report either went largely unchanged by an agency, for fiscal or policy reasons, or where the issue recurred after a period of several years. It thus reasonably could be argued that reading Section 925 as allowing at least limited repeat investigations more fully serves that section's legislative purpose. (Doa v. City of Los Angeles (2007) 42 Cal.4th 531, 543).

C. Limits on the Grand Jury's Reporting Power.

• The reporting function of grand juries set forth under Penal Code Section 933, has been described as "central to its effective operations in the public interest." (McClatchy Newspapers, *supra*, 44 Cal.3d at 1170-1171; Unnamed Minority Members, *supra*, 208 Cal.App.3d at 1347.) The report, having long historical basis in the English common law (see Comment, 64 Cal.L.Rev. 297, 301, (1976)), "is the only formal means by which the grand jury can hope to effectuate its recommendations." (McClatchy, *supra*, 44 Cal.3d at 1179; Unnamed Minority Members, *supra*, 208 Cal.App.3d at 1348, citing Note, Some Aspects of the California Grand Jury System, 8 Stan.L.Rev. at p. 651.)

- As with its investigatory power, however, the grand jury's power to issue reports is limited. It does not extend beyond the power expressly granted by statute. (McClatchy, supra, 44 Cal.3d at 1179; Santa Barbara County Grand Jury, supra, 58 Cal.App.4th at 1191-1192; Unnamed Minority Members, supra, 209 Cal.App.3d at 1348.)
- No power to review privileged school district personnel records. (Board of Trustees v. Leach (1968) 258 Cal.App.2d 281, 285-289).
- No authority to inspect confidential juvenile court records. (People v. Superior Court (2009 Grand Jury) (2009) 107 Cal.App.4th 488, 492).
- No authority to conduct on-scene investigations. (People v. Brown (1927) 81 Cal.App. 226).

- Accordingly, the grand jury, in issuing its report under Section 933, may not issue more than one report, or a "minority" report. (Unnamed Minority Members, supra, 208 Cal.App.3d 1344.)
- The grand jury may not issue a report which is not based on its own investigation, as required by Penal Code Section 939.9. (Id., at p. 1349.)
- The report may not set forth an intention at odds with the law, such as, for example, an intention to disclose raw data and evidence obtained during otherwise secret grand jury investigations. (McClatchy, supra, 44 Cal.3d 1162.)
- Finally, the report may not contain findings which exceed the grand jury's authority, such as matters which improperly "castigate and impugn the integrity of" (and possibly libel) specific individuals. (1979 Grand Jury, supra, 19 Cal.3d 430.)

D. Limits on Reports Concerning Successor Agencies and Housing Authorities.

- An interesting issue which has not been addressed by any reported case concerns the power of grand juries to issue reports making substantive, policy recommendations concerning successor agencies and housing authorities and even recommending (as many grand juries apparently have done) that successor agencies and/or housing authorities be abolished.
- In 64 Ops.Cal.Atty.Gen. 900 (1981), the Attorney General concluded that Section 933.5, authorizes grand juries to investigate and report upon the "methods and system" of such districts' performance of their functions, was intended only to permit grand juries to report upon the "operational procedure" of such districts. Thus, the Attorney General further concluded that Section 933.5 did not authorize grand juries to investigate or report on "the wisdom, merit, or expediency of substantive policy determinations which may fall within the jurisdiction and discretion of a particular district." (64 Ops.Cal.Atty.Gen. at p. 902.)

- Grand juries may only investigate and report on the procedures by which successor agencies and housing authorities operate. They may not properly include within their reports on successor agencies and housing authorities recommendations on substantive policy matters, including the proposed abolition of such entities.

E. Individual Grand Jurors Are Not Immune From Defamation and Other Suits Based on Statements and Conclusions Contained in Final Reports.

- Individual grand jurors may be held liable for damages based on false or defamatory statements made in grand jury reports, and holding jurors liable for such statements does not violate the jurors' due process rights.

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Penal Code Section 930 provides:

"If any grand jury shall, in the report above mentioned, comment upon any person or official which has not been indicted by such grand jury such comments shall not be deemed to be privileged."

- In Brooks v. Binderman (1995) 39 Cal.App.4th 1287, the court concluded that individual grand jurors may be held liable for damages based on false or defamatory statements made in grand jury reports.
- The court found that as long as the jury members were sufficiently informed that their comments pertaining to unindicted individuals were not privileged, the jurors acted at their own peril by criticizing plaintiffs' conduct in their reports.

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VI. RIVERSIDE COUNTY CIVIL GRAND JURY.

- Each July nineteen citizens of Riverside County are sworn as grand jurors for twelve months' service ending June 30 of the following year. Service is a full-time job with each grand jury establishing its own work schedule. Riverside County Grand Jury meets usually four days each week from 9:00 a.m. to 3:30 p.m. A grand juror receives \$25 for each full day served, and mileage and free parking.

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- On occasion, Riverside County empanels a "special grand jury" drawn from the general jury pool to hear that specific criminal case. Once that case is over, that "special grand jury" is disbanded. The "civil grand jury" (impaneled for a year) is not a criminal investigatory body, however, on rare occasions this jury may also be asked to sit on a criminal hearing of a special nature.
- The Riverside County Grand Jury is primarily a civil jury conducting general business meetings that include committee meetings inquiring into the operation of county and municipal governments.
- Conclusions of findings are developed into recommendations on how to improve county and municipal governments and presented to the Board of Supervisors.
- In addition, the Riverside County Grand Jury reviews complaints submitted by county residents.

- By law a citizen eighteen years of age or older who has been a resident of the county for one year immediately before being selected, is a person of ordinary intelligence and good character, and possesses sufficient knowledge of the English language is qualified to be a candidate.
- A person is not competent to act as a grand juror if any of the following apply: the person is serving as a trial juror or has been discharged as a grand juror in any court within one year; the person has been convicted of malfeasance in office or any felony or any other high crime; the person is serving as an elected public officer.

- In February of each year, a public announcement is posted soliciting applicants for the grand jury. Application is made and submitted to a committee of judges for review. Qualified persons are then invited to an interview.
- The Superior Court Judges try to nominate persons representing the cultural, ethnic, and diverse life experience of the County of Riverside so the grand jury may reflect the many interests and concerns of its citizens.
- From a list of qualified persons nominated by the judges, up to nineteen names are selected to comprise the grand jury. The number of names drawn may vary annually depending on the number of jurors held over from the last year's panel.

• Additionally, approximately fifteen more names are drawn and placed on an alternate jurors' list to fill vacancies created throughout the year.

• During the first week of July, the selected nineteen grand jurors are sworn in and given a description of their duties and responsibilities by the Presiding Judge of the Superior Court of Riverside County.

• The Presiding Judge of the Superior Court designates the foreperson to preside over all proceedings of the grand jury. The newly-formed grand jury body consists of the following officers to conduct general business: foreperson pro tem, secretary, sergeant at arms and parliamentarian.

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• The grand jury is divided into committees, each concentrating its attention on the investigation of certain functions of city or county government to meet whatever special needs or problems may be confronting the city or county at the time of each new grand jury's empanelment.

• All committees visit various county and municipal facilities, meet with county and municipal employees and officials, and develop recommendations for improvement.

• Committees:

- Administrative and Financial Services
- Environmental and Development Services
- Health and Community Services
- Justice System/Public Safety
- City Government and Education

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• The Riverside County Grand Jury is primarily a civil jury, performing "oversight" functions for county government.

• Additionally, any private citizen, county official, or county employee may present a complaint in writing to the grand jury. The jury holds its investigations to possible charges of malfeasance (wrongdoing) or misfeasance (doing of a lawful act in an unlawful manner) by public officials. Any request for an investigation must include detailed evidence supporting the complaint. If the Jury believes that the evidence submitted is sufficient, a detailed investigation will be held.

• Each grand jury submits final reports that pertain to county and city government and other applicable agencies throughout its term. These reports are available for public review on the Riverside Superior Court website at www.countyofriverside.us/home/grandjury.

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QUESTIONS?

EVERSIDE COUNTY OFFICE OF COUNTY COUNSEL



**COUNTY OF RIVERSIDE
OFFICE OF THE
AUDITOR-CONTROLLER**

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CONTROLLER
COUNTY OF RIVERSIDE

Paul Angulo, CPA, CGMA, MA
AUDITOR-CONTROLLER

April 8, 2015

Honorable Harold W. Hopp
Presiding Judge
Superior Court of California, County of Riverside
4050 Main Street
Riverside, CA. 92501

Reference: Response to 2014-2015 Grand Jury Report: Riverside County Information
Technology – Internal Audit Report

Dear Judge Hopp:

Pursuant to California Penal Code Section 933 et seq., please find enclosed the response of the Riverside County Auditor-Controller's Office to the above-entitled Grand Jury Report within the designated 90-day period.

The Riverside County Auditor-Controller's Office concurs with the Grand Jury's Finding 4 Distribution of Audit Reports

Respectfully,

Paul Angulo
Auditor-Controller

cc: Riverside Grand Jury ✓
Riverside County Clerk-Recorder

Findings:

Distribution of Audit Reports

4. The Grand Jury has not received Internal Audit Reports from the Auditor-Controller in several years.

BOS Resolution No. 83-338 III D states in part:

...Audit reports, except for request audits, shall be addressed to the head of the entity audited, with copies to the Board of Supervisors, Administrative Officer, District Attorney, and the Grand Jury. For requested audits, the report will be addressed to the proper authority requesting the audit (unless a different addressee is desired by the requester), with copies to the Board of Supervisors, Administrative Officer, District Attorney, and Grand Jury...

Response:

Respondent agrees with the Grand Jury Finding 4.

The Riverside County Auditor-Controller is committed to the responsible reporting of audits conducted and has in the past provided copies to the Grand Jury. Due to turnover of personnel in the Chief Internal Auditor position, the discontinuance of printing final bound copies of audit reports, and the posting of audit reports on the Auditor-Controller's website the requirement was not enforced. The post audit procedures have been revised to ensure the proper distribution of Internal Audit Reports. Internal Audit staff will provide a copy of each audit report to the Grand Jury after the Board of Supervisors have taken action to receive and file.

Recommendations:

Distribution of Audit Reports

4. In accordance to BOS Resolution No. 83-338 III D, the Auditor-Controller shall provide copies of all Internal Audit Reports to the Grand Jury.

Response to recommendation:

The Riverside County Auditor-Controller Internal Audit Division will provide the Grand Jury a copy of Internal Audit Reports upon the Board of Supervisors acceptance of the Receive and File Form 11.