CITY OF VALLEJO
OFFICE OF THE CITY MANAGER

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July 1, 2009

Honorable Ramona Garrett
Presiding Judge of the Superior Court
Solano County Superior Court
600 Union Avenue
Fairfield, CA 94533

RE: 2008-2009 Grand Jury Report Entitled: Carry Concealed Weapons License
Report date: April 7, 2009

Dear Judge Garrett:

This letter contains the City of Vallejo's response to the Solano County Grand Jury Report of April 7, 2009, which surveyed the policies and procedures for obtaining a concealed weapons permit from the County and the seven incorporated cities within the County.

The Vallejo Police Department's management staff has reviewed the Grand Jury's recommendations and provides the following response:

Finding 1a - The procedures for obtaining a license to carry a concealed weapon(s) are lengthy and convoluted. According to State law, applications may be denied if the Sheriff or Police Chief feels that the applicant has not provided sufficient "good cause" for issuance of the license.

Response to Finding 1a – Disagree wholly as applied to the Vallejo Police Department. The City of Vallejo's policies and procedures for obtaining a concealed weapons permit are clearly delineated, comprehensive in scope and derive from the criteria set forth in California Penal Code §§ 12050-12054. (See Vallejo Police Department General Order C-10 Concealed Weapons Licenses, attached to this letter) There are a number of criteria necessary for establishing "good cause". These criteria are set forth in Department General Order C-10 and in the California Penal Code.

Recommendation 1a - Since the final reason for denial of a CCW license may simply be the result of a difference of opinion between the applicant and the issuing authority regarding the need for the license; it should be incumbent upon the Sheriff or Police

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Chief to make the process as transparent as possible. This will avoid the appearance of favoritism or unwarranted discrimination. The law enforcement agencies should review their individual policies for issuance of CCW licenses to ensure they are basing their final decision on the most significant issues, which are: the safety and security of both the applicant and the citizens of the county.

Response – The Vallejo Police Department has already implemented this recommendation. The California Penal Code grants "extremely broad discretion" to both sheriffs and police departments in issuing concealed weapons licenses. (Gifford v. City of Los Angeles, 88 Cal. App. 4th 801, 805 (2001)) The current Concealed Weapons License General Order, as presented to the Grand Jury, clearly articulates the criteria necessary for obtaining a permit. Its procedures are in full compliance with State law and like State law are designed to ensure the safety and security of the public.

Applicants are advised that applications are processed in phases. First, an applicant must elaborate extensively regarding the reasons for their request. Successful applicants are then scheduled for an interview with the Professional Standards Division Commander or a designee. If the interviewer determines that a valid justification for a permit exists, the applicant then submits to a comprehensive background check. If the applicant passes the background check, he or she is required to complete a firearms safety class and undergo a psychological examination.

General Order C-10 and the written application information provided to prospective applicants are attached to this letter.

Finding 1b - The cost to the applicant varies considerably from jurisdiction to jurisdiction.

Response - The Vallejo Police Department is not aware of the concealed weapons permit fees charged by other jurisdictions and, therefore, cannot respond to this finding.

Recommendation 1b - The fees charged to the applicant should be reviewed to determine that they are in line with the actual processing costs incurred by the law enforcement agency. This may help to limit the wide variation of fees from jurisdiction to jurisdiction.

Response – The Vallejo Police Department has already implemented this recommendation. Concealed weapons application and processing fees are cost-covering only and are reviewed and updated on an annual basis. State-mandated fees are not controlled by the Police Department and are collected on a pass-through basis. The fees charged to the applicant are in line with the actual processing costs. All fees are set forth in the information provided to prospective applicants (copy attached).

Finding 1c - There may be an informal policy among some law enforcement agencies to deny access to the application process and/or discourage applicants from initiating the process.

Response: Disagree wholly as applied to the Vallejo Police Department.

Recommendation 1c - All personnel employed in the headquarters of a law enforcement agency from the front desk on up, should be instructed to not discourage applicants from initiating the CCW license process, nor to otherwise interfere with the process. Any law-abiding citizen has the right to apply for a license. The final decision and authority to issue the license lies with the chief executive of the agency: the Sheriff or Police Chief, and with no one else.

Response: The Vallejo Police Department has already implemented this recommendation. All concealed weapons permit applications are referred directly to the Commander of the Professional Standards Division and are not reviewed, processed or handled in any way by other staff members including front-desk personnel. See Paragraph II.A.1 of Departmental General Order C-10 (copy attached).

Finding 2 - The Sheriff and the Police Chiefs of the cities located within Solano County have indicated that they have fully met the requirements of California Penal Code §12053(b) requiring notification of denials. However, the Deputy Attorney General in charge of the firearms bureau of the State asserts she has not received any notifications of denials from Solano County for 2008. This may simply be due to a paperwork transmittal problem among various sections within the California Department of Justice. The Grand Jury determined that the proper address to send the denials to is:

State of California, Department of Justice
Division of Law Enforcement
P. O. Box 160487
Sacramento, CA 95816-0487
Attention: Alison Y. Merrilees, Deputy Attorney General, Bureau of Firearms

Response: Disagree in part as applied to Vallejo Police Department. The Vallejo Police Department has fully met the requirements of California Penal Code §12053(b) requiring notification of denials. The finding however is incorrect in its referrals to California Deputy Attorney General Alison Merrilees and her receipt of notifications or denials from Solano County.

As Ms. Merrilees explained in her May 13, 2009 letter to the Solano County Grand Jury, she is "not in charge of the firearms bureau of the State". According to Ms. Merrilees, she is "the Deputy Attorney General who happened to respond to a number of public records act requests". As she stated, there are a myriad of reasons why the

Department of Justice might not have retained a record of CCW denials. Chief among these, said Ms. Merrilees, is that most CCW denials occur before Livescan fingerprints are sent to the Department of Justice. The Department of Justice does not retain records of CCW denials which occurred prior to the submission of fingerprints. See letter from Deputy Attorney General Alison Merrilees to Mr. Bunyan W. Johnson, Jr. May 13, 2009 attached to this letter.

Recommendation 2 - In order to comply with the requirements of California Penal Code §12053(b), the Sheriff and the Police Chiefs should resubmit all previous reports of denials to the address indicated above. All parts of the statutes involved must be complied with in full. The Sheriff and the cities need to meet the requirements of Penal Code §12053(b) of the statute by properly reporting all CCW license denials.

Response: As stated above, according to the State of California Department of Justice, the Grand Jury's finding was not based on correct information. The Vallejo Police Department already complies in full with Section 12053(b) of the California Penal Code.

Finding 3 - There is an informal pre-screening policy among the Police Departments of the County to determine whether or not the applicant has sufficient good cause to carry a concealed firearm. If the applicant cannot satisfy the individual Police Department's criteria for good cause, he or she may be discouraged from initiating the application process. While this may not seem fair to the applicant and since he has not been given full access to the process, it may obviate the time and expense involved in going through the entire procedure. In the event of a pre-application denial, the applicant still has the option to apply to the Sheriff for a CCW license. According to the statutes, however, in the event of a denial, the applicant must be denied in writing following completion of the application process. This particular procedure does not allow for the circumstance where the applicant is denied during an informal pre-screening by the Police Department.

Response: Disagree in part as applied to Vallejo Police Department. The City of Vallejo does not informally deny applications. Full completion of the formal application process is not a prerequisite for the issuance of a written denial. The application process takes place in stages and at each stage any rejection would be memorialized in writing.

Recommendation 3 - Since there are numerous denials taking place during the screening process (prior to an application being submitted), the Police Departments should provide the applicant with a denial letter (perhaps a form letter addressed to the applicant). The applicant may then submit an application for a CCW license to the Sheriff.

Response – The Vallejo Police Department does not pre-screen applications. The application process and its costs are explained to citizens expressing an interest in a concealed weapons permit. The applicant then decides if he or she wants to proceed forward. No decision by the Vallejo Police Department occurs prior to the submission of an application. The Vallejo Police Department cannot deny what it has not rejected.

Please let me know if you have any questions or require further information.

Sincerely,

Robert F.D. Adams
Interim City Manager

cc: Frederick G. Soley, City Attorney
Mayor & Members of the Vallejo City Council
Robert W. Nichelini, Chief of Police

VALLEJO POLICE DEPARTMENT

GENERAL ORDER: C-10

SUBJECT: CONCEALED WEAPONS LICENSES

DATE: June 24, 2008 (Revision 1)
October 18, 2006 (Issued)

I. POLICY

A. The Department issues Carrying Concealed Weapon (CCW) licenses in accordance with California Penal Code Sections 12050 through 12054 and Department of Justice (DOJ) guidelines.

B. The Chief of Police, upon proof that an applicant is of good moral character as determined by a background investigation and psychological examination, submission of fingerprints and appropriate fees and documents, completion of a specified course of training, and proof that good cause exists, may issue a license to carry a concealed weapon.

C. The Department reserves the right to limit the type and numbers of weapons and ammunition to be carried, and to limit the carrying of a concealed weapon to specific times, places, manners or circumstances.

D. Department fees may be waived for active Department reserves and employees, on whom background and fingerprint checks have previously been completed.

II. PROCEDURES

A. ISSUANCE

1. Applications for CCW licenses are made available through the Professional Standards Division and must be signed for by the individual to be licensed.

2. Licenses which have been expired for one year or more may not be renewed. A new application process is required, including applicable fees.

3. Licenses retain their original month and day of expiration regardless of when they are renewed. For example, a license which expired in June and is renewed in August retains the June renewal date.

B. REQUIREMENTS

1. General

Persons wishing to obtain a CCW license shall:

a. Meet the jurisdictional requirements as established in B (2), below.

b. Have successfully completed a Department-approved firearms training course which complies with the requirements of Penal Code 12050(a) (l)(E).

c. Have no history of mental/emotional condition, alcoholism or drug abuse.

d. Not have been convicted of a felony, a serious misdemeanor, or any crime defined in Penal Code Section 12021(c)(1), nor have engaged in any conduct which would indicate the applicant is not of good moral character.

e. Not be the subject of a domestic violence investigation, or of any court order or restraining order, presently or during the previous three (3) years. Not have committed an act in another state which would constitute an act of domestic violence in the State of California.

f. Provide a factual statement on the license application form demonstrating the need to carry a concealed weapon.

g. Never have had a CCW license either suspended or revoked, from the Vallejo Police Department or other law enforcement agency within the State of California.

h. Furnish proof of medical fitness and/or undergo psychological testing by a psychologist specified by the Department, at the applicant's expense, in accordance with the provisions of PC 12054 (c).

i. Furnish a letter from the applicant's employer, if the applicant intends to carry a concealed weapon at work.

2. Jurisdiction

In establishing jurisdiction, the applicant must satisfy one of the following:

a. Continuous legal residence within the City of Vallejo, presently and for the year prior to the date of application,

AND,

b. Provide the two (2) most recent utility bills and a copy of the deed or parcel number or any other sufficient proof of full time residency within the City of Vallejo,

OR,

c. Be an active Reserve Police Officer in good standing with the Department.

Where an applicant resides outside City limits, application must be made to the police or Sheriff's department in which jurisdiction they reside or are employed.

3. Training

a. In accordance with Penal Code section 12050(a) (1) (B) and (E), applicants for new licenses are required to complete a course of training. The Department mandates a community college course, certified by the Commission on Peace Officer Standards and Training, which includes instruction on firearms safety and the law regarding the permissible use of a firearm. This course need not exceed 24 hours.

b. In accordance with Penal Code Section 12050 (a) (l) (B) and (E), renewal applicants must complete a minimum 4-hour course of training related to firearm safety and the law regarding the permissible use of a firearm. Professional Standards Division personnel may schedule and provide this training, in conjunction with annual weapons qualification, for a fee, or the course may be taken at a Department-approved location.

c. The Department requires annual qualification with the weapon(s) for which the CCW license is granted.

C. LICENSES

The following types of CCW license may be issued:

1. 90 Day Employment

The 90 Day Employment CCW license is intended for persons who spend a substantial period of time in their principal place of employment or business, but are not residents of the jurisdiction in which the license is issued. **The Department issues CCW licenses only to residents of the City of Vallejo and does not issue 90 Day Employment CCW licenses.**

2. Two Year Resident

   The standard license issued to a resident of the City of Vallejo.

3. Three Year Judicial

   May be issued to California judges, full-time court commissioners, and to federal judges and magistrates of federal courts. May be valid for any period of time not to exceed three years.

4. Four Year Reserve Peace Officer

   May be issued to Department reserve peace officers appointed pursuant to Section 830.6 of the Penal Code. Valid for any period of time not to exceed four years, except that any such license shall be invalid upon the conclusion of the person's appointment as a reserve peace officer.

D. TERMS

The Department grants CCW licenses only in accordance with the following terms. Failure to abide by these terms shall result in the immediate suspension or revocation of a CCW license.

The license holder shall:

1. Notify the Vallejo Police Department, within a ten-day period, of any change of address.
2. Surrender the CCW license and/or concealed weapon to any peace officer upon demand.
3. If contacted by a peace officer for any reason, immediately announce that he or she is carrying a concealed weapon, and has a license to do so.
4. Not unnecessarily display or expose the concealed weapon.
5. Should the license holder display or utilize, other than at a range, the concealed weapon for which the license has been issued, he/she shall, within five days, notify the Commander of the Professional Standards Division in writing and document the circumstances of such use. Failure to do so shall result in immediate revocation of the CCW license.

6. Not carry a concealed weapon while under psychiatric care, and shall notify the Commander of the Professional Standards Division of his/her condition in writing within five days of coming under such care.

7. Not carry a concealed weapon while taking any medication or substance likely to impair judgment, behavior, or dexterity.

8. Surrender the CCW license immediately upon arrest or conviction of any felony or serious misdemeanor, including under the influence of alcohol or drugs. Surrender the CCW license immediately should he/she become the subject of any domestic violence investigation or court order/temporary restraining order.

9. Not carry a concealed weapon while:

   a) Consuming alcohol;

   b) At a location where alcoholic beverages are being sold, dispensed, or consumed;

   c) At any airport or on a plane;

   d) In any school building or on school grounds;

   e) In any city, county, state, or federal building;

   f) At any facility where prisoners are housed; or,

   g) At any other location where firearms are normally prohibited by law.

E. APPLICATIONS

1. Personnel shall have the applicant sign the "New Concealed Weapons License" log and shall assign an application number which shall be written on the face of the application.

2. When all requirements are met and the application is complete, applicant shall call the Professional Standards Division to make an appointment for an interview with a background investigator.

3. Documents Required for Applicant Interview

   a. Completed CCW application

   b. Mandatory Training Certificate or scheduled date to attend course

   c. Three letters of character reference endorsing the CCW (Reserves require a written endorsement from a Department lieutenant or captain)

   d. Two money orders

e. Copy of current driver's license

f. Copy of DD214 (if applicable)

g. Copy of birth certificate and/or naturalization papers

h. Copy of a recent utility bill AND copy of deed or parcel number, or other proof of full time residency within the City of Vallejo, if applicable.

i. Written verification of employment in the City of Vallejo, if applicable

j. Written verification of medical/psychological examination

k. Weapons to be listed on license (up to three)

F. BACKGROUND INTERVIEW

1. Applicants shall be interviewed by a Department - approved background investigator or appropriate Department member.

2. Prior to the interview, Professional Standards Division personnel shall complete a Live Scan fingerprint request form for the applicant. The applicant shall sign the blank license form and place their thumbprint in the lower left corner of the form. Applicant shall then have his/her fingerprints taken.

3. Professional Standards Division personnel shall photograph the applicant and place the photo in the applicant's file. Fees shall be processed and the file placed in pending (maintained by the Professional Standards Division).

5. The background investigator or Professional Standards Division personnel shall run the serial number on each weapon subject to the license.

G. CCW FILE

1. The Professional Standards Division shall maintain files on CCW applicants and licensees, including those denied and revoked. The files shall include, as applicable:

a. Photo

b. Pink copy of license

c. Copy of application

d. Mandatory Training Certificate

e. Weapons verification

f. CCW worksheet

g. Copy of money orders
h. Intake questionnaire
i. Copy of birth certificate and/or naturalization papers
j. Copy of military discharge (DD214)
k. Local R.M.S. computer contacts
l. Confidential inquires
n. Three (3) reference letters
n. LiveScan verification
o. Signed "Agreement to Restrictions" form
p. Copy of California Driver's License
q. Signed Domestic Violence Waiver
r. Computer-verified weapons registration check
s. Utility bill/deed, etc.
t. Copy of medical/psychological clearance
u. Copy of letter granting or denying CCW
v. Firearms eligibility letter from DOJ with CII number

2. Data Entry

Professional Standards Division personnel shall:

a. Enter new applicant information in the R.M.S. computer system.
b. Verify that the license has a right thumbprint and the applicant's signature, and that it is marked as "new".
c. When a license is issued, mail the white original to the licensee and the yellow copy to DOJ, along with their required transmittal form. Retain the pink copy in file.

H. FEES

1. Initial applicants shall provide a money order, made payable to "California Department of Justice", for the following amounts:

a. Two Year Resident CCW $ 95.00
b. Three Year Judicial CCW $117.00
c. Four Year Reserve Peace Officer CCW $139.00

2. Initial applicants must also provide a money order, made payable to the "Vallejo Police Department", for $150.00.

3. Renewal applicants shall provide a money order, made payable to "California Department of Justice", for the following amounts:

   a. Two Year Resident CCW $ 52.00

   b. Three Year Judicial CCW $74.00

   c. Four Year Reserve Peace Officer CCW $96.00

4. Renewal applicants must also provide a money order, made payable to the "Vallejo Police Department", for $50.00.

5. Money orders shall be documented in the applicant's file and submitted in accordance with Department procedure.

I. LICENSE AMENDMENT

1. Professional Standards Division personnel shall document any amendment to an existing CCW on a DOJ "CCW License Modification Form".

2. General licensees shall be charged a fee of $10.00 per amended license, payable to the Vallejo Police Department.

3. Reserves may change weapons twice, without charge, during the period of their CCW. Additional amendments to the license are subject to the amended license fee.

4. Licensees may carry concealed only those weapons listed on the license.

J. DENIALS AND REVOCATIONS

1. Applicants denied a license shall, within 90 days of the application or within 30-days after receipt of the applicant's criminal background check from the DOJ, whichever is later, and in accordance with Penal Code Section 12052.5, be sent a notification letter by the Professional Standards Division Commander. A copy of the letter shall be maintained in the applicant's file at the Professional Standards Division.

2. Professional Standards Division personnel shall notify DOJ via a completed "Modification Form" when a license is revoked. Notification shall include, name, address, DOB, hair and eye color, height, weight and CII number.

3. Fees are not refundable, absent the approval of the Professional Standards Division Commander. Where fees are to be refunded, Professional Standards Division personnel shall send a letter to the bank where CCW fees

were deposited, providing the applicant's name and address and a copy of the money order from applicant's file.

K. RENEWALS

1. Professional Standards Division personnel shall, before processing a renewal, verify in the local R.M.S. computer that the applicant:

   a. Has not, within the past two years or since the issuance of their CCW, been a suspect in any crime that would prohibit them from legally possessing a firearm;

   b. Has no criminal record which would negatively implicate their moral character.

2. The renewal applicant shall provide:

   a. Two money orders, one payable to DOJ, one to the Department, in accordance with H (3) and (4), above.

   b. A completed "Standard Application for License to Carry a Concealed Weapon" (whether or not there have been changes in the previous year).

   c. A completed license, signed, dated and thumbprint placed on all three copies.

   d. Mandatory gun safety training course certificate.

   e. Verification of annual weapons qualification

3. If any weapon is to be changed, the licensee shall have new weapons verified at the Professional Standards Division.

4. Professional Standards Division personnel shall:

   a. Make any necessary changes to the license, copy and submit money orders and file copies. Type of license, renewal month and day remain the same.

   b. Update CCW computer tracking system and RMS, including new expiration/renewal year.

   c. Verify that each license has a right thumbprint, is signed and marked "renew".

   d. Review licensee's file to ensure that it is complete and current.

   e. Submit the license package to the Chief of Police for review and signature.

   f. Fill out DOJ transmittal form. Mail DOJ yellow copy with fee.

   g. Mail white copy to licensee. Pink copy to licensee file.

VALLEJO POLICE DEPARTMENT

PROCEDURE TO OBTAIN A CONCEALED WEAPON PERMIT

NOTE: Applications for concealed weapons permits are processed in phases. Applicants should anticipate a minimum of ninety (90) days processing time for issuance of a new concealed weapon permit. ALL FEES PAID ARE FOR PROCESSING COSTS AND ARE NON-REFUNDABLE, WHETHER OR NOT A PERMIT IS GRANTED.

APPLICATION: The justification for an applicant's request is considered when the determination is made whether to issue a permit. Applicants should elaborate extensively regarding the reasons for their request. Personal convenience, personal protection, position or job classification do not, in themselves, constitute good cause for issuance of a permit.

Each applicant must submit a legible and complete California Department of Justice "Standard Application for License to Carry a Concealed Weapon" package, with a personal check or money order in the amount of $20.00, payable to the "City of Vallejo", to the:

Professional Standards Division

Vallejo Police Department

111 Amador St.

Vallejo, CA 94590

INTERVIEW: Successful applicants will be scheduled for an interview and completion of the "Standard Application" with the Professional Standards Division Commander or a designee. Upon the interviewer's determination that a valid justification apparently exists, and that the applicant's legal residence or place of employment is within the jurisdiction of the City of Vallejo, the applicant will be given a comprehensive background questionnaire to complete. Denials at this stage of the application process will be made in writing.

REVIEW: The Professional Standards Division Commander or a designee will review the completed background package upon submission. The applicant will be notified in writing or by phone within three weeks as to the result of this review.

FIREARMS QUALIFICATION: If the application is accepted, the applicant will be required to complete a course of training. The law requires that all applicants and renewals complete a California State Peace Officer Standards & Training-approved firearms safety training class, presented by a community college. If a permit is issued, the applicant must complete the training course prior to each renewal.

PSYCHOLOGICAL EXAMINATION: All initial applications are required to furnish proof of medical fitness and/or undergo psychological testing by a psychologist specified by the Department, at the applicant's expense, in accordance with the provisions of PC 12054 (c).

RECORD AND BACKGROUND CHECK: Upon proof of an applicant's successful completion of required training, the Professional Standards Division Commander will forward the applicant's fingerprints to the Department of Justice for processing. It can take 10 to 12 weeks to receive notification of clearance from the Department of Justice. When such notice is received, the Department will cause a background investigation to be conducted. The information gathered by the background investigator will be forwarded to the Chief of Police, who will make the final determination regarding issuance of the permit.

APPROVAL or DENIAL: Successful applicants will be notified by mail and may pick up their permit at the Vallejo Police Department, where all remaining fees must be paid. Those applicants whose permit requests are denied will be informed by mail.

FEES

Application fees are collected in the following order:

1. $20.00 non-refundable application fee, submitted with the application.
2. $100.00 non-refundable DOJ fees, paid when fingerprints are taken.
3. $80.00 non-refundable Department fees, paid when the permit is picked up

ADDITIONAL FEES

1. Background check (approx. cost $300)
2. Psychological Examination (shall not exceed $150)

DOCUMENTS REQUIRED BY APPLICANT

- Completed CCW application
- Mandatory Training Certificate or scheduled date to attend course
- Three letters of character reference endorsing the CCW (Reserves require a written endorsement from a Department lieutenant or captain)
- Copy of current driver's license
- Copy of DD214 (if applicable)
- Copy of birth certificate and/or naturalization papers
- Copy of a recent utility bill AND copy of deed or parcel number, or other proof of full time residency within the City of Vallejo, if applicable.
- Written verification of employment in the City of Vallejo, if applicable
- Weapons to be listed on license (up to three)

CONDITIONS FOR PERMIT HOLDERS

A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person, may carry the pistol, revolver, or other firearm capable of being concealed upon a person.

Permit holders are subject to the following conditions, and any violation thereof or of any restriction placed on the license itself shall constitute cause for an immediate revocation of said license. The license must be surrendered upon demand, and it may be seized by any peace officer and returned to the Sheriff.

APPLICANTS MAY NOT:

1. Consume any alcohol and/or drug while carrying or transporting a concealed weapon.
2. Represent to any person that he/she is a peace officer.
3. Abuse this privilege by any unjustified display of a deadly weapon.
4. Impede peace officers in the conduct of their activities.
5. Refuse to display the license or to surrender the firearm to any peace officer for inspection upon demand.
6. Violate any law of this state or country.
7. Carry, concealed any weapon not listed on the license.
8. Carry any weapon on or about your person, openly or concealed, onto an airport without the permission of the Port Director.
9. Carry any weapon on or about your person, anywhere that is prohibited by law.

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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May 13, 2009

Mr. Bunyan W. Johnson, Jr.
Foreperson, Solano County Grand Jury
600 Union Avenue
Fairfield, CA 94553

Re: 2008-2009 Grand Jury Investigation: CCW Policies and Procedures

Dear Mr. Johnson:

Thank you for the courtesy copy of the recent report by the Solano County 2008 – 09 Grand Jury about policies and procedures in Solano County for issuing licenses to carry concealed weapons (CCW). Unfortunately, several statements in the report about the procedure for notifying the California Department of Justice (DOJ) about the issuance, denial and modification of a CCW license are incorrect. The purpose of this letter is to correct some of the information in the report, and clarify the procedure for licensing authorities (county sheriffs and chiefs of police authorized by California law to issue CCW licenses) for notifying DOJ about CCW licenses.

The Grand Jury's report states that "Licenses may be issued for the following applicant categories and time frames:

- Resident – valid for two years
- Judicial – valid for three years
- Reserve Peace Officer – valid for four years
- Custodial (Correctional Peace Officer) – valid for four years
- Non-resident temporary – valid for 90 days."

It should be noted that CCW licenses are not necessarily valid for the entirety of these periods, and may actually be in effect for much shorter times. State law specifies the *maximum* time for CCW licenses to be in effect. A resident CCW license, for example, "is valid for *any period of time not to exceed two years* from the date of the license." (Pen. Code,[1] § 12050, subd. (a)(2)(A)(i).) Furthermore, the licensing authority is required to revoke a CCW license after being notified by DOJ that a CCW license holder is prohibited by state law from possessing firearms. (§ 12050, subd. (e)(1).) As a result, a CCW license may be valid for a much shorter time than the maximum period allowed by law.

[1] All further statutory references are to the California Penal Code, unless otherwise indicated.

The Grand Jury's report states "Re-issuance of a CCW license requires that applicant fingerprints (Livescan) be resubmitted for review by the CDOJ, Bureau of Firearms. Renewal fees will apply." This statement is incorrect. In fact, current state law *prohibits* DOJ from requiring renewal applicants to resubmit additional fingerprints via Livescan. (§ 12052, subd. (c).) Under current law, the licensing authority is only required to submit "the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 12053 and no additional fingerprints shall be required" for renewal applicants. (*Ibid.*) Accordingly, DOJ reviews the Criminal Identification Information (CII) number and manual thumbprint on each renewal application to verify the identity and criminal history of each renewal applicant. This practice ensures the accuracy of the DOJ response data that is forwarded back to the issuing LEA regarding the renewal applicant's eligibility to purchase and possess firearms.

Further, the Grand Jury report finds that "the Deputy Attorney General in charge of the firearms bureau of the State asserts that she has not received any notification of denials from Solano County for 2008." The report goes on to conclude that the reason why DOJ has no records of being notified by the Solano County Sheriff's Office of CCW denials in 2008 "may simply be due to a paperwork transmittal problem among the various sections within the California Department of Justice."

For a number of reasons, this information is incorrect or incomplete. First, I am not "in charge of the firearms bureau of the State." I am the Deputy Attorney General assigned to the Bureau of Firearms within the California Department of Justice who happened to respond to a number of requests for public records pursuant to Government Code section 6250 (The California Public Records Act, or PRA) asking for information about CCW licenses issued, modified and denied by the law enforcement agencies in Solano County during 2008. I do not personally maintain those records, or collect fees for CCW licenses. I am neither responsible for processing CCW licenses, nor for maintaining any of DOJ's CCW license records.

Second, while it is certainly possible that there could be "a paperwork transmittal problem among the various sections within the California Department of Justice," it is also likely that the Solano County Sheriff has submitted CCW license "denial" information to DOJ for individuals who never formally applied for CCW licenses by submitting fingerprints to DOJ via the Livescan process. As explained below, DOJ cannot maintain such information as DOJ records of CCW "denials."

California law requires all initial CCW applicants to submit fingerprints to DOJ to establish their identity so that DOJ can determine whether applicants are eligible to lawfully possess firearms. (§ 12052, subd. (a).) No license may be issued by a licensing authority until after DOJ makes a determination about the applicant's eligibility to possess firearms. (*Ibid.*) Without fingerprints, however, DOJ has no way to positively determine the identity of an applicant. If a licensing authority were to submit information about a "denial" of a CCW license for which DOJ never received any fingerprints, DOJ would have no way to identify the person, or link the denial with DOJ's earlier determination of the person's identity and eligibility.

Therefore, in order for a person to be considered a CCW "denial" *for DOJ's purposes*, DOJ must have received the person's fingerprints via Livescan to verify the person's identity; completed a firearms eligibility background check of the applicant; notified the licensing authority about the applicant's eligibility to possess firearms, and finally been notified by the licensing authority of the denial of a CCW license.

State law prohibits DOJ from retaining unverifiable personal information about an individual – such as incomplete information about a CCW denial - as if it were an official record. Like all state agencies, DOJ is required to "maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness . . . when such records are used to make any determination about the individual." (Civ. Code, § 1798.18.) The legislature has declared that "[i]n order to protect the privacy of individuals, it is necessary that the maintenance . . . of personal information be subject to strict limits." (Civ. Code, § 1798.1, subd. (c). A state agency cannot disseminate an incorrect record without correcting, updating, or deleting "any portion of the record that it knows or has reason to believe is inaccurate" (i.e. the person's name). (*Ibid.*) DOJ is required to retain CCW denials and furnish the information "upon proper application therefor," to the "officers referred to in Section 11105. (§ 11106, subd. (a).) Without the ability to disseminate information incomplete information about a denied CCW applicant, however, there is no justification for DOJ to retain such information as if it were a DOJ record.[2] (See § 12053, subd. (b)(1).)

Next, the Solano County Grand Jury stated in its report that "the proper address to send the denials to is:

State of California, Department of Justice
Division of Law Enforcement
P.O. Box 160487
Sacramento, CA 9581600487
Attention: Alison Y. Merrilees, Deputy Attorney General, Bureau of Firearms."

This information is also incorrect because, as explained above, I am not responsible for collecting or retaining any DOJ records of CCW licenses, such as DOJ records of CCW denials.

In order to correct any misunderstanding about these issues, DOJ has drafted an Information Bulletin for all law enforcement agencies in the state, explaining the proper procedure for reporting CCW license information to DOJ. The Information Bulletin will explain the following:

(1) All initial CCW applicants must be processed via the state's Livescan fingerprint identification process via a Law Enforcement Agency (LEA)/Public Livescan

[2] On the other hand, the record of a person who applies for a CCW license, but never submits fingerprints to DOJ via Livescan, and who is later denied a CCW license by the local licensing authority (i.e. because the agency denied in an informal review process that the applicant does not have good cause for a license) would seem to be a record of a "denial" by the licensing authority that must be maintained by the licensing authority. (See § 12053, subd. (a)(1).)

Terminal Operator (LTO), who is responsible for electronically capturing and forwarding the applicant's fingerprints and personal descriptor information to DOJ.

(2) Local licensing authorities should not send personal checks to DOJ with initial CCW applications. Local licensing authorities are responsible for collecting their own fees from CCW applicants, and then reimbursing DOJ for the use of Livescan to submit fingerprints to DOJ. The DOJ Accounting Office directly bills the LEA/Public LTO for the fees associated with the Livescan fingerprint process, based upon the number of Livescan transmissions to DOJ. The LEA/Public LTO is billed by DOJ after the Livescan data has been received and processed by the DOJ applicant section

(3) Once a CCW license is issued by the local licensing authority, a copy of the license must be mailed to the DOJ at the following address: Bureau of Firearms, Firearms Licensing and Permit Section (CCW), P.O. Box 981118 West Sacramento, California 95798-1118.

(4) The process for renewing an applicant's CCW license is handled differently than the initial application process. LEAs should forward a copy of each *renewed* CCW license (with the licensee's right thumbprint) and its accompanying fee in the form of a check/money order (no cash) to DOJ at the following address: Bureau of Criminal Identification and Information (BCII), P.O. Box 903417 Sacramento, California 94203-4170.

(5) If a CCW license is denied by the licensing authority *after the applicant has submitted fingerprints to DOJ via Livescan* and DOJ has transmitted information about the applicant's eligibility to lawfully possess firearms back to the licensing authority, information about the denial should be mailed to DOJ at the following address: Bureau of Firearms, Firearms Licensing and Permit Section (CCW), P.O. Box 981118 West Sacramento, California 95798-1118.

(6) Local licensing authorities should not send records of CCW license denials to DOJ unless the applicant has submitted fingerprints to DOJ at the time of his or her initial CCW license application. Without such fingerprints, DOJ has no way to match the denial with its own applicant records and verify the identity of the denied applicant.

(7) If a CCW license is revoked by the local licensing authority, information about the revocation should immediately be sent to the following address: Bureau of Firearms, Firearms Licensing and Permit Section (CCW), P.O. Box 981118 West Sacramento, California 95798-1118.

I hope this information is helpful. Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

Cc: Solano County Sheriff/Coroner's Office
Benicia Police Department
Dixon Police Department
Fairfield Police Department
Rio Vista Police Department
Suisun City Police Department
Vacaville Police Department
Vallejo Police Department
City of Benicia
Solano County Board of Supervisors
Solano County Administrator's Office
Solano County District Attorney