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PREVIEW



trivalleyherald.com

Tri-Valley Herald

Friday | January 12, 2007

The Valley's Hometown Newspaper Since 1874

50 cents

Flier attacking McNerney has earlier stamp date

■ Mailer came out in September; some homes are just now getting it

By Josh Richman
STAFF WRITER

The National Republican Congressional Committee says a flier attacking Rep. Jerry McNerney's immigration-reform stance was mailed in September, not in the last 10 days as some district constituents believe.

Still, McNerney's campaign manager and office spokesman both said Thursday they have heard from angry constituents who have just found the fliers in their mailboxes.

NRCC spokeswoman Julie Shutley — who said an internal NRCC snafu kept her from returning phone calls and an e-mail on the matter Wednesday — said Thursday the flier was mailed Sept. 18, as McNerney's campaign to unseat Richard Pombo, R-Tracy, was heating up.

The NRCC spent almost \$1.4 million in the 11th District last year on mailings such as these, as well as phone banking, television ads and surveys; McNerney, D-Pleasanton, won with 53 percent of the vote. Shutley said Thursday the NRCC has spent no money in

Please see **MAILER**, News 6



CINDI CHRISTIE — Associated Press
MANAGER ADRIENNE BROWN shows off Rep. Jerry McNerney's, D-Pleasanton, new district office, which opened Thursday in Pleasanton. Much of the equipment, paid for by taxpayers, comes from former Rep. Richard Pombo's office.

Iraq plan meets hostility on Hill

■ No senator on committee from either party supports president's blueprint

By Michael Abramowitz and Jonathan Weisman
WASHINGTON POST

WASHINGTON — President Bush's proposal to send 21,500 additional troops to Iraq encountered strong bipartisan opposition on Capitol Hill on Thursday, and his top national security advisers, dispatched to defend the strategy, were greeted with a skepticism not seen from Congress over the past six years.

Lawmakers said they had little confidence that the Iraqi government has the capacity to deliver on promises to take the lead in cracking down on violent militias and providing security in Baghdad, as the president's plan contemplates. Democrats and Republicans alike said they were concerned Bush's plan, announced Wednesday night in a prime-time nationally televised address, is too little and too late, and does not appear very different than previous efforts to secure the capital.

The administration's emissaries, Secretary of State Condoleezza Rice and Defense Secretary Robert Gates, sought to reassure the lawmakers that the plan could work if they were only given the time.

Gates said he detected a much greater determination from Iraq Prime Minister Nouri al-Maliki to go after "all lawbreakers" with "no excep-

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INSIDE



Who is cheering?

Poll puts Bush's approval rating at a new low.

News 4

EDITORIAL:

Iraq plan is formula for failure.

Valley 9

ACCESS DENIED

Reporters go undercover to obtain public records, only to find rejection at law enforcement's doors



Audit shows wide gap between legal rule, reality

By Thomas Peele and Matt Krupnick
MEDIANEWS STAFF

California law gives anyone the right to walk into a police department and inspect a wide variety of information, from crime and arrest reports to statistics on officer-misconduct complaints.

But a statewide audit of such access released today shows a wide gap between the law and the reality of what happens when people ask to see public information at California police stations.

Police often violated laws that mandate open access to public records and delayed for weeks the release of ordinary reports, intimidating people who asked for them and researching their backgrounds, according to the audit of more than 200 departments and California Highway Patrol offices, including 63 in the Bay Area. Written requests for records were sometimes ignored, and some departments even refused to accept them.

More than 60 journalists across the state — including the Herald participated in the audit, which was conducted Dec. 4 in 34 of California's 58 counties.

The effort was coordinated by Californians Aware, a Sacramento-based group that advocates transparent government and records access. The group aims to educate government workers and the public about information that every person — not just public officials or journalists — is entitled to see.

In order to gauge the response an average citizen

Please see **AUDIT**, News 9

Average Grades

Bay Area law enforcement agencies averaged a score of 37 points in how they provided public information.

Average grades and scores in the Bay Area and by county:

Bay Area	F (37)
Alameda	F (35)
Contra Costa	D (52)
Marin	C- (60)
Napa	F- (27)
San Francisco	D- (46)
San Mateo	F (31)
Santa Clara	F- (22)
Solano	F+ (42)
Sonoma	F- (26)

Sources: Californians Aware, MediaNews, KGO-TV
CHUCK TODD MEDIANEWS

Best grade received in the Valley is a D-plus

By Roman Gokhman
STAFF WRITER

More than 200 state law enforcement agencies in 34 counties failed in their willingness to produce requested public records, according to a recent audit.

The results are part of the Californians Aware audit conducted in December. The agencies earned a collective grade of "F" on their performance.

MediaNews Reporter Leslie Griffy audited four Tri-Valley agencies, and findings from her inquiries were indicative of the statewide trend.

"Folks didn't have a good idea about what was accessible or have a good system for what should be accessible," Griffy said.

Alameda County tied with Los Angeles County for the most agencies audited — 16. And of those agencies, the average also was F.

Griffy audited police departments in Livermore, Pleasanton and Dublin, as well as the California Highway Patrol headquartered in Dublin; San Ramon and Danville police were not audited.

Of those, Dublin police received the best grade — a D-plus.

"Some people (from different agencies) were nicer than others," she said. "Dublin was the rudest. They

Please see **POLICE**, News 9

OPINION: Most in law enforcement don't follow the law. **Valley 9**

Supervisors settle Altamont bird suit

■ Alameda County agreement is inadequate, environmentalists say

By Chris Metinko
MEDIANEWS STAFF

OAKLAND — Alameda County Supervisors on Thursday approved a settlement intended to reduce the number of birds killed by Altamont Pass windmills, but not all environmental groups are happy.

The settlement forces the wind industry to commit to a 50 percent reduction in raptor deaths by November 2009, along with removing the deadliest turbines and continuing winter shut-downs of the wind machines.

The supervisors approved the agreement by a 4-1 vote, with Supervisor Gail Steele casting the dissenting vote.

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Forecast

Sunny
Highs: upper 40s
Lows: mid-20s

Details on **Business 8**



PUBLIC RECORDS REPORT CARD

About the audit: Law-enforcement agencies in the Bay Area were graded by Californians Aware based on how they responded to requests for public documents. Audits were conducted by MediaNews and KGO-TV.

A: 100 to 90
B: 89 to 75
C: 74 to 60
D: 59 to 45
F: 44 to 0

ALAMEDA COUNTY SHERIFF'S OFFICE

Grade: **F-** Sheriff's office requests extension to release records, no documents ever released.

Score: **20**

CHP DUBLIN

Grade: **F+** Requester told DUI information "is private." Station staff refuses to accept written request for public information.

Score: **40**

CHP HAYWARD

Grade: **F-** Requester's identification required. No information released. Extension deadline passed with no release of public information.

Score: **10**

CHP MARTINEZ

Grade: **F-** Requester told that DUI records are not public information. CHP requested an extension for answering written request. Deadline passed with no answer.

Score: **30**

CONCORD POLICE DEPARTMENT

Grade: **C** Requester told that arrest and crime reports are public records for only seven days.

Score: **65**

CONTRA COSTA SHERIFF'S OFFICE

Grade: **D** Twenty-four days after receiving written request, sheriff's department refers requester to other county departments.

Score: **51**

DUBLIN POLICE DEPARTMENT

Grade: **D+** Requester told that department is required by law to know occupation and affiliation before accepting written request for public records.

Score: **55**

HAYWARD POLICE DEPARTMENT

Grade: **F-** Requester asked for identification and what information would be used for. Requester asked multiple times for identity.

Score: **25**

LIVERMORE POLICE DEPARTMENT

Grade: **F+** Requester told arrest records found only on Internet; city attorney says department does not make summary of records against officers public.

Score: **40**

OAKLAND POLICE DEPARTMENT

Grade: **F-** No one will answer questions or accept written request. Requester told that the department has no budget to provide public information.

Score: **20**

PLEASANTON POLICE DEPARTMENT

Grade: **F-** Requester told that only reporters, not members of the public, are entitled to inspect arrest and crime records.

Score: **30**

SAN FRANCISCO POLICE DEPARTMENT

Grade: **D-** Department referred most requests to other city agencies or the city Web site.

Score: **20**

SAN JOSE POLICE DEPARTMENT

Grade: **F-** Chief's aide yells at requester, claims no information about chief is public record. Department refuses to accept written request for public records.

Score: **10**

WALNUT CREEK POLICE DEPARTMENT

Grade: **B** Department releases most requested records. Requester aided in pursuit of records.

Score: **80**

Letter grades and comments are compiled and issued by Californians Aware.

How the audit was performed and how scoring was done

On Dec. 4, journalists from 31 newspapers and broadcast news organizations visited more than 200 police and sheriff's departments and California Highway Patrol stations in 34 California counties ranging from San Diego to Oakland to Siskiyou. Presenting themselves as ordinary citizens with no special affiliation, they requested records both verbally and in writing.

POLICE AND SHERIFF REQUESTS: At police stations and sheriff's departments, audit participants asked to see statements of economic interest and public information on the occurrences of and arrests for burglaries, armed robberies and sexual assaults for a two-week period in November.

They also submitted a written request asking to inspect 10 sets of documents, including:

- Asset forfeiture fund disbursement records
- Statistical data on officer discipline
- Officer salary schedule
- Individual officer compensation records

- The latest death-in-custody report filed to the state Department of Justice
- Records copy fee schedule
- The department's media policy
- The police chief's employment contract
- Officer second-job records
- Worker compensation claims

CHP REQUESTS: At CHP stations, the participants asked to see citations and arrest information for all drunken driving and reckless driving stops for a two-week period in November.

They also submitted a written request to inspect the following documents:

- Officer salary schedule
- Individual officer compensation records
- Worker compensation claims
- Officer second-job records
- The latest death-in-custody report filed to the state Department of Justice

GRADING: Police and sheriff departments and CHP stations

were graded based on the response, cooperation, service and access allowed by the government employees who work there.

Each department or station began with a score of 100. Points were subtracted each time:

- Someone at the department or station asked the requester questions such as "who are you" or "what do you want these records for" that are not required under the Public Records Act.
- Someone at a department or station demanded the requester's name, occupation, intent, employer or identification as a condition of allowing inspection of public records.
- The requester was required to fill out a form for records
- Arrest and crime information failed to contain all legally required public information.
- A department took more than 10 days to allow a record to be inspected.
- A department referred the requester to another agency to inspect records.

A department refused to allow inspection of each requested item without citing specific legal reasoning.

Crime and arrest reports failed to contain the full level of details required by law, such as suspect's name, age, occupation and information such as when and where the crime or arrest occurred.

Departments that failed to accept the requester's written request for public records automatically failed the audit.

THE JOURNALISTS: Journalists from seven MediaNews newspapers in the Bay Area and KGO-TV participated in the audit. They were: Malaika Fraley, Scott Marshall, George Kelly, Quynh Tran, Matt Krupnick and Thomas Peele of the Contra Costa Times; Cecily Burt of the Oakland Tribune; Roman Gokhman of the Tri-Valley Herald; Martin Ricard of the Daily Review; Angela Woodall of The Argus; Leslie Griffy of the San Jose Mercury News; Kelly Pakula of San Mateo County Times and Steven Fyffe of KGO-TV.

Best grade received in the Valley is a D-plus

► POLICE, from News 1

started off pleasant but quickly went downhill.

Griffy was required to say who she was working for and why she needed the documents. A clerk tried to close the glass partition in front of Griffy several times, she said.

Griffy was allowed to look at arrest logs and later got documents that explained the department's photocopy fees and the asset forfeiture funds disbursements.

"They gave me a very thorough denial (on the written request)," she said.

She did not get any of the other documents. Griffy was told to request several documents from the Alameda County Sheriff's Office, which contracts with the city to provide police services.

However, a reporter who audited the sheriff's office in Oakland was told to go to a different office to look at records. The department received a grade of F-minus.

Reporter Angela Woodall indicated that records personnel in Oakland did not know what she was referring to when asked for a Form 700 — an economic disclosure form for public officials — and told her to ask another officer, who was not available.

She was later told to go to a San Leandro office for crime records. The department requested an additional 14 days to respond to the written requests, but did not get back to her within that time frame.

The Dublin CHP office and Livermore police were each given an overall grade of F-plus.

"They (CHP) would not take my written request, saying I would need to send it to Sacramento," Griffy wrote.

She said she was told that all crime and arrest information was confidential, and was offered statistics instead.

"(Officers) didn't ask my name or affiliation, but wouldn't give me any information," she wrote.

The highway patrol's statewide grade was F-minus because most regional offices referred the auditor to the main office in Sacramento.

At the Livermore department, she was told the agency did not know what a Form 700 was. The department later provided records of asset forfeiture funds disbursements, salary schedules, media relations policy and a photocopy fee schedule.

All other records, the department responded, do not exist or are exempt from public information requests because they

constitute an invasion of privacy and that "nondisclosure outweighed the public interest in disclosure."

"The woman at Livermore was very nice, however," Griffy said. "She went to the back to find out how I (could) look at (some documents) online."

Pleasanton police received the worst grade, an F-minus.

Griffy had to give her name and affiliation before she was allowed to see any records.

"Before I was allowed to look at incident reports, I was told I could (only) if I was a reporter," she wrote. "I showed them my driver's license — I think they began to doubt I was a reporter at that point. They said they'd rather see a work ID but still allowed me to look at the records."

She was then told the department did not know what a Form 700 was. She was shown an incident blotter that provided information about crimes and suspects. However, the blotter was not connected to any arrest logs, and the agency did not respond to Griffy's written requests.

"(Pleasanton police employees) were very nice," she said. "Part of the reason I think they failed was because they asked me if I was a reporter."

Audit: Police deny public's right to see records

► AUDIT, from News 1

might face in making public records requests, journalists participating in the survey asked police for information without identifying themselves as working for news organizations.

Auditors first asked verbally to look at the local police chief's statement of economic interest, a form that all high government officials are required by law to fill out, disclosing their financial holdings. They then asked to see crime and arrest documentation for armed robberies, burglaries and sexual assaults covering a two-week period in November.

The auditors also gave the departments a written Public Records Act request asking to inspect documents that should be public, such as the police chief's employment contract, records of how the proceeds of assets seized from criminals are spent, reports on the deaths of people in the department's custody, and the forms officers must submit if they take second jobs.

But, "the common experience was for a person to go in and be forced to identify themselves and their purpose and then walk away with nothing," said Terry Francke, Californians Aware's general counsel.

So many departments' responses were so "absurdly wrong," Francke said, that taxpayers should have legitimate questions about the administration of police agencies.

One auditor was ordered to give an officer her Social Security number so her record could be checked for arrest warrants. Another was told he could see records only if county supervisors voted to allow it.

Several auditors reported officers and record clerks yelling or laughing at them and being told they weren't going to be allowed to see anything.

Francke said police departments were chosen to be audited for openness because, like any other public agency, they need intense citizen scrutiny over spending and policy. Adding to that need, he said, is the critical mission of law enforcement and its power to place people in custody, make urgent decisions about emergencies and even, in extreme circumstances, take people's lives.

"We don't notice that our freedom is run on a system of being able to find out what the government, on all levels, is doing," he said.

Departments were graded on a scale of zero to 100 based on the records provided, the timeliness of the informa-

EDITOR'S NOTE

One of the first things journalists are taught is to always identify themselves as reporters.

But on Dec. 4, journalists from 31 news organizations across California went to police and sheriff departments and California Highway Patrol stations and asked for records without saying they were reporters.

We did this to determine how those agencies respond to requests for information from citizens.

While the participants were told not to identify themselves as journalists, they were also given strong instructions not to lie.

If asked, "Are you a reporter?" they replied, "Is that required to view public information?"

The answer is no. Journalists have no greater right to access to government records than anyone else in California.

The law allows people to inspect government records without identifying themselves or providing any personal information. All anyone has to do is ask. In this case, that's what we did.

Kevin Keane
Executive Editor

tion released and the way the requester was treated.

The statewide median grade was 40. The median grade was 30 in the nine Bay Area counties, where scores ranged from a low of 5 for the East Palo Alto Police Department to a high of 94 for the Dixon Police in Solano County, the highest grade in the state.

The lowest statewide grade was a zero, given to police in the Los Angeles suburb of Pico Rivera, where the auditor reported that the records clerk said that people "can't just walk in here and make these kind of requests."

California Highway Patrol offices averaged a score of 29, sheriff's departments averaged 39, and police departments averaged 44. Only three departments statewide — or 1.4 percent — had scores of 90 or higher.

CHP spokeswoman Fran Clader said that the agency needed to take "appropriate action to improve our customer service" based on the responses auditors received at stations. She defended the agency's handling of written requests, which were all forwarded to the office of its general counsel in Sacramento.

The CHP requested a 14-day exten-

sion to Dec. 28 to provide access to the records, but that deadline was missed. Clader said documents were being mailed to auditors this week.

Francke said the CHP scores were especially troubling because agency lawyers attended a Californians Aware training session on the Public Records Act last year.

The audit shows that members of the public "have a much tougher time" than journalists in obtaining information from police, said Tom Newton, general counsel of the California Newspaper Publishers Association. The Public Records Act clearly "requires agencies to help the public" obtain records, Newton said. But that didn't happen in most cases.

"It's these kinds of occurrences that create a huge distance between government agencies and the people that are supposed to be served by them," Newton said.

By cutting off the public from information to which it is legally entitled, police are cutting themselves off from the type of community cooperation that can make law enforcement more effective and the public safer, said Mark Schlosberg, police-practices policy director for the American Civil Liberties Union of Northern California.

One of the more troubling aspects of the audit is that agencies fared badly while being asked for just "very basic information," Schlosberg said.

"You have to create a balance between the department and the community," he said. The audit shows "the opposite (relationship) of what police should want to foster with the public."

The state's new attorney general, former governor and Oakland Mayor Jerry Brown, didn't respond to questions about the audit findings.

Some police chiefs vowed to improve access.

"Collectively, I think law enforcement has gone through some tough times. The only way to regain the public's trust is by being open," Pleasanton Police Chief Tim Neal said.

Neal, whose department received a score of 30, decried the persistent secrecy that characterizes many law enforcement agencies. "I really believe most of what we do could be done on a picnic table in a public park," he said.

Neal said he has tried to instill more openness in his department and plans to instruct his staff on records laws compliance and openness at a meeting Monday.

The audit results show that openness is far from the norm.

Among the findings:

- At the Sacramento County Sheriff's Office, the person asking for records was asked to provide her Social Security number so she could be checked for pending arrest warrants before records were provided. The law prohibits officials from requiring the identity of people inspecting public records.

- A records clerk at the Napa County Sheriff's Office told a requester he couldn't inspect arrest records and other documents unless the county supervisors voted to allow it. No special action is needed to make such records public.

- The clerk in charge of records at the Benicia Police Department told the requester that arrested people had to "sign off" on the release of information about them and referred the requester to a public library to look up arrest information in the back issues of newspapers. People arrested have no right to keep that information secret.

- A clerk at the San Mateo Police Department said each arrest and crime record would cost \$50 to look up on the department's computer. State law allows charges only for making photocopies.

- Police at the Bay Area's three largest departments — San Francisco, Oakland and San Jose — failed to release any requested records. Oakland and San Jose wouldn't accept written requests.

- The Los Gatos, American Canyon, Berkeley, Redwood City and San Mateo police were among Bay Area departments that refused to accept written requests for records.

- The Fremont, Santa Clara, Pleasanton, St. Helena and San Leandro departments were among those that accepted a written request for records and then failed to answer it. State law requires agencies to respond within 10 days.

- When confronted with these lapses, police chiefs offered a variety of responses.

- "We screwed up," Fremont police Chief Craig Steckler said. A part-time clerk accepted the auditor's written request and it wasn't forwarded to the right people, he said, adding that he has instructed the records manager to "make sure it doesn't happen again."

- The majority of police administrators contacted about the results said they were disappointed in their departments' failures. Most pledged to revamp procedures to prevent future problems.

In some cases, even departments that earned high scores behaved questionably the day of the audit. In El Cerrito, for example, records supervisor Loralee Palfini laughed and shook her head as she read the written request and then assured the requester she would be able to track down his identity even without his last name.

Agencies were scored in part on their willingness to give information, and also on whether they improperly cited state laws that allow some information to be kept confidential, or erroneously claimed they were not required to give out information.

In Berkeley, where police records clerks refused to accept a written request, Mayor Tom Bates said "it is totally unacceptable behavior. I have never heard of anything like this."

East Palo Alto police Chief Ron Davis said he was dismayed about receiving the lowest grade in the Bay Area, a score of 5.

"Whether it's one day or ongoing, it absolutely concerns me," he said. "It sounds like we have room for much improvement."

Benicia, Oakland, San Francisco and Contra Costa County all have better-government ordinances that require greater transparency than the state Public Records Act. Police in the three cities all received scores of 32 or lower. The Contra Costa County Sheriff's Department received a 51.

In Benicia, a records clerk repeatedly asked an auditor who she was and why she wanted to see records. Police Chief Jim Trimble said that response wasn't acceptable. "We are going to change our training to address some of these issues," Trimble said.

In Oakland, an auditor was unable to get anyone at police headquarters to accept a written request for records or even tell him who to ask for crime and arrest records.

"That is unacceptable," said Mark Morodomi, supervising attorney of the city's Open Government Program. "We need to know where the roadblocks are."

In San Jose, where city leaders are pondering whether to pass a local law to make government more transparent, an aide to police Chief Robert Davis told an auditor that Davis' statement of economic interest wasn't a public document. The department also didn't accept the auditors' written request for records.

MediaNews reporters Angela Woodall and Leslie Griffy contributed to this story.