

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD  
POLICY RECOMMENDATION  
DISCONTINUE STANDARD PROCEDURE OF "SEALING" MEDICAL EXAMINER REPORTS FOR IN-  
CUSTODY DEATHS**

**BACKGROUND:**

Pursuant to the San Diego Sheriff's Department (SDSD) Homicide Unit Manual of Policy and Procedures (P&P) #3.9.2.C entitled, "Sealing and Unsealing of Autopsies," the SDSD Homicide Unit's "standard procedure for any investigation is to seal all autopsies," to include all in-custody deaths. The stated purpose of the sealing request is "to protect the integrity of any ongoing investigation."

The "sealing" of these cases is requested pursuant to Government Code (GC) Sections 6254(f) and 6255 and results in the prohibition of public release of information contained within the San Diego County Medical Examiner's Office investigative, autopsy (examination), and toxicology reports.

GC Section 6254(f) permits the nondisclosure of investigative files "compiled by any other state of local agency for correctional, law enforcement, or licensing purposes", and may include autopsy reports only if they constitute an investigation of a suspected homicide in which the prospect of criminal law enforcement proceedings is concrete and definite. Furthermore, victims of an incident or specific crimes and the victim's authorized representatives are still entitled to certain information from law enforcement agencies under GC Section 6254(f), and nondisclosure is only permitted if the disclosure would "endanger the safety of a witness or other person involved in the investigation," or would "endanger the successful completion of the investigation or related investigation."

GC Section 6255 mandates that the agency justify withholding any record by demonstrating "that the record in question is exempt under express provisions of the [California Public Records Act] or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

The SDSD P&P further states that in-custody deaths (use of force or jail) should be unsealed upon completion of the investigation (within 90 days) or upon the approval of the Homicide Lieutenant. Finally, the SDSD P&P notes that the Homicide Lieutenant has authority to unseal any autopsy, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation.

The written request to "seal" the Medical Examiner's reports in all in-custody deaths, authored by staff from the SDSD Homicide Division, provides the following justification:

Pursuant to Government Code Sections 6254(f) (investigative file) and 6255, I am requesting you withhold the public release of the autopsy, toxicology and investigator's reports in the above case. I believe the public release of the information contained in these reports would seriously hamper the successful resolution of the homicide investigation. Such items which are not now public knowledge, but are contained in the aforementioned reports, include:

- Location and nature of trauma on the decedent;
- Existence of foreign material on or in the body;
- Presence of toxic compounds;
- Identification of potential witnesses;
- Description of crime scene, including items of physical evidence.

Homicide suspects frequently communicate with their peers. If this information is of the nature that no prior public knowledge was available, detectives could confirm the origin of such information and

narrow the scope of their investigation. The above information has been withheld by homicide detectives following the investigative maxim that certain facts are known only to the suspect and the detectives involved. As a result, the social need to withhold this information in the hopes of obtaining an unbiased resolution clearly outweighs the public interest in the release. (Gov. Code§ 6255).

The “sealing” of a case results in the Medical Examiner’s Office not providing information to the next-of-kin and simply referring them to the SDSA, which limits the information it provides due to its on-going investigation. These unfortunate circumstances result in next-of-kin receiving no answers for several months, at minimum, and sometimes for a year or longer. In addition, information pertaining to in-custody deaths provided to the public is limited when a case is “sealed.”

The Citizens’ Law Enforcement Review Board (CLERB) understands the need to prohibit the public dissemination of investigatory information known only to homicide suspects. CLERB does not wish to compromise any investigation and supports the “sealing” of cases when certain facts are only known to suspects and homicide detectives. CLERB also understands that the release of information could influence witness statements. However, in-custody deaths in which there are no indications or suspicions of foul play, even after the autopsy, should not be “sealed” for several reasons. First, under such circumstances, GC Section 6254(f) does not permit nondisclosure of an autopsy because the prospect of criminal law enforcement proceedings is *not* concrete and definite. Second, in these cases, the potential witnesses are primarily in custody and available for timely interviews. Third, GC Section 6255’s catch-all provision no longer provides sufficient legal justification for sealing these autopsy records. In these times of increased public scrutiny about deaths occurring in the SDSA detention facilities, the routine “sealing” of these cases does not “outweigh the public interest served by the disclosure of the record” and limits transparency, creating distrust in the investigatory process while raising additional questions and concerns about the circumstances under which inmates are treated while in SDSA custody.

**POLICY RECOMMENDATION:**

Pursuant to Section 340.9(g) of the San Diego County Administrative Code of Ordinances, CLERB shall have the authority to review and make recommendations on policies and procedures of the SDSA and San Diego County Probation Department. As such, CLERB makes the following policy recommendation to the SDSA:

1. Revise the Homicide Unit Policy and Procedures to discontinue the “standard procedure” for “sealing” of in-custody death cases in which there are no indications or suspicions of foul play, and the prospect of criminal law enforcement proceedings is not concrete and definite.

Submitted by:



Paul Parker, Executive Officer      Date

09-30-21

Reviewed by:



Lynn Setzler, Supervising Special Investigator      Date

09-30-21