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Complaint 06-07-07: Dos Palos Police Department

Introduction

The complainant states that while she and her family were out of town, three Dos Palos Police Officers came to her residence to conduct a probationary search for a suspect. After knocking several times and checking around the house, they forced the front door open and searched the residence after hearing noises in and about the residence. The officers left a note at the home, which said the door was forced open due to a probation search. The complainant states the officers had been to her residence before and knew there was a parrot in the living room and knew the noises it made. The officers left the damaged door and doorframe, failing to properly secure the front door.

Method of Investigation

The Law and Justice Committee of the Grand Jury interviewed the complainant to obtain additional information and to clarify several issues not listed in the formal complaint. The complainant explained that on July 29, 2006, Dos Palos Police Officers came to her residence looking for a suspect. The complainant told the officers he was not at her residence and that they could search the house. On July 30, 2006, the complainant and her family left for the day. Upon their return, they observed that the front door was kicked in and the doorframe broken. A note was left on the screen door by the Dos Palos Police officers, which stated the door was forced open due to a probationary search. The complainant also explained they have a parrot that stays in the living room and that the Senior Officer present was aware they had a parrot from his previous visits to her residence. The complainant said that both her mother and the next-door neighbor told the officers there was no one home prior to them forcing the door open. The front door was left unsecured and could not be locked until repairs could be made five days later.

The committee also interviewed the senior Dos Palos police officer present during the incident. He stated that on July 30, 2006, he was the senior officer on duty and that the other officer who was present related to him that an informant had told him that the suspect was at the complainant's residence. He said the suspect was possibly the boyfriend of one of the complainant's daughters. The officer stated that three of the complainant's children are on felony probation and have search and seizure clauses. The officer's arrived at the complainant's residence and knocked on the door several times. They heard music and heard noises inside that sounded like females.

They walked around the house and checked the back. They then forced entry into the residence and made a complete search. No one was located. The officer completed a report on the incident. The senior officer acknowledged that he had been at the residence before but didn't remember a parrot living there. He also stated they later determined the music was coming from next door. When questioned about securing the front door, the officer stated the front door would not lock.

The committee reviewed a copy of the incident report (#063817). The report chronicles the events that led up to the forced entry to the residence. The report indicates the officers heard music and female voices inside and noted that a parrot was found in the

living room, which they believed was the source of the female voices. The report also indicated the damage to the door consisted of the doorframe being cracked and the locking faceplate was dislodged.

The committee reviewed the building contractor's report on the repaired damage, paid for by the City of Dos Palos. The repair included a new door, lockset, door trim and labor for a total cost of $947.00.

The committee reviewed the Dos Palos Police Department Policies and Procedures Manual. There were no polices or procedures listed regarding probationary searches.

Findings

1. The officers could legally use forced entry into the complainant's residence based on the complainant's children's probationary status.

2. The Dos Palos Police Department does not have a policy or procedure for probationary searches.

3. The officers were well aware of the complainant and her children and should have known about the pet parrot. There were no exigent circumstances that warranted their forced entry. There appears to have been sufficient information made available to the officers that there was no one at the residence.

4. Based on the police report, the address of the suspect was listed on the report, which is located several blocks away from the complainant's residence.

5. California Penal Code Section 3067(d) states it is not the intent to authorize law enforcement to conduct searches for the sole purpose of harassment. The California Attorney General's Opinion states you may not undertake a probationary search for the purposes of harassment or for arbitrary and capricious reasons.

6. The officer's actions, though legal, give the perception of heavy handedness, as well as creating a liability for the city. This resulted in the City of Dos Palos paying $947.00 for the damage to the residence.

Recommendations

1. The Dos Palos Police Department should establish a policy and procedure for conducting probationary searches.

2. The Dos Palos Police Department Officers should be trained in the policy and procedures of their Department in conducting probationary searches.

Response to Grand Jury Complaint 06-07-07

January 19, 2007

Van Vanderzyde, Foreman
Merced County Grand Jury
P.O. Box 2034
Merced California 95344

Thank you for your January 5, 2007 letter reminding us that a response to Grand Jury report 06-07-07 is due back to the Grand Jury by January 22, 2007.

Unless specifically required by the Grand Jury, this and all future Grand Jury responses made on behalf of the City of Dos Palos will be made by the Mayor rather than the City Manager.

The following is the official response from the City of Dos Palos to the Grand Jury's (report 06-07-07) Recommendations:

Recommendation:

1. The Dos Palos Police Department should establish a policy and procedure for conducting probationary searches.

Response:

1. (a. Short Term): On January 19, 2007, and effective immediately, the Chief of Police has issued a Directive on Searches (attached) which includes direction in regard to probationary searches. This directive will remain in effect until such time that a permanent policy and procedures manual is completed and adopted, which includes direction on searches and probationary searches, or a new directive is issued to replace this directive.

   (b. Long Term): The City Manager has directed the City of Police to contact the Central San Joaquin Valley Risk Management Authority (of which the City of Dos Palos is a member) to obtain its standards in regard to Police Policy and Procedures and to enter into an agreement (attached) with its contractor, "Lexipol LLC" to develop a new City of Dos Palos Police Policy and Procedures manual, to provide regular updates to remain in compliance with the law, and to provide training bulletins. The Chief of Police contacted the RMA and has entered into an agreement with Lexipol.

Recommendation:

2. The Dos Palos Police Department Officers should be trained in the policy and procedures of their Department in conducting probationary searches.

Response:

3. (a. Short Term): The Chief of Police will personally, individually and collectively, review and train all sworn officers in regard to searches and in particular, probationary searches, as described in the January 19, 2007 Directive. Each officer will verify their training by documented signature. This training will be completed by January 31, 2007.

   (b. Long Term): Once a permanent, new Policy and Procedures Manual is completed and adopted, all sworn officers will be trained in regard to searches and in particular probationary searches. Training will be verified by documented signature.

The City Council will review these actions to determine if any further action, changes, or direction is needed.

Sincerely,

Michael Burns
Mayor of Dos Palos

Darrell Fonseca
City Manager