



FOR YOUR EYES ONLY

POLICE DEPARTMENT

DATE: 1/23/16

From: John McKean
To: Chief of Police

Subj: POTENTIAL RELEASE OF MEDICAL RECORDS:

The pre-employment medical waiver of the psychological evaluation records for police officer candidates was for the limited purpose of employment. All prospective candidates were **required** to waive this right to move on in the hiring process. To use this mandated waiver to publically release this medical information is overreaching and illegal.

According to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the unauthorized releasing of private medical information is a violation of law. HIPAA section 1177 (a) provides that a person who knowingly and in violation of this part uses or causes to be used a unique health identifier, obtains individually identifiable health information relating to an individual, or discloses individually identifiable health information relating to another person shall be punished as provided in subsection (b).

There can be a valid but limited HIPAA waiver from the employee. The waiver can restrict the end date of the waiver, who is authorized to release and receive the private records, and what specific information is released. Absent this waiver or a valid court order, we take the risk of violating both state and federal laws, thereby, opening the department and city to both criminal charges and civil liabilities.

As leaders, we need to exhaust all ethical and legal means available to avoid this disclosure. Court orders are a strong possibility for which there should be a plan. A court order



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has two different benefits. One, it allows the employee and his legal counsel an opportunity to request an injunction against disclosure of the records from the courts. This offers the employee the opportunity to voice his objections in court and detail the circumstances of his reluctance to release the records. Second, it takes the liability away from the department and city for any further civil and criminal action that may follow a disclosure.

Political pundits and community groups will continue to render their opinions about the lack of transparency from the department if the medical records are not released. However, police leadership has a higher obligation, not only to the community, but also to the members of the department. We cannot yield to political pressure when it is the easier option. Our obligation is to uphold the Constitution of the United States and the rights of all citizens, including our employees. This includes the most coveted of all rights, the right to privacy. The US Supreme Court ruled how important the right to privacy is in several court cases, and the leading case is *Griswold v Ct.*

Another area we must consider is precedent. The release of all medical records upon public demand could open a Pandora's Box. This would open the floodgates to public requests for some of the most sensitive information the law enforcement community has. As one of the fifth largest departments in the country, other communities and agencies will be watching the outcome of this most important decision. We must make the correct decision and uphold our profession with the highest ethical and legal standards possible.