

RELATED SECTIONS OF LAW - CITIZEN COMPLAINTS (1000)

(No. 37 August 1995)

PENAL CODE SECTIONS

832.5. Citizens' complaints against personnel; investigation; description of procedure; retention of records

- (a) Each department or agency in this state which employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of such departments or agencies, and shall make a written description of the procedure available to the public.
- (b) Complaints and any reports or findings relating thereto shall be retained for a period of at least five years.

832.7. Personnel records; confidentiality; discovery

- (a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General's office.

832.8. Personnel records

As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to:

- (a) Personal data, including marital status, family members, educational and employment history, or similar information;
- (b) Medical history;
- (c) Election of employee benefits;
- (d) Employee advancement, appraisal, or discipline;
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which he participated, or which he perceived, and pertaining to the manner in which he performed his duties; or

- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

CIVIL CODE SECTIONS

- 47.5. Notwithstanding Section 47, a peace officer may bring an action for defamation against an individual who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence, if that complaint is false, the complaint was made with knowledge that it was false and that it was made with spite, hatred, or ill will. Knowledge that the complaint was false may be proved by a showing that the complainant had no reasonable grounds to believe the statement was true and that the complainant exhibited a reckless disregard for ascertaining the truth.

EVIDENCE CODE SECTIONS

- 1043. Peace officer personnel records; discovery of disclosure procedure
 - (a) In any case in which discovery or disclosure is sought of peace officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from such records, the party seeking such discovery or disclosure shall file a written motion with the appropriate court or administrative body upon 10 days' written notice to the governmental agency which has custody and control of such records. Upon receipt of such notice the governmental agency served shall immediately notify the individual whose records are sought.
 - (b) Such motion shall include all of the following:
 - (1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace officer whose records are sought, the governmental agency which has custody and control of such records, and the time and place at which the motion for discovery of disclosure shall be heard.
 - (2) A description of the type of records or information sought.
 - (3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental agency identified has such records or information from such records.

- (c) No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of such hearing by the governmental agency identified as having such records.

1045. Peace Officers; access to records of complaints or discipline imposed; relevancy; protective orders

- (a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of such investigations, concerning an event or transaction in which the peace officer participated, or which he perceived, and pertaining to the manner in which he performed his duties, provided that such information is relevant to the subject matter involved in the pending litigation.
- (b) In determining relevance the court shall examine the information in chambers in conformity with section 915, and shall exclude from disclosure:
 - (1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction which is the subject of the litigation in aid of which discovery or disclosure is sought.
 - (2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.
 - (3) Facts sought to be disclosed which are so remote as to make disclosure of little or no practical benefit.
- (c) In determining relevance where the issue of litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from order records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.
- (d) Upon motion reasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

- (e) The court shall, in any case or proceeding permitting the disclosure of discovery of any peace officer records requested pursuant to section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

- 1046. Allegation of excessive force by peace officer during arrest, police arrest report.

In any case, otherwise authorized by law in which the party seeking disclosure is alleging excessive force by a peace officer in connection with the arrest of that party, the motion shall include a copy of the arrest report setting forth the circumstances under which the party was stopped and arrested.

- 1047. Arrests; records of peace officers; exemption from disclosure.

Records of peace officers, including supervisory peace officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, shall not be subject to disclosure.

GOVERNMENT CODE SECTIONS

- 3305. Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign.

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

- 3306. Response to adverse comment entered in personnel file; time

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3307. Polygraph examination; right to refuse; effect No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take polygraph examination.

3309. Search of locker or storage space; consent; search warrant.

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency. (Note: Recent court decisions indicate this may apply to all employees).

19574. Adverse action: parties; grounds; notice. The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (a) a statement of the nature of the adverse action; (b) the effective date of the action; (c) a statement of the reasons therefore in ordinary language; (d) a statement advising the employee of the right to answer the notice orally or in writing; and (e) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

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