

## Personnel Records

### 727.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual employee's name.

### 727.2 POLICY

It is the policy of this Department to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California. (Pen. Code § 832.7.)

### 727.3 EMPLOYEE RECORD LOCATIONS

Employee records will generally be maintained in any of the following:

**Department File** - That file maintained by the office of the Chief Probation Officer as a permanent record of a sworn officer's employment with this Department.

\* The official County employee personnel file is maintained by the Yolo County Human Resources Department.

**Supervisor File** - Any file that is separately maintained by an Supervisor for the purpose of completing employee performance evaluations. Supervisor log entries in the file are any written comments, excluding actual performance evaluations, made by a Supervisor concerning the conduct of an employee of this Department.

**Training File** - Any file that documents an employee's training.

**Internal Affairs Files** - Any files that contain complaints of employee misconduct and all materials relating to the investigation into such allegations, regardless of disposition.

**Medical File** - Any file that contains material relating to an employee's medical history.

### 727.4 DEPARTMENT FILE

The Department file may contain, but is not limited to, the following:

- (a) Performance evaluation reports regularly completed by an appropriate Supervisor and signed by the affected employee.
- (b) Records of all transcripts, diplomas and education.
- (c) Disciplinary action:
  1. Resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to established records retention schedule and at least two years. (Govt. Code § 26202; Govt. Code § 34090.)
  2. Resulting from a sustained civilian complaint, which shall be destroyed after five years except as otherwise provided in this policy.

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- (d) Adverse comments such as Supervisor log entries which may be retained in the Department file or Supervisor file after the employee has had the opportunity to read and initial the comment and for a period up to two years. (Gov. Code § 3305.)
  - 1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days. (Gov. Code § 3306.)
  - 2. Any such employee response shall be attached to and retained with the original adverse comment.
  - 3. If an employee refuses to initial or sign an adverse comment, at least one Supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.
- (e) Commendations shall be retained in the employee's Department file, with a copy provided to the employee.
- (f) Personnel Action Reports reflecting assignments, promotions and other changes in the employee's status.
- (g) A photograph of the employee.

Investigations of complaints that result in a finding of not-sustained, unfounded or exonerated shall not be placed in the employee's Department file, but will be separately maintained for the appropriate retention period in the Internal Affairs file.

#### **727.5 SUPERVISOR FILE**

Supervisor files may be maintained by a Supervisor for the purpose of completing employee performance evaluations. The Supervisor file may contain Supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this file shall be provided to the employee prior to being placed in the file in accordance with Government Code sections 3305 and 3306.

Duplicate copies of items that will also be included in the employee's Department file may be placed in this file in anticipation of completing of an upcoming performance evaluation.

Once the permanent performance evaluation has been made final, any material(s) and copies should be purged from the Supervisor's file in accordance with this policy.

#### **727.6 TRAINING FILE**

An individual training file shall be maintained by the Probation Department's Human Resources staff for each employee. Training files will contain records of all training; original or photocopies of available certificates, other documentation including policy acknowledgements and firearms qualifications. Training records may also be created and stored remotely, either manually or electronically (e.g., Daily Training Bulletin (DTB) records).

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- (a) Employees are responsible for providing the Probation Department's Human Resources staff with evidence of completed training/education in a timely manner.
- (b) The Probation Department's Human Resources staff or Supervisor shall ensure copies of such training records are placed in the employee's training file.

#### **727.7 INTERNAL AFFAIRS FILE**

Internal Affairs files shall be maintained under the exclusive control of the Chief Probation Officer or designee. Access to these files may only be granted by the Chief Probation Officer or the Assigned Internal Affairs Officer supervisor.

These files shall contain the complete investigation of all complaints of member misconduct, regardless of disposition. (Pen. Code § 832.12.) Investigations of complaints that result in the following findings shall not be placed in the employee's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

Each investigation file shall be sequentially numbered within a calendar year (e.g., yy-001, yy-002).

Investigation files arising out of civilians' complaints shall be maintained pursuant to the established records retention schedule and for a period of at least five years. Investigations that resulted in a finding other than sustained may not be used by the Department to adversely affect and employee's career. (Pen. Code § 832.5.)

#### **727.8 MEDICAL FILE**

An employee's medical file is maintained by the Yolo County Human Resources Department.. The medical file shall be maintained separately from all other personnel records and shall contain all documents relating to the employee's medical condition and history, including but not limited to:

- (a) Materials relating to a medical leave of absence, including leave under the Family and Medical Leave Act (FMLA).
- (b) Documents relating to workers' compensation claims or the receipt of short- or long-term disability benefits.
- (c) Fitness-for-duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records that reveal an employee's medical condition.
- (e) Any other documents or materials that reveal the employee's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

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### **727.9 RETENTION AND PURGING**

Civilian complaints and all related files not the subject of litigation or other ongoing legal proceedings may be purged no earlier than five years from the underlying complaint date. (Pen.Code § 832.5.)

- (a) The Chief Probation Officer or designee shall determine whether any prior sustained disciplinary file should be retained beyond the statutory period for reasons other than pending litigation or other ongoing legal proceedings. The employee shall be notified if a file is to be retained. If, in the opinion of the Chief Probation Officer, a complaint or disciplinary action beyond the statutory retention period is no longer relevant, all records of such matter shall be destroyed.
- (b) During the preparation of each employee's performance evaluation, complaints and discipline should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development.

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

#### **727.9.1 REQUESTS FOR DISCLOSURE**

Any employee receiving a request for a personnel record shall promptly notify the Department Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected employee as soon as practicable that such a request has been made. (Evid. Code § 1043.)

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

All requests for disclosure that result in access to an employee's personnel records shall be logged in the corresponding file.

#### **727.9.2 RELEASE OF PERSONNEL INFORMATION**

Personnel records shall not be disclosed except as allowed by law. (Pen. Code § 832.7; Evid. Code § 1043.)

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any employee of this Department may be guilty of a misdemeanor. (Pen. Code § 146e.)

The Department may release any factual information concerning a disciplinary investigation if the member who is the subject of the investigation (or the member's representative) publicly makes a statement that is published in the media and that the member (or representative) knows to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement. (Pen. Code § 832.7.)

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Pursuant to Penal Code section 832.7(e), the disposition of any civilian complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any, was imposed.

### **727.10 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS**

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Chief Probation Officers shall consult with the Office of County Counsel in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes :

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officers actions were consistent with law and Department policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the pre-disciplinary or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. (Pen. Code §832.7(b)(2).)

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code section 832.7(b)(7) or other law, the following records may be made available for public inspection upon request :

- (a) Records relating to the report, investigation, or findings of:
  1. The discharge of a firearm at another person by an officer.
  2. The use of force against a person resulting in death or in great bodily injury (as defined by Pen. Code § 243(f)(4)) by an officer.
- (b) Records relating to an incident where a sustained finding was made by the Department or oversight agency regarding:

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1. An officer engaged in sexual assault of a member of the public ( Pen. Code § 832.7(b)).
2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure. (Pen. Code § 832.7(b)(3).)

When an investigation involves multiple officers, the Department shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless it relates to a sustained finding of a qualified allegation as provided by Penal Code section 832.7(b)(4) against the officer. However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a sustained finding of the qualified allegation against another officer that is subject to release. (Pen. Code § 832.7(b)(4).)

#### 727.10.1 REDACTION

The Custodian of Records, in consultation with the Chief Probation Officer or authorized designee and Office of County Counsel, shall redact the following portions of records made available for release (Pen. Code § 832.7(b)(5)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers.
- (b) Information that would compromise the anonymity of complainants and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force.
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person.

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it. (Pen. Code § 832.7(b)(6).)

#### 727.10.2 DELAY OF RELEASE

Unless otherwise directed by the Chief Probation Officer, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury due to any of the following conditions. (Pen. Code § 832.7):

- (a) Active criminal investigations:

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1. Disclosure may be delayed 60 days from the date the use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
  2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who used the force.
- (b) Filed criminal charges:
1. When charges are filed related to an incident where force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- (c) Administrative investigations:
1. Disclosure may be delayed until whichever occurs later:
    - (a) There is a determination from the investigation whether the use of force violated law or Department policy, but no longer than 180 days after the date of the Department's discovery of the use of force or allegation of use of force.
    - (b) Thirty days after the close of any criminal investigation related to the officer's use of force.

#### 727.10.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury during an active criminal investigation, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Pen. Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.
  1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
    - (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Department must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding

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outweighs the public interest for prompt disclosure of records about use of serious force by an officer.

In cases where an action to compel disclosure is brought pursuant to Government Code section 6258, the Department may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation. (Pen. Code § 832.7(b)(7).)

### **727.11 EMPLOYEE ACCESS TO HIS/HER OWN PERSONNEL RECORDS**

Any employee may request access to his/her own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from his/her personnel records shall file a written request to the Chief Probation Officer through the chain of command. The Department shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the Department shall be retained with the contested item in the member's corresponding personnel record. (Gov. Code § 3306.5.)

Members may be restricted from accessing files containing any of the following information:

- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the Department for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for department planning purposes.
- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the Department and the member that may be discovered in a judicial proceeding.