
Personnel Records

1026.1 PURPOSE AND SCOPE

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

1026.2 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 (Penal Code § 832.7).

1026.3 DEFINITIONS

Department File – The file which is maintained in the Office of the Chief of Police as a permanent record of an employee's employment/appointment with this Department.

Division File – Any file which is separately maintained internally by an employee's supervisor(s) within an assigned division for the purpose of completing timely performance evaluations.

Internal Affairs File – Those files that contain complaints of employee misconduct and all materials relating to the investigation into such allegations, including documentation related to disciplinary action, regardless of disposition.

Medical File – The file maintained separately by Human Resources which exclusively contains material relating to an employee's medical history.

Training File – Any file which documents the training records of an employee.

1026.4 DEPARTMENT FILE

The department file shall be maintained as a record of a person's employment/appointment with this department. The department file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Personnel action reports reflecting assignments, promotions and other changes in employment/appointment status. These should be permanently retained.
- (c) Original performance evaluations. These should be permanently maintained. When preparing employee performance evaluations it is the responsibility of the employee's supervisor to review all documentation in the respective employee's Division file, Department file, and Internal Affairs file.
- (d) Commendations and awards.
- (e) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

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1026.5 DIVISION FILE

The Division file may contain supervisor comments, notes, negative and positive performance notations, corrective memorandums, performance improvement plans, letters of improvement, and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

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

The following written documents may be used to record employee performance:

- (a) **Performance Notations** - This is the lowest level of documentation. Performance Notations may contain either positive or negative comments. The retention period will be for one year or when memorialized in an evaluation. Performance notations will be stored in the employee's Division file. Removal of the Performance Notation is the responsibility of the respective employee's supervisor. Examples of Performance Notations include but are not limited to:
 - 1. Any document of a negative or positive manner recording the employee's conduct
 - 2. CAD (Computer Assisted Dispatch) event printout with handwritten notations where an officer was observed by his/her supervisor effectively handling a situation
 - 3. A supervisor documenting an employee showing up to work late on an Interoffice Correspondence
 - 4. Dispatch Bureau's Quality Assurance Program documentation
- (b) **Performance Improvement Plan (PIP)** - A document written on an Interoffice Correspondence which addresses specific improvement(s) needed from an employee. Review of the Performance Improvement Plan should take place after a defined period of time, typically four months later. All Performance Improvement Plans will be purged no earlier than four months after issuance and no later than one year and shall be memorialized in an evaluation. The employee's supervisor is responsible for removing the PIP from the Division file.
- (c) **Letter of Improvement** - This is an Interoffice Correspondence issued to the employee who successfully meets the requirements of the Performance Improvement Plan. The Letter of Improvement will remain in the affected employee's Division file until the next evaluation when it is memorialized and removed by the supervisor.
- (d) **Corrective Memorandum**- This Interoffice Correspondence applies to the individual who does not satisfactorily complete the Performance Improvement Plan or to any situation of negative performance a supervisor or manager decides to record at a level higher than a Performance Notation. This is the last level of corrective action documentation. The Corrective Memorandum will remain in the employee's Division file for a minimum of one year or when memorialized in an evaluation. Removal of the Corrective Memorandum is the responsibility of the employee's supervisor.

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Adverse comments such as supervisor notes, negative performance notations, or memos may be retained in the division file after the member has had the opportunity to read and sign the comment (Government Code § 3305).

- (a) Once a member has had an opportunity to read and sign any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
- (b) Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).
- (c) If a member refuses to sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).
- (d) If an employee or the employer discovers a negative comment in the personnel file, that has not been signed by the employee, then the document shall immediately be removed from the employees file and shall not be used against the employee for advancement, promotion, discipline, or transfer to a specialty unit unless and until the employee has had an opportunity to read and sign the adverse comment in accordance with this section. This provision shall not apply to a member who refused to sign an adverse comment in accordance with subsection (c) above.

1026.6 TRAINING FILE

An individual training file shall be maintained by the Training Sergeant for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Training Sergeant or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Training Sergeant or supervisor shall ensure that copies of such training records are placed in the member's training file.

1026.7 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Professional Standards Bureau in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the Professional Standards Bureau Commander.

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

- (a) Not sustained

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- (b) Unfounded
- (c) Exonerated

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

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least two years (Government Code § 34090)

All records of disciplinary action shall be maintained in the Internal Affairs file.

Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least two years (Government Code § 34090).

Disciplinary action resulting from a sustained civilian's complaint shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).

Investigations of complaints which result in a finding of not-sustained, unfounded or exonerated shall be maintained for the appropriate retention period in the internal affairs file.

1026.8 MEDICAL FILE

A medical file shall be maintained by Human Resources separately from all other personnel records and shall contain all documents relating to the member'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 a member's medical condition.
- (e) Any other documents or materials that reveal the member's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

1026.9 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

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Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

1026.9.1 RELEASE OF PERSONNEL INFORMATION

Personnel records are confidential and shall not be disclosed except as allowed by law (Penal Code § 832.7; Evidence Code § 1043) (See also Records Maintenance and Release Policy).

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 member of this department may be guilty of a misdemeanor (Penal 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 (Penal Code § 832.7).

1026.9.2 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the 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 member as soon as practicable that such a request has been made (Evidence 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 a member's personnel records shall be logged in the corresponding file.

1026.10 MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS

Any member 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 of Police 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 (Government Code § 3306.5).

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

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- (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.

1026.11 RETENTION AND PURGING

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

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Chief of Police.
- (c) If, in the opinion of the Chief of Police, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.
- (d) Upon completion of an employee's annual performance evaluation supervisors are responsible for removing all documentation in the employee's Division file that has been memorialized in the employee's evaluation. This includes but is not limited to, Positive and Negative Performance Notations, Corrective Memorandums, Performance Improvement Plans, and Letters of Improvement.

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Personnel Files: Location, Removal, and Retention

1026.12 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 Custodian of Records should work as appropriate with the Chief of Police or the Professional Standards Bureau supervisor 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 (Penal Code § 832.7(b)(2)):

- 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 officer's action was 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 *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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

- (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 Penal Code § 243(f)(4)) by an officer.
- (b) Records relating to an incident where a sustained finding (see the Personnel Complaints Policy) was made by the department or oversight agency regarding:
 1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).

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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 (Penal 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 § 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 (Penal Code § 832.7(b)(4)).

1026.12.1 REDACTION

The Custodian of Records, in consultation with the Chief of Police or authorized designee, shall redact the following portions of records made available for release (Penal 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 (Penal Code § 832.7(b)(6)).

1026.12.2 DELAY OF RELEASE

Unless otherwise directed by the Chief of Police, 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 (Penal Code § 832.7):

- (a) Active criminal investigations
 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.

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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

1026.12.3 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 (Penal 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 outweighs the public interest for prompt disclosure of records about use of serious force by officers.

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In cases where an action to compel disclosure is brought pursuant to Government Code § 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 (Penal Code § 832.7(b)(7)).

If the department determines records will be disclosed pursuant to the above, the department will provide the request for information to the primary employee(s) identified in the responsive records, as determined by the department, at least ten (10) calendar days prior to disclosure, provided that the circumstances related to the request for information allows for at least 10 calendar days prior notice.