

MAINTENANCE AND RELEASE OF EMPLOYEE DISCIPLINE RECORDS

- AUTHORITY:** Penal Code Sections 832.7 & 832.8, 1203.05, 1203.45, 1326-1330, and 1328(a)(d)(e)(f)
Welfare and Institutions Code Sections 781, 827, and 828
Pitchess v. Superior Court (1974) 11 Cal.3d 53; Penal Code Section 832.7, Subdivision (a); Evidence Code Sections 1043 and 1046
Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300-3312
California Public Records Act, Government Code Sections 6250-6270
Senate Bill 16 and 1421, Penal Code Sections 832.7 and 832.8
County of Orange Equal Employment Opportunity and Anti-Harassment Policy and Procedure (Board Resolution No. 15-135)
Standing Order No. 2008-5/08, Superior Court of California in and for the County of Orange
- RESCINDS:** Procedural Manual Item 1-3-105, dated 8/26/21
- FORMS:** None
- PURPOSE:** To set guidelines for the maintenance and release of Professional Standards Division (PSD) discipline records to the affected employee during an Internal Affairs (IA) investigation and in response to a California Public Records Act (CPRA) request as it relates to Senate Bill (SB) 1421.

I. GENERAL INFORMATION

- A. Penal Code Section 832.7, Subdivision (a) makes peace officer personnel files, with limited exceptions, confidential and available in court proceedings only through discovery procedures under Evidence Code Sections 1043 – 1046, aka *Pitchess Motions*.
- B. Public Safety Officers Procedural Bill of Rights Act (more commonly referred to as the Peace Officers Bill of Rights – POBOR) provides the elements of procedural rights that must be followed towards public safety officers when they are subject to an investigation or discipline. POBOR also provides for rules regarding officer personnel records, privacy, searches, and other issues.
- C. Effective January 1, 2019, SB 1421 amends Government Code Section 832.7 to require disclosure of records and information relating to *narrowly defined* incidents in response to a request under CPRA. Essentially, SB 1421 allows members of the public to obtain certain peace officer personnel records that were previously available only through the *Pitchess Motions*.
 1. All *Pitchess Motions* are processed by the Department's Custodian of Records (COR), assigned to PSD.
- D. The Orange County Probation Department (referred to as "Probation") shall comply with the State and Federal law regarding disclosure of applicable Probation

records. CPRA requests may be made orally or in writing. Persons making CPRA requests are not required to identify themselves or state the reasons why they want records. The Chief Probation Officer (CPO) has designated the Department's Public Information Officer (PIO) to initially process and review all CPRA requests.

- E. In the context of this Procedure Manual Item (PMI), "client" refers to a youth offender under probation supervision or an adult offender under formal probation supervision, Mandatory Supervision (MS), and/or Post-Release Community Supervision (PRCS).

II. PROCEDURE

A. Investigations of **Peace Officer** Employee Misconduct

1. All investigations are authorized by Executive Management (CPO, Assistant Chief Probation Officer (ACPO), and Chief Deputy Probation Officer (CDPO) (EM)) via the chain of command and are conducted by designated PSD staff in the Internal Affairs Unit. No employee will conduct an investigation of another employee without prior EM approval.
2. As authorized by EM, the Assistant Division Director (ADD) and Supervising Probation Officers (SPOs) of PSD shall conduct investigations into allegations of misconduct, including ongoing substandard performance of Probation **peace officer** employees.
3. When a potential conflict arises in investigating an employee, the case may be deferred to the Probation Human Resources Services (HRS) Manager or Administrator, with approval from the PSD Division Director (DD).
4. In cases involving an allegation in violation of the County of Orange Equal Employment Opportunity (EEO) and Anti-Harassment Policy and Procedure, the PSD ADD or PSD SPO shall staff the case with the EEO Officer of the County of Orange and/or his/her designee for input or to request that they investigate the complaint.

B. Records that may be reviewed during an IA Investigation

1. Depending on the nature of the allegations, the IA SPO will request, acquire, and review various Probation business and/or client records. Access to certain records will necessitate prior PSD ADD approval.
2. Electronic and paper records may include but are not limited to the following:
 - a. Probation business records.
 - b. Probation client records.
 - (1) Electronic records such as the Institutional Case Management System (ICMS) and Institutional Management System (IMS).

- (2) Paper records such as the adult probation file, juvenile probation file, and juvenile institutional file.
 - (a) Client files may include third party records from other law enforcement agencies, treatment providers, school districts, etc.
 - (3) Client records are prepared by Department employees in the ordinary course of Probation business at or near the time of the act, condition, or event. They are kept daily, weekly, and monthly and entered into the Probation computer database or placed in the client Probation file.
 - (4) These records are printed from the Department's computer database or copied from a Probation file kept for the client.
3. If the investigation requires third party records, the IA SPO will make the appropriate request from the agency and/or entity.

C. Maintenance of PSD Discipline Records

- 1. Only authorized PSD personnel or other Probation or County personnel with a business need shall have access to employee discipline records, which include Complaints Against Personnel (CAP), Guidance Memorandums, Letters of Reprimand, suspensions, and discharges.
- 2. Records are stored in locked buildings and locked cabinets, and the computer database is password protected.

D. PSD Discipline Records Subject to Release

- 1. PSD IA Unit
 - a. The PSD discipline file is created by the assigned IA investigator of the case. All records entered into the file shall be in compliance with POBOR. The file will be reviewed and approved by the PSD ADD.
 - b. The PSD ADD and DD will determine which IA case qualifies for release per a CPRA request under the strict guidelines set forth by SB **16 and** 1421. They may consult and meet with County Counsel for input and feedback.
- 2. POBOR
 - a. An administrative interview (AI), as known as an investigatory meeting of an employee, may be recorded by PSD investigators, the employee, and his/her representative.
 - b. The employee is entitled to the AI recording if there is a second AI. Prior to a second interview, the employee shall also be entitled to a transcribed copy of any notes made by a stenographer or any reports or complaints made by PSD investigators or other persons, except those which are deemed by PSD to be confidential.

3. SB 1421

- a. Notwithstanding any other law, a peace officer's PSD discipline file may be made available for public inspection pursuant to CPRA as delineated in Penal Code Section 832.7, as amended by SB 1421, effective January 1, 2019.

E. Processing a CPRA Request per SB 1421

1. All CPRA requests are routed to and/or received by the PIO, including those made per SB 1421.
2. If the PSD discipline file involves a peace officer at the management level, the PIO will notify the Orange County Managers Association (OCMA). If the peace officer records are of a non-manager, the PIO will contact the Association of Orange County Deputy Sheriffs (AOCDS). In both cases, the PIO will send the respective Association and the affected employee notice of such request within ten (10) calendar days from receipt. "Association" refers to both OCMA and AOCDS.
 - a. Notification will be made to Executivedirector@aocds.org or ocma@ocma.info.
 - b. Notification to the affected employee will be made via his/her work email and a certified letter to the home address.
 - c. If the affected employee is retired or no longer employed by the agency, the Department will notify AOCDS and make every reasonable effort to contact the retired and/or former employee within the above-mentioned guidelines.
3. Once PSD has prepared the responsive records for the CPRA request, the PIO will send all relevant CPRA documents via encrypted email to AOCDS at Executivedirector@aocds.org, and the affected employee (pick up in person or by certified mail) at least seven (7) days prior to releasing the documents to the CPRA requestor.
4. Review Process by Probation
 - a. After Probation has provided a copy of the responsive records to the affected employee and the Association, the Association and/or the employee will have the opportunity to forward any disagreements, findings of safety concerns, redactions, or any other issues, in writing, to the CDPO overseeing the **Administrative Services** Bureau, which includes PSD, no later than seven (7) calendar days from receipt of responsive records.
 - b. If the PSD CDPO or his/her designee disagrees with the concerns brought forth by the affected employee and/or the Association, either party will have the option of engaging in an open dialogue with the CPO prior to releasing the records. The CPO shall have

final authority on whether materials are released pursuant to a CPRA request.

5. Redactions

a. All PSD discipline records will be reviewed for redactions required by SB 1421. Such redactions shall be made for any of the following purposes:

- (1) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers.
- (2) To preserve the anonymity of **whistleblowers**, complainants, **victims**, and witnesses.
- (3) To protect confidential medical, financial, or other information, disclosure of which is specifically 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 by peace officers.
- (4) 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 peace officer, custodial officer, or another person.
 - (a) If Probation or the affected employee(s) believe there may be a danger as a result of releasing such records, the Bureau will conduct a Threat Assessment according to departmental procedures (PMI 1-4-110).
- (5) If the employee's discipline records contain information or references to another disciplinary action not subject to release under SB 1421, or discuss sustained policy violations or allegations of misconduct which are not subject to release pursuant to SB 1421.

b. PSD Discipline Records that Contain Client Records

- (1) Adult Client Records
 - (a) Standing Order No. 2008-5/08 outlines the procedure by which adult client records are redacted. It also defines the types of records that are exempt from disclosure absent a court order.
- (2) Youth Client Records

- (a) When the PSD discipline records contain any youth information or records, additional precaution must be exercised. All youth records have an additional layer of confidentiality as defined in the Welfare and Institutions Code (WIC) Section 827.
- (b) When the PSD discipline records only identify the name of one youth, his/her name (first, middle, and last) must be redacted in its entirety along with any of his/her identifying information (e.g., photo of youth, date of birth, social security number, home address, telephone number, Probation number, court case numbers, etc.).
- (c) When the PSD discipline records involve the identity of multiple youth, a variation of redaction methods may be utilized. For example:
 - (i) The youth's first name and the first letter of their last name can remain unredacted (i.e., Jane D.), or
 - (ii) Redact all the names in black, and replace each name with a generic identifier, such as Youth #1, Youth #2, etc.

If there are multiple youth named in the records and certain youth are not pertinent to the investigation, their names may be redacted.
- (d) If Probation wishes to release youth records without the noted redactions, an 827 WIC motion must be filed with the Juvenile Court in the County of Orange. In these cases, County Counsel will complete and submit the necessary court forms on behalf of Probation.
 - (i) No youth records shall be released unredacted (as it relates to an IA investigation) without prior approval from the Presiding Judge of Juvenile Court.

6. Retention Schedule

- a. Probation will comply with Penal Code Section 832.5(b) and retain all PSD discipline records as mandated by the Department's Records Control Schedule.
- b. CPRA paper records are retained for two (2) years and then copied to electronic media. Electronic copy retained permanently.

REFERENCES:

Procedures:	1-4-110	Threats, Harm or Danger to Employees and Others
	3-1-F	Professional Standards – Institutions
	3-11-001	Youth's Facility Folders
Policy:	B-1	Case Confidentiality – Client's Right to Privacy
	B-3	Case File Management and Security
	C-11	Employee Personnel File
	C-18	Investigations: Departmental Response to
		Allegations of Employee Misconduct
	C-19	Equal Employment Opportunity (EEO)

Probation Records Control Schedule

G. Dransfeldt

APPROVED BY: