

TRAINING



BULLETIN

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Discipline Policy Appendices
Internal Investigation Appendices

“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”

PART IV

INTERNAL INVESTIGATIONS & DISCIPLINE APPENDICES

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REVISION RECORD

The page numbering format has been revised to facilitate updating and tracking revisions to publications contained in this Handbook.

When a minor revision is made to a publication, the 'Revision Number' will be indicated on the Special Order and shall be accompanied by the updated page(s). The 'Revision Date' and 'Reference Page Number(s)' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'.

When it is necessary to make major policy or content revision, the publication shall be rewritten in its entirety. The 'Revision Number' and 'Revision Date' shall be indicated on the new order. The 'Revision Date' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'. The term 'NEW' shall be recorded in the 'Reference Page Number(s)' box to indicate the promulgation of a new order.

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Appendix 1

IAD Related Codes

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PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS

CALIFORNIA CODES

Government Code Section 3300-3312

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.



(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non criminal matters.



This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.



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(3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's pre-disciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision

(e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

3305. 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 entry may be made if after reading such instrument the public safety 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. 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.

3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefore by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, 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, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or



identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. 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.

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish



actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages.

Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- (c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

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THE COMPLAINT PROCESS

Penal Code Section 832.5

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.



(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

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CONFIDENTIALITY OF RECORDS

Penal Code Section 832.7

832.7. (a) Peace officer or custodial 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 peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.



PERSONNEL RECORDS

Penal Code Section 832.8

832.8. 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 any of the following:

- (a) Personal data, including marital status, family members, educational and employment history, home addresses, 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 or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

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EXEMPTION OF PARTICULAR RECORDS

Government Code Section 6254

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.



Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.



- (i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- (j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.
- (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
- (l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.
- (m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.
- (n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.
- (o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.
- (p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.
- (q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.



Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.



(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.



(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).



Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

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FALSE COMPLAINTS

Penal Code Section 148.6

148.6 (a) (1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor.

This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.



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Police Personnel Records/Discovery

Evidence Code Section 1043-1044

1043. (a) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

(b) The 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 or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or 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 the governmental agency identified has the records or information from the 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 the hearing by the governmental agency identified as having the records.

1044. Nothing in this article shall be construed to affect the right of access to records of medical or psychological history where such access would otherwise be available under Section 996 or 1016.

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Appendix 2

Related Case Law

Due Process Hearings

<u>Skelly v. State Personnel Board</u>	IV – 8.1
<u>White v. County of Sacramento</u>	IV – 8.1
<u>Baggett v. Gates</u>	IV – 8.1
<u>McManigal v. City of Seal Beach</u>	IV – 8.1
<u>Civil Service Association, Local 400 v. San Francisco Redevelopment</u>	IV – 8.1
<u>Henneberque v. City of Culver City</u>	IV – 8.1
<u>Doyle v. City of Chino</u>	IV – 8.1

Civilian Employees

<u>Meyers-Milias-Brown Act (Government Code § 3300 et seq.)</u>	IV – 8.1
<u>Long Beach City Employees Assoc. v Long Beach</u>	IV – 8.1

Probationary Officers

<u>Lubey v. San Francisco</u>	IV – 8.2
<u>Barnes v. City of El. Cajon</u>	IV – 8.2
<u>Dorr v. County of Butte</u>	IV – 8.2
<u>Phillips v. Civil Service Commission of San Diego</u>	IV – 8.2
<u>Fleisher v. Signal Hill</u>	IV – 8.2

CUBO (Conduct Unbecoming of an Officer)

<u>Perea v. Fales</u>	IV – 8.2
<u>Cranson v. City of Richmond</u>	IV – 8.2
<u>Nicolini v. County of Tuolumne</u>	IV – 8.2

Internal Investigations

<u>Lybarger v. Los Angeles</u>	IV – 8.2
<u>Mounger v. Gates</u>	IV – 8.2
<u>Williams v. City of Los Angeles</u>	IV – 8.2
<u>Estes v. Grover City</u>	IV – 8.3
<u>Pitman v. City of Oakland</u>	IV – 8.3
<u>Titus v. Civil Service Commission</u>	IV – 8.3
<u>Kirkpatrick v. City of Los Angeles</u>	IV – 8.3
<u>O'Connor v. Ortega</u>	IV – 8.3
<u>Schwennerdt v General Dynamics</u>	IV – 8.3
<u>Railway Labor Executives Assoc. v. Burnley</u>	IV – 8.3
<u>Tomer v. Gates</u>	IV – 8.3

Right to Representation

<u>Robinson v. State Personnel Board</u>	IV – 8.4
<u>NLRB v. Weingarten, Inc.</u>	IV – 8.4



Role of Representative

NLRB v. Texaco IV – 8.4
Civil Service Association v. San Francisco IV – 8.4
Gardner v. Broderick IV – 8.4
Garrity v. New Jersey IV – 8.4

Adverse Comments

Hopson v. Los Angeles IV – 8.4
Miller v. Chico Unified School District IV – 8.4
Turturici v. Redwood City IV – 8.4

Grievance

LAPPL (Quan) v. Los Angeles IV – 8.4



IAD Related Case Law

- A. Due Process Hearings
1. Skelly v. State Personnel Board (1975) 15 Cal.3d 194 - Procedural due process required written notice of proposed action, a copy of the charges, all material upon which the action is based and an opportunity to respond, either orally or in writing, to the authority initially imposing the discipline.
 2. White v. County of Sacramento (1982) 31 Cal.3d 676 - Reassignment of Peace Officer to lower paying position is per se punitive and requires an opportunity for an administrative appeal.
 3. Baggett v. Gates (1982) 32 Cal.3d 128 - AB 301 applies to charter cities. Despite agency's label as non-punitive transfer, reassignment to lower paying position is per se disciplinary and entitled to G.C. § 3304(b) hearing.
 4. McManigal v. City of Seal Beach (1985) 166 Cal.App.3d 975 - Any action resulting in less pay (e.g., motorcycle hazard pay) entitles officer to administrative appeal.
 5. Civil Service Association, Local 400 v. San Francisco Redevelopment (1985) 166 Cal.App.3d 1222 - Administrative appeal to neutral authority may be post-deprivational providing employee was informed of charges and given meaningful opportunity to respond prior to imposition of discipline. [See: Cleveland Board of Education v. Loudermill (1985) U.S., 105 S.Ct.1487]
 6. Henneberque v. City of Culver City (1983) 147 Cal. App.3d 250 - Summary demotion of probationary promotion requires an opportunity for 3304(b) hearing. (**Note:** Consider also Government Code §§ 3502 and 3506 for interference with labor organization.)
 7. Doyle v. City of Chino (1981) 117 Cal. App. 3d 673 - Protections of A.B. 301 apply to Chief of Police by virtue of his statue as peace officer.
- B. Civilian Employees
1. Meyers-Milias-Brown Act (Government Code §§ 3300 et seq.)
 2. Long Beach City Employees Assoc. v Long Beach (1986) 41 Cal.3d.937 - No public employee may be compelled to take polygraph. (Unreliable and invasion of privacy) Cf.LC § 432.2 - Private employers; GC §3307 - Police Officers.



C. Probationary Officers

1. Lubey v. San Francisco (1979) 98 Cal.App.3d 340 - Where probationary employee is terminated for misconduct which might stigmatize the reputation, due process requires an opportunity to clear their name or refute the charges.
2. Barnes v. City of El. Cajon (1978) 87 Cal.App.3d 502 - Protections of A.B. 301 apply to probationary officers.
3. Dorr v. County of Butte (9th Cir. 1986) 795 F2d 875 - If department labels termination of probationary employee as "unsatisfactory performance," it is immaterial that disciplinary grounds may also exist and procedural safeguards (e.g., Lubey) do not create a property interest for at will employees.
4. Phillips v. Civil Service Commission of San Diego (1987) 192 Cal.App.3d 996 - The sole purpose of a liberty interest hearing is to provide an opportunity to clear one's name, thus making reinstatement and back pay discretionary (i.e., reference in personnel file is adequate.)
5. Fleisher v. Signal Hill (9th Cir. 1987) 829 F2d 1491 - No liberty interest where employee admits misconduct and is terminated for failure to meet standards. (No privacy interest in pre-employment criminal sex acts.)

D. CUBO (Conduct Unbecoming of an Officer)

1. Perea v. Fales (1974) 39 Cal.App.3d 939 - While CUBO may be vague on its face, required certainty may be provided by the common knowledge of members of the particular vocation.
2. Cranson v. City of Richmond (1985) 40 Cal.3d 755 - While CUBO violations are narrowly construed, sufficiently definite notice of nature of misconduct may be determined from within vocation.
3. Nicolini v. County of Tuolumne (1987) 190 Cal.App.3d 619 - Dishonesty and conduct which tends to discredit the department (passing altered prescription in uniform) is specific enough for CUBO.

E. Internal Investigations

1. Lybarger v. Los Angeles (1985) 40 Cal.3d 822 - Whenever potential exists for criminal charges, accused officer must be advised of Miranda plus fact that answers may be compelled and such answers are limited to scope of administrative investigation.
2. Mounger v. Gates (1987) 193 Cal.App. 3d 1248 - Peace Officer need not exhaust administrative remedies prior to seeking relief under § 3309.5 to enjoin violations of AB 301.
3. Williams v. City of Los Angeles (1988) 199 Cal.App.3d 505 - Failure to advise officer of 3303(g) rights is unlawful and Superior Court may properly exclude any resulting statements in subsequent administrative proceedings. Department may, however, reinterview officer by starting over in accordance with AB301.



4. Estes v. Grover City (1978) 82 Cal.App.3d 509 - While no administrative exclusionary rule exists per se, statements coerced under threat of polygraph (Government Code § 3307) may be inadmissible.
5. Pitman v. City of Oakland (1988) 197 Cal.App.3d 1037 - If arrest does not ultimately result in a conviction, early disclosure to affect employment is violation of privacy and LC § 432.7(f)(1). No cause of action for early disclosure. [432.7(d) exempts only pre-employment disclosure]. While employer may inquire about arrest, arrests alone may not be sole basis for discipline.
6. Titus v. Civil Service Commission (1982) 130 Cal.App.3d 357 - Police officer's duty to disclose information critical to a criminal investigation supersedes any claim to an employer of privileged communication.
7. Kirkpatrick v. City of Los Angeles (9th Cir. 1986) 803 F2d 485 - Strip search of police officer for administrative investigation must be supported by reasonable suspicion.
8. O'Connor v. Ortega (1987) U.S., 107 S.Ct.1492 Employer controlled areas may be searched for either non-investigative work related purpose or investigation of work related misconduct if there is a reasonable belief that either is justified under the totality of the circumstances.
9. Schwennerdt v General Dynamics (9th Cir. 1987) 823 F2d 1328 - Public employee has a reasonable expectation of privacy in areas given over to his exclusive use unless on notice of periodic work related searches. However, work related reasonable searches may still be valid. [Note: No unrestrained inquiries into personal sexual matters without nexus to job performance. Thorne v. El Segundo (9th Cir. 1986) 802 F2d1131].
10. Railway Labor Executives Assoc. v. Burnley (9th Cir 1988) 839 F2d 575 - While less than probable cause is required for mandatory drug testing, two prong reasonableness test applies: (1) Individualized suspicion from inception that evidence of job related substance abuse will be found and (2) scope of search must be reasonable related to circumstances initially justifying search. (Note: One cannot give prior consent to a future unreasonable search as a condition of employment.)
11. Tomer v. Gates (9th Cir. 1987) 811 F2d 1240 - Use of certain sting operations during internal affairs investigation does not violate any constitutional rights and investigator is entitled to qualified good faith immunity. (**Note: On** remand, investigator was hit with \$50,000 in punitive damages.) Also, Gibson v. Gates.



F. Right to Representation

1. Robinson v. State Personnel Board (1979) 97 Cal.App.3d 994 - Employee has right to representation at any meeting which could lead to disciplinary action and employee may not be disciplined for attempting to exercise that right.
2. NLRB v. Weingarten, Inc. (1975) 95 S.Ct.959, 420 U.S. 251 - Right to request meaningful representation arises when employee reasonably believes that the interview will result in disciplinary action.

G. Role of Representative

1. NLRB v. Texaco (9th Cir 1981) 659 F2d 124 - Employee representative may not be relegated to role as a passive observer and must be permitted to speak during interview.
2. Civil Service Association v. San Francisco (1978) 22 Cal.3d 552 - Representative is more than a mere observer and has duty to exercise vigilance to ensure employer does not impose discipline unjustly (i.e., representative may ask questions to clarify, but may not testify).
3. Gardner v. Broderick (1968) 88 S.Ct.1913, 392 U.S. 273 - While criminally incriminating answers may be administratively compelled, questions must be specifically, narrowly and directly related to scope of investigation (i.e., no "fishing expedition").
4. Garrity v. New Jersey (1967) 87 S.Ct.616, 385 U.S. 493 - Police Officers are not relegated to a watered down version of constitutional rights and administratively coerced statements may not be used in criminal proceeding.

H. Adverse Comments

1. Hopson v. Los Angeles (1983) 139 Cal.App.3d 347 - Any comment which could be reasonably construed as adverse to the officer's interest entitles officer to 3304(b) hearing prior to entry into personnel file.
2. Miller v. Chico Unified School District (1975) 24 Cal.3d 703 - All adviser comments entered into any file used for personnel purposes must be disclosed to employee (non-compliance prohibits subsequent use). See also Labor Code, § 1198.5.
3. Turturici v. Redwood City (1987) 190 Cal.App.3d 1447 - Negative comments in performance evaluation are not "punitive action 3304(b), but are governed by §§ 3305 and 3306.

I. Grievance

1. LAPPL (Quan) v. Los Angeles (1985) 163 Cal.App.3d 1141 - Depending on M.O.U. provisions, disciplined employee may pursue grievance (e.g., binding arbitration) or a writ of mandate to challenge administrative hearing.



Appendix 3

Internal Investigation Related Reports, Letters and Forms

Report of Investigation Template IV – 9.1
IAD File Folder Category Divider Sheets IV – 9.2
Investigation Checklist IV – 9.3
Inter-Office Letter Template IV – 9.4
Chronological Activity Report IV – 9.5
Photographic Lineup Advisement IV – 9.6
Acknowledgement of Rights and Obligations Pursuant to Penal Code Section 148.6 IV – 9.7
Medical Information Request Letter IV – 9.8
Medical Release Form IV – 9.9
FAX Transmittal Cover Sheet IV – 9.10
Subject Notification Letter IV – 9.11
Witness Notification Letter IV – 9.12
Complainant Contact Request Letter IV – 9.13
Notification of Complaint Investigation Letter IV – 9.14
Notification of Complaint Investigation Division Level Investigation Letter IV – 9.15
Communications Division Tape Request Form IV – 9.16
Miranda Rights & Lybarger Advisement Form IV – 9.17
Acknowledgement of Rights and Obligations Form (OPD Personnel) (TF-722) IV – 9.18
Investigator’s Checklist (TF-3164) IV – 9.19
Complaint Form (TF-3039b) IV – 9.20
Acknowledgement of Rights and Obligations Pursuant to Penal Code Section 148.6 IV – 9.21
Informal Complaint Resolution Form (TF-3132) IV – 9.22
Filing a Complaint Against the Police (Letter Size) (TF-3039) IV – 9.23
Complaint Close-Out Letter IV – 9.24



**OAKLAND POLICE DEPARTMENT
INTERNAL AFFAIRS DIVISION
REPORT OF INTERNAL INVESTIGATION
FILE NO. XX-XXX**

<u>COMPLAINANT:</u>	X
<u>ABSTRACT OF ALLEGATION:</u>	X
<u>APPLICABLE RULE(S):</u>	X
<u>DISCOVERY OF ADDITIONAL RULE(S) VIOLATION(S):</u>	X
<u>SUBJECT OF COMPLAINT:</u>	X
<u>DATE/TIME/LOCATION OF INCIDENT:</u>	X
<u>DATE COMPLAINT RECEIVED:</u>	X
<u>ASSIGNED INVESTIGATOR:</u>	X
<u>COMPLAINANT'S INTERVIEW:</u>	X
<u>WITNESS STATEMENT(S):</u>	X
<u>SUBJECT INTERVIEW:</u>	X

NOTE: All definitions, concepts, facts, conclusions and recommendations contained herein are strictly administrative in nature without force of law and have no bearing on any legal body with competent authority.



DISPUTED FACTS: X

EVIDENCE: X

OTHER RELEVANT INFORMATION: X

DISCUSSION & CONCLUSION: X

RECOMMENDED FINDINGS: X

Chief of Police



IAD FILE FOLDER CATEGORIES

Prepare the Following Divider Categories for Control Files and Investigative Files

OAKLAND POLICE DEPARTMENT Internal Affairs Division



INVESTIGATION REPORT

<hr/> <p>ASSIGNED INVESTIGATOR</p>

<hr/> <p>CASE NO.</p>	<hr/> <p>3304 DATE</p>
-----------------------	------------------------

CONFIDENTIAL

EXEMPLAR



File Folder Dividers

FILED

Investigation # _____

This report has/was assigned a *FILED* Status on _____

Contact Sgt. X. XXXXXXXX for further information or file review.



File Folder Dividers

STOP

Confidential Law
Enforcement Documents

Do not disclose/release to any non-police personnel

If you have any questions,
please contact Sgt. X. XXXXXXXX at 239-3161



File Folder Dividers

OFFICER LETTERS

EXEMPLAR



File Folder Dividers

INTERNAL DOCUMENTS



File Folder Dividers

IAD CASEWORK



File Folder Dividers

DOCUMENT REQUESTS



File Folder Dividers

COMPLAINT FORM

EXEMPLAR



INTERNAL AFFAIRS REPORT CHECKLIST

- Chronological log

- Report of Internal Investigation

- Investigator's Checklist



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REPORTS

- Criminal Crime, Arrest, Statements, Supplemental, Assignment, Citations

- Procedural Use of Force, Pursuit

- Other Collision, 5150 Hold, Operations Plan, Threat Assessment, Daily Watch Detail



EVIDENCE

- A. Photographs/Video Tapes
 - Taken by IAD
 - Provided to IAD by Complainant
 - Booking
 - Scene
 - Video Tape Provided by Complainant/Witness

- B. Medical Records/Release

- C. Jail Division
 - Checklist
 - Nurse/Medical Report

- D. Radio
 - Purge Printout
 - Phone Call to Communications Division
 - Radio Traffic



STATEMENTS (Audio/Written)

- A. Complainant
- B. Witness Officer
- C. Subject
- D. Neighborhood Canvass for Witnesses
- E. Notification of Complaint Letter
- F. AB 301 Form
- G. Notes
- H. 148.6 Form



INTERNAL AFFAIRS REPORT

- A. Records Management System
- B. Pitchess Motion Request
- C. Contact Letter(s)
- D. Court Transcripts (i.e., statements, court testimony, depositions, etc.)
- E. Close-out Letter
- F. Other _____



CITY OF OAKLAND

Memorandum

TO:
ATTN:
FROM:
DATE:

RE:



Photographic Lineup

Case # _____

You will be asked to look at several photographs. The fact that the photographs are shown to you should not influence your judgment. The photographs may or may not include the photograph of the person who is alleged to have committed the misconduct. You are not obligated to identify anyone. It is just as important to free an innocent person from suspicion as to identify the guilty parties. Please take your time and look at each of the photographs before attempting to identify anyone. Keep in mind that hairstyles are easily changed, as are beards and mustaches. Photographs do not always depict the true complexion of a subject; they can be darker or lighter. Please, do not discuss the case with other witnesses nor indicate in any way whether you have identified someone.

At the below note time and date, *Investigator's Name* showed me photographs of persons of similar appearance. Prior to reviewing the photographs, I read the above statement. Immediately after reading the above statement and acknowledging that I understood it, I examined each of the photographs and identified photograph number _____ as the person who:

I circled and signed my initials on the photograph I identified.

Signature of Witness /Complainant

Signature of Investigator

Name of Witness/Complainant (Printed)

Date/Time



**OAKLAND POLICE DEPARTMENT
ACKNOWLEDGEMENT OF RIGHTS AND OBLIGATIONS
PURSUANT TO PENAL CODE SECTION 148.6**

CASE NO. _____

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizen's complaints. You have the right to a Written description of this procedure. This agency may find, after an investigation, that there is not enough evidence to warrant action on your complaint; even if that is the case you have a right to make the complaint and have it investigated if you believe that an officer behaved improperly. Citizen complaints must be retained by this agency for at least five years.

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be criminally prosecuted.

I have read and understood the above statement.

Complainant

Intake Officer

Date



Medical Information Request Letter

Date:

Internal Affairs Case #: 04-XXXXXX

Highland General Hospital
Attention: Medical Records
1411 E. 31st Street
Oakland, California 94602

I am investigating a complaint initiated by John Doe, against the Oakland Police Department, which stems from an incident that occurred on **INCIDENT DATE**.

Mr. Doe was treated at your Oakland facility shortly after the incident, on **DATE** for an injury allegedly received at the hands of an officer: His birth date is **BIRTH DATE** and his Kaiser Medical # is **XXXXXXX**. To complete my investigation, it is necessary for to obtain a copy of any records that you may have, which describe the injury and the treatment received.

Enclosed is a signed medical release authorizing the release of Mr. Doe's information.

If there are any questions concerning this request, please telephone me at (510) 238-3161, Monday through Thursday, between the hours of 0900-1700. Your prompt response to this matter will be greatly appreciated.

INVESTIGATOR'S NAME

Police Officer
Internal Affairs Division



MEDICAL RELEASE

Internal Affairs Case Number: 05-XXX

To Whom It May Concern:

I hereby authorize the Alameda County (Highland) Hospital and the Oakland City Jail to release to the Oakland Police Department, Internal Affairs Division any information in your files pertaining to my medical records: This release is executed with full knowledge and understanding that the information is for the official use of the Oakland Police Department, Internal Affairs Division.

I hereby release Alameda County (Highland) Hospital, the Oakland City Jail and the custodians of such records, from any and all liability for damages of any kind, which may at any time result to me, my heirs, family or associates, because of compliance with this authorization and request to release information, or any attempt to comply with it. Should there be any questions as to the validity of this release, you may contact me as indicated below.

Complainant

Signed Date

Parent/Guardian

Signed Date

Name: _____

Address: _____

Telephone: _____

D.O.B. _____

Medical No.: _____

Soc. Sec #: _____



Fax Transmittal Cover Page



Internal Affairs Division
250 Frank Ogawa Plaza Suite C
Oakland, California 94612
510-238-3161
510-238-3014 FAX

XXXXXXXXX
Chief of Police

**FAX
COVER PAGE**

Date:	
To:	Fax Number:
From:	Number of Pages:
Subject:	

Notes/Comments/Additional Information
--

<p>The document (all pages) "faxed" (is/are) intended for the individual or organization to whom, or to which, addressed. Information contained herein may be defined by statute as confidential, privileged and exempt from disclosure. If you are not the addressee, agent or an authorized employee, you may be responsible and subject to sanction of applicable law for any misuse or publication of this material. If you have received this communication in error, please notify the sender immediately by telephone. Arrangements will be made for the return or destruction of the specified contents.</p>
--

CITY OF OAKLAND

Memorandum

To: Patrol Division
Attn: Officer **XXXX**
From: Internal Affairs Division or Other Division
Date: 1 Jan 05

Re: Subject Officer Notification IAD Case # 05-**XXXX**

SUBJECT OFFICER: Officer **XXXXXX**

INVESTIGATOR: Officer **XXXXXXXX** 1234

M.O.R. SECTION: 370.27, Use of Force

On 4 Dec 04, John Doe filed a complaint with the Internal Affairs Division against you regarding an incident that occurred on 20 Nov 04 at 60th Ave. and International Blvd. Doe alleges that you punched him in the face during a car stop. The Internal Affairs Division is currently investigating this matter.

Manual of Rules Section 398.70 prohibits members and employees from contacting any witnesses or complainants involved with internal investigations for the purpose of influencing their testimony or persuading them to withdraw complaints. When routine contact with such persons is unavoidable, members and employees shall refrain from any discussion of complaints against Departmental personnel or testimony relating to those complaints.

Please call me at 238-3161, upon receipt of this notice, to arrange a time when we can discuss this matter.

Refer to IAD Case No. 05-**XXXX**. RD# is 04-**XXXXXX**.

Investigator's Name

Police Officer
Internal Affairs Division or other Division

Cc: Subject's Supervisor
Subject's Division Commander/Manager

EXEMPLAR

CITY OF OAKLAND

Memorandum

To: Patrol Division
Attn: Officer **XXXX**
From: Internal Affairs Division or other Division
Date: 1 Jan 05

Re: Witness Officer Notification IAD Case # 05-**XXXX**

Internal Affairs Division Case # 05-XXX

WITNESS OFFICER: Officer

INVESTIGATOR: Officer **XXXXXXX** 1234

M.O.R. SECTION: 370.27, Use of Force

On 4 Dec 04, John Doe filed a complaint with the Internal Affairs Division against you regarding an incident that occurred on 20 Nov 04 at 60th Ave. and International Blvd. The Internal Affairs Division is currently investigating this matter and you may be a witness to the incident.

Manual of Rules Section 398.70 prohibits members and employees from contacting any witnesses or complainants involved with internal investigations for the purpose of influencing their testimony or persuading them to withdraw complaints. When routine contact with such persons is unavoidable, members and employees shall refrain from any discussion of complaints against Departmental personnel or testimony relating to those complaints.

Please call me at 238-3161, upon receipt of this notice, to arrange a time when we can discuss this matter.

Refer to IAD Case No. 05-**XXXXXX**. The RD# is 04-**XXXXXX**.

Investigator's Name

Police Officer

Internal Affairs Division or other Division

EXEMPLAR

CITY OF OAKLAND



POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

Patrol Desk (510) 238-3455

Fax (510) 238-2251

November 9, 2004
John Doe
123 Happy Street
Oakland Ca, 94062

Dear Mr. Doe,

On 23 October, 2004 you were arrested by the Oakland Police Department. You subsequently contacted the Internal Affairs Division, and alleged police misconduct. The alleged incident occurred on Park Boulevard, near Beaumont Avenue.

In order to initiate the complaint process in a timely manner, please contact me within five (5) business days at the Internal Affairs Division at (510) 238-3161 or in person at 250 Frank H. Ogawa Plaza, Suite C, Oakland, Ca, 94612, Monday through Friday, between the hours of 8:00 am and 5:00 pm.

I have enclosed a copy of a Complaint Form. Please complete the form, return it to the Internal Affairs Division and set up a time that you will be available for an interview.

Thank you,

Investigator's Name
Police Officer
Internal Affairs Division

EXEMPLAR

CITY OF OAKLAND



POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

Patrol Desk (510) 238-3455

Fax (510) 238-2251

December 31, 2002

Dear: Mr. Doe

Thank you for contacting the Oakland Police Department's Internal Affairs Division. We will attempt to resolve any concerns or complaints that you may have regarding the conduct of our employees, policies and procedures. Your complaint has been accepted for review. According to our records:

- The date your complaint was received: *Date Complaint Received*
- The file number assigned to your matter is: 05-XXXX
- The name of the investigator assigned to the matter is: *Investigator's Name*
- The telephone number where the investigator may be reached:
(510) 238-3161.

You also may elect to file your complaint with the Citizen's Police Review Board if:

- Your complaint or concern involves the use of force or the communication of bias based upon race, gender, national origin, sexual orientation or disability.
- The police department fails to complete its review within 90 calendar days without a disposition: You then have 30 days to file with the Citizens' Police Review Board.
- You disagree with the outcome. You then have 30 days from the date that you are notified of the outcome to file with the Citizen's Police Review Board.

The Internal Affairs Division
Oakland Police Department

EXEMPLAR



POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227
Patrol Desk (510) 238-3455
Fax (510) 238-2251

**Notification of Complaint Investigation
Division Level Investigation**

December 28, 2004

Dear: Mr. /Ms.

Thank you for contacting the Oakland Police Department’s Internal Affairs Division. We will attempt to resolve any concerns or complaints that you may have regarding the conduct of our employees, policies and procedures. Your complaint has been accepted for review. Your investigation has been assigned to the Bureau of _____ for investigation. An investigator will contact you by mail, fax, e-mail or by phone. According to our records:

- The date your complaint was received is:
- The file number assigned to your matter is: XX-XXX
- The involved subject is currently assigned to the Bureau of _____.
- If you are not contacted within 30 days you can contact the Bureau Chief’s office to obtain the name and phone number of the assigned investigator.

Bureau of Field Operations Deputy Chief	XXXXX	510 238-3801
Bureau of Investigations Deputy Chief	XXXXX	510 238-3076
Bureau of Services Deputy Chief	XXXXX	510 238-3074

The Internal Affairs Division
Oakland Police Department

COMMUNICATIONS DIVISION

TAPE REQUEST FORM

Date of Request:

Investigator Name:

Extension and/or Pager No.:

Date of Incident:

INC Number:

Date Needed:

Reason for Request:

Comments*:

*** NOTE**

All requests must be accompanied by a complete, legible copy of the CAD Purge. Please indicate what you want recorded (i.e., all or specific) phone calls, all or portions of the radio air traffic including main patrol channels, secondary patrol channels (P4 & P5), TAC channels, SDU channels, etc.

EXEMPLAR

Oakland Police Department
Internal Affairs Division

MIRANDA RIGHTS

ADMONITION: You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to talk to a lawyer and have him/her present with you while you are being questioned. If you cannot afford a lawyer, one will be appointed to represent you before any questioning if you wish one.

WAIVER: Do you understand each of these rights I have explained to you?

Having these rights in mind are you willing to speak with us now?

Signature: _____

Print Name: _____

Statement taken by: _____

Date & Time: _____

LYBARGER ADVISEMENT

I have been advised that the Internal Affairs Division is proceeding administratively with this investigation and I am being ordered to provide a statement according to **Lybarger v. Los Angeles, 40 Cal. 3rd 822, 829, 221 Ca. Rptr. 529, 533 (1985).**

I have been advised that I am compelled to give a statement; and neither this statement nor any information derived from this interview may be used in any criminal and/or civil proceeding pursuant to the Public Safety Officers Bill of Rights Act. **Government Code Section 3300 et seq.**

I have been advised that if I refuse to give a statement or answer any questions regarding this matter, since the inquiry is administrative, I may be charged with insubordination and be subject to disciplinary action. Oakland Police Department Manuel of Rules Section 314.30.

Signature: _____

Print Name: _____

Statement taken by: _____

Date & Time: _____

OAKLAND POLICE DEPARTMENT
Acknowledgement of Rights and Obligations

IAD File No.:

Pursuant to General Order M-3, Processing Complaints Against Departmental procedures and Personnel, and the Public Safety Officer's Procedural Bill of Rights Act (Government Code Section 3300 et. Seq.), the following applies:

1. The nature of this investigation concerns an allegation of a violation of the provisions of the *Manual of Rules* section: (**EXAMPLES: General Conduct 314.03 M.O.R. Performance of Duty 314.39 M.O.R. Use of Physical Force 370.27 M.O.R. Obedience to Laws and Regulations 314.42 M.O.R. Insubordination 314.30 M.O.R.**)
2. Officer in charge of this investigation:
3. Officer in charge of this interview:
4. Interviewing Officer:
5. Other persons present during this interview:
6. Government Code Section 3303 (i). A member or employee, **who is the subject of an internal investigation**, shall, at their request, have a representative present while being interviewed. A reasonable period shall be afforded to enable the member or employee to arrange for a representative of their choice.
7. Government Code Section 3303 (g). A member or employee being interviewed during an internal investigation may use his or her own recording device to record all aspects of the interview. A member or employee being interviewed may review any reports or other documents pertinent to the matter under investigation, **except those that are deemed confidential.**

I am aware of the following *Manual of Rules* sections:

- 398.80 TRUTHFULNESS:** Members and employees are required to be truthful at all times whether under oath or not.
- 398.64 DEPARTMENTAL INVESTIGATIONS-TESTIFYING:** Members and employees are required to truthfully answer questions by or render material and relevant statements to a competent authority in a Departmental investigation when so directed.
- 398.48 REFUSAL TO TESTIFY:** Any member or employee, who appears as a witness before any competent investigative body, judicial tribunal, hearing board or person authorized to receive testimony, and refuses to testify, shall be subject to disciplinary action.
- 398.70 INTERFERING WITH INTERNAL INVESTIGATIONS:** Members and employees are prohibited from contacting any witnesses or complainants involved with internal investigations for the purpose of influencing their testimony or persuading them to withdraw complaints. When routine contact with such persons is unavoidable, members and employees shall refrain from any discussion of complaints against Departmental personnel or testimony relating to those complaints.
- 398.75 ASSISTING SUBJECT OF INTERNAL INVESTIGATION:** Members and employees shall not impart to any person who is the subject of an internal investigation any information that may assist him/her to conceal a violation of Departmental rules and regulations or otherwise thwart the internal investigation process.

Signature _____

Date _____

Print Name _____

Time _____

Investigator _____



INTERNAL AFFAIRS
INVESTIGATOR'S CHECKLIST

<input type="checkbox"/> Complaint Investigation Report with Case # _____			
<input type="checkbox"/> Chronological Log <input type="checkbox"/> Notification of Complaint Letter <input type="checkbox"/> Report of Internal Investigation			
REPORTS:			
<input type="checkbox"/> Crime	<input type="checkbox"/> Assignment	<input type="checkbox"/> Use of Force	<input type="checkbox"/> OPS Plan
<input type="checkbox"/> Arrest	<input type="checkbox"/> Adult Citation	<input type="checkbox"/> Collision	<input type="checkbox"/> Daily Watch Detail
<input type="checkbox"/> Statements	<input type="checkbox"/> Juvenile 606	<input type="checkbox"/> 5150 Hold	
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Juvenile NTA	Miscellaneous _____	
RADIO:			
<input type="checkbox"/> Purge Printout		<input type="checkbox"/> Radio Traffic	
<input type="checkbox"/> Phone call to Communications Division			
PHOTOS:			
<input type="checkbox"/> Taken by IA	<input type="checkbox"/> Booking Photos	<input type="checkbox"/> Scene Photos	
<input type="checkbox"/> Provided to IA by Complainant		<input type="checkbox"/> Video Tape Provided by Complainant/Witness	
STATEMENTS:			
<u>Audio</u>		<u>Written</u>	
<input type="checkbox"/> Complainant	<input type="checkbox"/> Subject	<input type="checkbox"/> Complainant	<input type="checkbox"/> Subject
<input type="checkbox"/> Witness	<input type="checkbox"/> Witness Officer	<input type="checkbox"/> Witness	<input type="checkbox"/> Witness Officer
<input type="checkbox"/> Neighborhood Canvass for Witnesses			
JAIL DIVISION:			
<input type="checkbox"/> Jail Checklist		<input type="checkbox"/> Nurse/Medical Report	
MEDICAL RELEASE:			
<input type="checkbox"/> Medical Reports			
RMS:			
<input type="checkbox"/> Check for Prior Arrests, Complaints		<input type="checkbox"/> Civil Complaint	
<input type="checkbox"/> 148.6 Report		<input type="checkbox"/> Inspection of Subject Officers IA Record	
<input type="checkbox"/> Court Transcripts		<input type="checkbox"/> Pitchess Motion Request	
<input type="checkbox"/> CPRB Subpoena, Statement Request			
MEDIATION ASSESSMENT:			
<input type="checkbox"/> Complainant Agrees		<input type="checkbox"/> Officer Agrees	
ADJUDICATION:			
<input type="checkbox"/> Close Out Letter		<input type="checkbox"/> Informal Resolution Agreement	

City of Oakland

Complaint Form TF-3039b (12/05)

For Official Use Only

Date Stamp

Temp. Tracking No.	IAD Case No.
--------------------	--------------

Complainant's LAST Name, First, Middle	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race:	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	Date of Birth
		<input type="checkbox"/> Asian	<input type="checkbox"/> White	<input type="checkbox"/> Pac. Islander	
		<input type="checkbox"/> Black	<input type="checkbox"/> Middle Eastern	<input type="checkbox"/> Other _____	
Address		City <input type="checkbox"/> Oakland	Zip	Home Phone ()	Work Phone ()
Person Receiving Complaint		Serial Number	Regular Unit of Assignment	Date	Time

Complete this Portion if Complainant is a Minor or if Assisted by an Attorney

LAST Name, First, Middle	Relationship to Complainant			
Address	City <input type="checkbox"/> Oakland	Zip	Home Phone ()	Work Phone ()

Location of Occurrence	Day	Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
------------------------	-----	------	--

Identity of Involved Personnel

Badge No.	<input type="checkbox"/> Name / Vehicle No., etc.	<input type="checkbox"/> Officer	<input type="checkbox"/> Ranger	<input type="checkbox"/> Civilian	Sex	Race

Brief Narrative Using Own Words. If you need more space, use an additional sheet of paper. Any questions, call the Internal Affairs Division at 510 238-3161 or the Citizens' Police Review Board at 510 238-3159.

Were you Injured? <input type="checkbox"/> No <input type="checkbox"/> Yes (Describe)	What would you like as a result of this complaint?
---	--

Witness Name (LAST, First, Middle)	Address	City/Zip	Phone (Include Area Code)

I have read and understood this statement, which I have made of my own free will, and the facts contained therein are true and correct to the best of my knowledge.

Complainant's Signature X _____ Date _____

For Official Use Only

Check all Categories that Apply: <input type="checkbox"/> Force <input type="checkbox"/> Conduct <input type="checkbox"/> Untruthfulness <input type="checkbox"/> Procedure <input type="checkbox"/> Bias/Discrimination Other _____
--

Complaint Received by <input type="checkbox"/> Walk-in <input type="checkbox"/> Mail <input type="checkbox"/> Fax Intake Officer/Personnel	Date Received <input type="checkbox"/> IAD <input type="checkbox"/> CPRB
---	---

Copies to: IAD

Complainant (when applicable)

Subject Office/Employee Through Chain-of-Command

EXEMPLAR



INFORMAL COMPLAINT RESOLUTION AND AGREEMENT

Complainant's LAST Name		First	MI	IAD Case Number	Temp. Tracking No.	Date
Address				<input type="checkbox"/> Oakland	City/Zip	Phone No. ()
Incident Date	Incident Time	Incident Location				
Subject Officer/Employee				Serial No.	Assignment	
Subject Officer/Employee				Serial No.	Assignment	
Summary of Complaint						
Complaint Taken By			Serial No.	Forwarded to	Serial No.	Assignment

This Portion to be Completed by Subject Officer/Employee's Supervisor and Forwarded to the Internal Affairs Division.

Action Taken: <input type="checkbox"/> The Complainant has been advised of the formal complaint process. <input type="checkbox"/> Met with Complainant on (date) _____ at (location) _____ <input type="checkbox"/> Telephoned Complainant on (date) _____ at (Contact #) () _____						
Summary (Summarize meeting/phone call and describe the conditions of the resolution) 						
Complaint Disposition <input type="checkbox"/> Complainant satisfied with informal resolution. If supervisor met with complainant in person, please have complainant sign the bottom of this form. <input type="checkbox"/> Complainant not satisfied and wants to pursue a formal complaint with the Internal Affairs Division and/or CPRB. <input type="checkbox"/> I re-contacted the Complainant to ensure they were not unduly influenced to consent to the ICR process. Name: _____ Serial No. _____ Date: _____						
Complaint Handled by			Serial No.	Date		
<i>I acknowledge I have the right to make a complaint against a police officer pursuant to Penal Code Section 148.6. My complaint has been resolved through informal resolution and I am satisfied with the outcome of the informal resolution.</i> Complainant's Signature _____ Date _____						

ADMINISTRATIVE REVIEW

Supervisor	Date	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Comment
Commander	Date	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Comment
Commander	Date	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Comment
Bureau Commander	Date:	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Comment

Copies to: IAD

Complainant (when applicable)

Subject Office/Employee Through Chain-of-Command

EXEMPLAR

Oakland Police Department

Filing a Complaint Against the Police

Chief of Police
Oakland Police Department
455-7th Street
Oakland, CA 94607

Telephone: (510) 238-3365
Fax: (510) 238-2251

Internal Affairs Division
250 Frank H. Ogawa Plaza, Suite C
Oakland, CA 94612

Telephone: (510) 238-3161
Fax: (510) 238-3014
TDD: (510) 777-3333
Hours: M-F 9 AM to 5 PM

24-Hr Complaint Hotline:
(866) 214-8834

Citizens' Police Review Board
1 Frank H. Ogawa Plaza, 11th Flr
Oakland, CA 94612

Telephone: (510) 238-3159
TDD: (510) 238-2007
Fax: (510) 238-7084

www.oaklandnet.com/government/citizens/homepage.html

Any member of the community may file a complaint with the Oakland Police Department* and/or the Citizens' Police Review Board (CPRB).**

* *Filing a complaint with the Oakland Police Department does not prevent a member of the community from filing a damage claim against the City or from making complaints with other government agencies or authorities.*

** *The CPRB is composed of 12 members of the Oakland community who have been appointed by the mayor to review complaints.*

FILING A COMPLAINT

Take a Complaint Packet. The packet contains all the information and forms you will need to file a complaint. In order to process your complaint in a timely manner, read and follow the instructions.

You may also obtain a ***Your Guide to Filing a Complaint Against the Police (TF-3208)*** packet:

1. From any officer or employee;
2. By calling or writing to the Internal Affairs Division;
3. By calling the 24-hour Complaint Hotline;
4. By calling or writing to the CPRB; or
5. Visit a local resource center.

Chinatown Community Resource Center
(Pacific Renaissance Center)
388 - 9th Street
Oakland, CA 94607
Telephone: (510) 238-7930

Latino Community Resource Center
4470 International Blvd.
Oakland, CA 94601
Telephone: (510) 238-7647

Eastmont Precinct
2651 - 73rd Avenue
Oakland, CA 94605
Telephone: (510) 777-8500

If you wish to make a complaint or have any questions, call or visit the Internal Affairs Division or the CPRB, or call the 24-hour Complaint Hotline.

If you need assistance with translation into Chinese, Spanish, and Vietnamese, please contact the Internal Affairs Division.

Close-Out Letter

January 11, 2005

Mr. Guillermo Cruz
1234 Harrington Avenue
Oakland, CA 94601

RE: IAD File fro. 04-1234

Dear Mr. Pena:

A complaint was initiated against officers of the Oakland Police Department, via written correspondence, alleging that on May 30, 2004, officers entered your home and made rude comments towards you and also handcuffed you to tightly. An investigation into these allegations has been completed.

As to the allegation that officers made rude comments to you, the investigation was informally resolved. As to the allegation that you were handcuffed to tightly, the investigation has determined that the act complained of did not occur; therefore, a finding of 'Unfounded' has been determined.

The Department apologizes for any inconvenience this incident may have caused you. Should you have any questions regarding this matter, please telephone me at 238-3161 on any weekday between 8:00 AM - 4:00 PM.

Sincerely,

Benson H. Fairrow
Lieutenant of Police
Internal Affairs Division

BWF: abs



Appendix 4

IAD Related Reports, Letters and Forms

Notification of Complaint Investigation..... IV – 10.1
Notification to Witness Member-Employee..... IV – 10.2
Notification to Subject Member-Employee (with cc to Supv/Commander)..... IV – 10.3
Case Review Disposition Form..... IV – 10.4
IAD Commanders’ Initial Case Review Checklist..... IV – 10.5



Date

Complainant's Name
Complainant's Address
City, State, Zip Code

Dear Mr./Mrs./Ms. Complainant

Thank you for contacting the Oakland Police Department's Internal Affairs Division. Your complaint has been accepted for review and we will attempt to resolve any concerns or complaints that you may have regarding the conduct of our employees, policies or procedures.

According to our records:

- Your complaint was received on:
- The file number assigned to your complaint is:
- The investigator assigned to investigate this matter is:
- The telephone number where your investigator may be reached is:
(510) 238-3161

Should you have any concerns or questions you would like to bring to my attention, please don't hesitate to contact me at (510) 238-3161, or by email at: Name@Oaklandnet.com.

The Citizen's Police Review Board (CPRB) is another venue through which you may also elect to file your complaint. Should you wish to do so, the CPRB may be contacted at: City Hall, One Frank Ogawa Plaza, 11th Floor, Oakland, CA 94612 or at (510) 238-3159.

Sincerely,

Investigator's Name
Internal Affairs (or other) Division
Oakland Police Department

CITY OF OAKLAND

Memorandum

TO:
ATTN:
FROM: Internal Affairs Division
DATE:

RE: Notification to Witness Member/Employee, IAD Case Number ##-###

On *DATE*, a complaint was filed with the Internal Affairs Division by *COMPLAINANT'S NAME*. This complaint pertains to *ALLEGATION* of and concerns *DATE OF INCIDENT*.

I am the assigned investigator in this matter. You have been identified as a possible witness. Upon receipt of this notice, please contact me at (510) 238-3161 to arrange a time when we can discuss this incident. Please refer to Internal Affairs Division Case Number ##-#### when calling.

Manual of Rules Section 398.70 prohibits members and employees from contacting any witnesses or complainants involved with internal investigations for the purpose of influencing their testimony or persuading them to withdraw complaints. When routine contact with such persons is unavoidable, members and employees shall refrain from any discussion of complaints against Departmental personnel or testimony relating to those complaints.

Investigator's Name
Internal Affairs (or other) Division



CITY OF OAKLAND

Memorandum

TO:
ATTN:
FROM: Internal Affairs Division
DATE:

RE: Notification to Subject Member/Employee, IAD Case Number ##-###

On *DATE*, a complaint was filed with the Internal Affairs Division by *COMPLAINANT'S NAME*. This complaint pertains to *ALLEGATION* of and concerns *DATE OF INCIDENT*.

I am the assigned investigator in this matter. You have been identified as a possible subject. Upon receipt of this notice, please contact me at (510) 238-3161 to arrange a time when we can discuss this incident. Please refer to Internal Affairs Division Case Number ##-#### when calling.

Manual of Rules Section 398.70 prohibits members and employees from contacting any witnesses or complainants involved with internal investigations for the purpose of influencing their testimony or persuading them to withdraw complaints. When routine contact with such persons is unavoidable, members and employees shall refrain from any discussion of complaints against Departmental personnel or testimony relating to those complaints.

Investigator's Name
Internal Affairs (or other) Division

cc: Subject's Supervisor
Subject's Division Commander/Manager



**IAD Commanders’
Initial Case Review and Approval Checklist**

- Review
 - COP Notification Required?
 - OCA Notification Required?
 - District Attorney’s Office Notification Required?

- Approval
 - Points Assigned
 - DLI or IAD
 - COP approval for Class I Violation to be investigated as DLI?
 - Initial and Date

- Journal Entry
 - Document R&A and IAD Points assignment
 - Document File Routing
 - IAD
 - IAD Investigator Assignment
 - Routed to Administrative Sergeant
 - DLI
 - COP approval if Class I
 - Routed to Administrative Sergeant



Appendix 5

Discipline Exemplars

Civilian Administrative Leave..... V – 11.1

Civilian Suspension Letter from Chief of Police..... V – 11.2

Civilian Suspension Letter from City Administrator..... V – 11.3

Civilian Termination Letter from City Administrator..... V – 11.4

Discipline Recommendation to City Administrator from Chief of Police..... V – 11.5

Skelly Letter for Civilian or Sworn..... V – 11.6

Sworn Administrative Leave..... V – 11.7

Sworn Suspension Letter from Chief of Police..... V – 11.8

Sworn Suspension Letter from the City Administrator..... V – 11.9

Sworn Termination Letter from City Administrator..... V – 11.10

Written Reprimand..... V – 11.11

Demotion Letter from Chief of Police..... V – 11.12

Demotion Letter from the City Administrator..... V – 11.13

Complaint Investigation Report (To document Counseling and/or Training)..... V – 11.14



CIVILIAN ADMINISTRATIVE LEAVE EXEMPLAR

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

> (1 space)

Police Department

October 1, 2004

Telephone Device for the Deaf (510) 238-3227

Patrol Desk (510) 238-3455

Fax (510) 238-2251

Exemplar

> (4 – 6 spaces)

Ms. Jane Doe
455-7th Street
Oakland, CA 94607

> (1 space)

Dear Ms.Doe:

> (1 space)

The Chief of Police has directed that you be placed on administrative leave until further notice. Your existing benefits as a City employee are unaffected.

> (1 space)

While on administrative leave status, your access to the Police Administration Building is limited to that of a private citizen. If you require access to non-public portions of the building, please telephone the on-duty Watch Commander and advise him/her of your request. Additionally, you are required to notify the Personnel Section of any changes in your home telephone number and/or address immediately.

> (1 space)

Sincerely,

> (5 spaces)

Gregory A. Lowe
Deputy Chief of Police
Bureau of Services

> (1 space)

GAL:pd **(3 initials of author & initials of first & last name of typist)**

> (3 spaces)

Service Certification:

> (1 space)

Served by:

Name: _____

Serial No.: _____

Date: _____ Time: _____



CIVILIAN SUSPENSION LETTER EXEMPLAR

(Suspension of 1 – 10 days from Chief of Police)

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

> (1 space)

Patrol Desk (510) 238-3455

January 1, 2005

Fax (510) 238-2251

Exemplar

> (4 – 6 spaces)

Mr. Bradford Jones
900 Davis Avenue
Happyville, CA 94621

> (1 space)

Dear Mr. Jones:

> (1 space)

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have suspended you from your position as a Correctional Officer for three working days (24- hours), without pay, commencing January 25, 2005 and terminating January 27, 2005.

> (1 space)

The suspension results from an Internal Affairs Division investigation, IAD Case Number 04-182, which revealed that on September 28, 2004, you used inappropriate use of physical force on an inmate.

> (1 space)

By your actions, you violated the following Departmental Manual of Rules Section:

> (1 space)

370.27 USE OF PHYSICAL FORCE

> (1 space)

This disciplinary action takes into consideration your past disciplinary record.

> (1 space)

You are hereby notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and United Public Employees, Local 790.

> (1 space)

Sincerely,

> (5 spaces)

XXXXXXXXX
Chief of Police

> (3 spaces)

Service Certification:

> (1 space)

Served by: _____

Serial Number: _____

Date: _____ Time: _____

Check here ___ if personal service.

Receipt number if service by registered mail:



CIVILIAN SUSPENSION FROM CITY ADMINISTRATOR EXEMPLAR

Suspension of 11 or more days

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

Exemplar

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

> (1 space)
January 1, 2005
(Date & signature block in line with City of Oakland)

> (4 – 5 spaces)
Mr. Joseph Baloney
132 Sack Avenue
Blissville, CA 94782

> (1 space)
Dear Mr. Baloney:

> (1 space)
Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have suspended you for 20 working days (160 hours), without pay, from your position as a Correctional Officer commencing February 7, 2005 and terminating March 4, 2005.

> (1 space)
This discipline results from the findings of two internal investigations. On October 7, 2004, you used excessive physical force against an inmate. On November 14, 2004, you feigned an illness to avoid reporting to work and then you were untruthful during the investigation.

> (1 space)
By your actions, you violated the following Sections of the Police Department Manual of Rules:

> (1 space)
370.27 USE OF PHYSICAL FORCE
328.53 MALINGERING
398.80 TRUTHFULNESS

> (1 space)
This discipline takes into consideration your disciplinary history as set forth below:

> (1 space)

April 24, 2004	PERFORMANCE OF DUTY	Written Reprimand
November 3, 2003	PERFORMANCE OF DUTY	Oral Reprimand
June 8, 2003	ABSENCE FROM DUTY	Oral Reprimand
December 3, 2002	ATTENDANCE	One-Day Suspension
July 17, 2002	ATTENDANCE	Written Reprimand
January 29, 2002	ATTENDANCE	Oral Reprimand
December 5, 2001	ATTENDANCE	Oral Reprimand
October 16, 2001	USE OF PHYSICAL FORCE	3-Day Suspension
May 10, 2001	PERFORMANCE OF DUTY	Written Reprimand
June 30, 2000	PERFORMANCE OF DUTY	Oral Reprimand

> (1 space)

You are further notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and United Public Employees Local 790.

> (1 space)

Sincerely,

Exemplar

> (5 spaces)

DEBORAH A. EDGERLY
City Administrator

> (3 spaces)

Service Certification:

> (1 space)

Served by:

Serial No.: _____

Date: _____ Time: _____

Check here ___ if personal service.

> (1 space)

Receipt number if service by registered mail:



CIVILIAN TERMINATION LETTER EXEMPLAR

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

Exemplar

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

> (1 space)
January 1, 2005
(Date & signature block in line with City of Oakland)

> (4 – 5 spaces)
Ms. Caroline Smith
300 Bay Street
Paradise, CA 94702

> (1 space)
Dear Ms. Smith:

> (1 space)
Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have terminated you from your position as a Police Communications Dispatcher with the City of Oakland, effective January 14, 2005.

> (1 space)
The termination results from the findings of an Internal Affairs Division investigation which revealed that you fraudulently submitted a large number of over time payment documents.

> (1 space)
By your actions, you violated the following Sections of the Police Department Manual of Rules:

- > (1 space) **370.45 REPORTS AND BOOKINGS**
- 314.39 PERFORMANCE OF DUTY**

> (1 space)
You are notified that you may file a grievance as provided in the Memorandum of Understanding between the City of Oakland and United Public Employees, Local 790. This grievance must be presented within seven (7) calendar days from the date of your termination.

> (1 space)

Sincerely,

> (4 - 5 spaces)
DEBORAH A. EDGERLY
City Administrator

> (3 spaces)
Service Certification:
Served by registered mail:
Receipt No.: _____

Exemplar

**DISCIPLINE RECOMMENDATION TO CITY ADMINISTRATOR
FROM CHIEF OF POLICE EXEMPLAR
CITY OF OAKLAND**

Memorandum

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Police Department
DATE: January 1, 2005
RE: Recommendation for Disciplinary Action: Police Officer Thomas Lance

> (2 spaces)

I recommend that Thomas Lance be terminated from his position as a Police Officer. Officer Lance has been a member of the Department since April 5, 1985.

> (1 space)

My recommendation results from the fact that on June 21, 2004, while arresting a handcuffed suspect, Officer Lance struck him with a baton, kicked him and used profanity. The subsequent investigation determined that the amount of force used was excessive. When questioned about the incident, he made untruthful statements.

> (1 space)

By his actions, Officer Lance violated the following Sections of the Manual of Rules:

> (1 space)

314.06	CONDUCT TOWARDS OTHERS
370.27	USE OF FORCE
398.80	TRUTHFULNESS

> (1 space)

It should be noted that this recommendation is being submitted after reviewing Officer Lance's disciplinary history as set forth below:

> (1 space)

April 17, 2004	PERFORMANCE OF DUTY	Written Reprimand
August 19, 2003	KNOWLEDGE OF LAWS AND REGULATIONS	Counseling & Training
January 8, 2001	OBEDIENCE TO LAWS AND REGULATIONS	20-Day Suspension
June 9, 1999	GENERAL CONDUCT	1-Day Suspension

> (1 space)

On December 15, 2004, Officer Lance was informed in writing by Deputy Chief Peter Dunbar of the recommended disciplinary action. On December 15, 2004, Officer Lance and his representative, Mr. Boris Crump, Jr. of David and Dowd, subsequently met with Deputy Chief Gregory Lowe pursuant to the Skelly process.

Exemplar

Continued

Page 2

> (1 space)

Assuming your concurrence, I have enclosed a letter for your signature which advises Officer Lance of the termination.

> (5 spaces)

XXXXXXXXXX

Chief of Police

> (1 space)

XXX:pd

> (1 space)

Enclosure



SKELLY LETTER FOR CIVILIAN OR SWORN EXEMPLAR

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department
> **(1 space)**
January 1, 2005

Exemplar

Telephone Device for the Deaf (510) 238-3227
Patrol Desk (510) 238-3455
Fax (510) 238-2251

> **(4 -6 spaces)**

Mr. Harry Black
1550 Joy Drive
Happyville, CA 94805

> **(1 space)**

Dear Mr. Black:

> **(1 space)**

This letter is to inform you that I recommended to the Chief of Police that you be terminated from your employment as a Jail Division Utility Worker for the City of Oakland.

> **(1 space)**

My recommendation results from the fact that on August 10, 2004, at approximately 0600 hours, you refused to obey a lawful order given by a superior officer, failed to perform your duties, left your assigned area prior to being properly relieved and without proper authority.

> **(1 space)**

By your actions, you have violated the following Sections of the Police Department Manual of Rules:

> **(1 space)**

314.30	INSUBORDINATION
314.39	PERFORMANCE OF DUTY
328.35	RELIEF

> **(1 space)**

This recommendation takes into consideration your disciplinary history that is set forth below:

> **(1 space)**

May 11, 1999	OBEDIENCE TO LAWS AND REGULATIONS	Written Reprimand
June 22, 1999	GENERAL CONDUCT	Oral Reprimand
December 15, 1999	GENERAL CONDUCT	Written Reprimand
December 30, 2000	ATTENDANCE	Oral Reprimand
June 30, 2001	CONDUCT TOWARD OTHERS	3-Day suspension
August 20, 2001	CONDUCT TOWARD OTHERS	Oral Reprimand
September 30, 2002	ATTENDANCE (AWOL)	Oral Reprimand
October 7, 2002	CONDUCT TOWARD OTHERS	Written Reprimand
August 9, 2003	ATTENDANCE (AWOL)	Oral Reprimand

> **(1 space)**

If you wish to see or obtain a copy of the written materials upon which this recommendation was based, please contact the Internal Affairs Division at 238-3161. You have the right to respond orally, in writing, or both to the facts contained in this letter. If you choose to respond in writing, you have until Thursday, January 21, 2005 to do so. If you wish to respond orally, you may meet with Deputy Chief Peter Dunbar Friday, January 21, 2005 at 10:00 a.m. Call IAD to arrange for a pick up of your material at least seven (7) days in advance of your hearing. If you elect to meet and discuss the recommended discipline, contact Deputy Chief Dunbar's assistant at least three days prior to your appointment by telephoning 238-3801. You may have a representative of your choice at the Skelly hearing.

> (1 space)

Sincerely,

Exemplar

> (5 spaces)

Gregory A. Lowe
Deputy Chief of Police
Bureau of Services

> (1 space)

GAL:pd (3 initials of author & initials of first & last name of typist)

> (3 spaces)

Service Certification:

> (1 space)

Served by:

Name: _____

Serial Number: _____

Date: _____ Time: _____

Check here if personal service.

Receipt number if service by registered mail:



SWORN ADMINISTRATIVE LEAVE EXEMPLAR

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

> **(1 space)**

January 1, 2005

Exemplar

Telephone Device for the Deaf (510) 238-3227

Patrol Desk (510) 238-3455

Fax (510) 238-2251

> **(4 – 6 spaces)**

Mr. Kevin J. Hollingsworth
7200 Ocean Avenue
Paradise, CA 94702

> **(1 space)**

Dear Mr. Hollingsworth:

> **(1 space)**

The Chief of Police has suspended your peace officer authority and directed that you be placed on administrative leave until further notice. Your existing benefits as a City employee are unaffected; however, during the term of this leave, you are not authorized to carry a concealed weapon or take any action as a peace officer.

> **(1 space)**

While on administrative leave status, your access to the Police Administration Building is limited to that of a private citizen. If you require access to non-public portions of the building, please telephone the on-duty Watch Commander and advise him/her of your request. Additionally, you are required to notify the Patrol Division and the Personnel Section of any changes in your home telephone number and/or address immediately. You are also required to check-in on your duty days to Capt. _____ between the hours of _____ at _____.

> **(1 space)**

Sincerely,

> **(5 spaces)**

Gregory A. Lowe
Deputy Chief of Police
Bureau of Services

> **(1 space)**

GAL:pd **(3 initials of author & initials of first & last name of typist)**

> **(3 spaces)**

Service Certification:

> **(1 space)**

Served by:

Name: _____

Serial No.: _____

Date: _____ Time: _____

Check here if personal service.



SWORN SUSPENSION LETTER EXEMPLAR

(Suspension of 1 – 10 days by Chief of Police)

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

> (1 space)

Patrol Desk (510) 238-3455

January 1, 2005

Fax (510) 238-2251

Exemplar

> (4 – 6 spaces)

Mr. Harry Hatford
900 Davis Avenue
Happyville, CA 94621

> (1 space)

Dear Mr. Hatford:

> (1 space)

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have suspended you from your position as a Police Officer for three working days (24 hours), without pay, commencing January 25, 2005 and terminating January 27, 2005.

> (1 space)

The suspension results from an Internal Affairs Division investigation, Case number 04-102, which revealed that on September 28, 2004, you used inappropriate use of physical force while taking a suspect into custody.

> (1 space)

By your actions, you violated the following Departmental Manual of Rules Section:

> (1 space)

370.27 USE OF PHYSICAL FORCE

> (1 space)

This disciplinary action takes into consideration your past disciplinary record.

> (1 space)

You are hereby notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and the Oakland Police Officers' Association.

> (1 space)

Sincerely,

> (5 spaces)

XXXXXXXXX
Chief of Police

> (3 spaces)

Service Certification:

> (1 space)

Served by: _____

Serial Number: _____

Date: _____ Time: _____

Check here if personal service.

Receipt number if service by registered mail:



SWORN SUSPENSION FROM CITY ADMINISTRATOR EXEMPLAR

(Suspension of 11 or more days)

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

Exemplar

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

> (1 space)
January 1, 2005
(Date & signature block in line with City of Oakland)

> (4 - 5 spaces)
Mr. Joseph Baloney
132 Sack Avenue
Blissville, CA 94782

> (1 space)
Dear Mr. Baloney:

> (1 space)
Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have suspended you for 20 working days (160 hours), without pay, from your position as a Correctional Officer commencing February 9, 2005 and terminating March 5, 2005.

> (1 space)
This discipline results from the findings of two internal investigations. On August 7, 2004, you used excessive physical force against an inmate. On July 14, 2004, you feigned an illness to avoid reporting to work and then you were untruthful during the investigation.

> (1 space)
By your actions, you violated the following Sections of the Police Department Manual of Rules:

- > (1 space) 370.27 USE OF PHYSICAL FORCE
- 328.53 MALINGERING
- 398.80 TRUTHFULNESS

> (1 space)
This discipline takes into consideration your disciplinary history as set forth below:

> (1 space)		
April 24, 2004	PERFORMANCE OF DUTY	Written Reprimand
November 3, 2003	PERFORMANCE OF DUTY	Oral Reprimand
June 8, 2002	ABSENCE FROM DUTY	Oral Reprimand
December 3, 2001	ATTENDANCE	One-Day Suspension
July 17, 2001	ATTENDANCE	Written Reprimand
January 29, 2001	ATTENDANCE	Oral Reprimand
December 5, 2000	ATTENDANCE	Oral Reprimand
October 16, 2000	USE OF PHYSICAL FORCE	3-Day Suspension
May 10, 2000	PERFORMANCE OF DUTY	Written Reprimand
June 30, 1999	PERFORMANCE OF DUTY	Oral Reprimand

> (1 space)

You are further notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and United Public Employees Local 790.

> (1 space)

Sincerely,

Exemplar

> (5 spaces)
DEBORAH A. EDGERLY
City Administrator

> (3 spaces)
Service Certification:

> (1 space)

Served by:

Serial No.: _____

Date: _____ Time: _____

Check here if personal service.

> (1 space)

Receipt number if service by registered mail:



SWORN TERMINATION LETTER EXEMPLAR

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

Exemplar

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

> (1 space)
January 1, 2005
(Date & signature block in line with City of Oakland)

> (4 – 5 spaces)

Mr. Thomas Lance
777 Sunset Strip
Los Angeles, CA 94609

> (1 space)

Dear Mr. Lance:

> (1 space)

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have terminated you from your position as a Police Officer, effective January 15, 2005.

> (1 space)

The termination results from the fact that on June 21, 2004, while arresting a handcuffed suspect, you struck him with a baton, kicked him and used profanity. The subsequent investigation determined that the amount of force used was excessive. When questioned about the incident, you made untruthful statements.

> (1 space)

By your actions in this case, you violated the following Section(s) of the Manual of Rules:

> (1 space)

314.06	CONDUCT TOWARD OTHERS
370.27	USE OF PHYSICAL FORCE
398.80	TRUTHFULNESS

> (1 space)

Your disciplinary record, outlined below, was taken into consideration:

> (1 space)

April 17, 2000	PERFORMANCE OF DUTY	Written Reprimand
August 19, 2000	KNOWLEDGE OF LAWS AND REGULATIONS	Counseling & Training
January 8, 2001	OBEDIENCE TO LAWS AND REGULATIONS	20-Day Suspension
June 9, 2003	GENERAL CONDUCT	1-Day Suspension

> (1 space)

You are hereby notified that you may file a grievance within seven (7) days regarding this action, as provided in the Memorandum of Understanding between the City and the Oakland Police Officers' Association.

> (1 space)

Sincerely,

Exemplar

> (5 spaces)

DEBORAH A. EDGERLY
City Administrator

> (3 spaces)

Service Certification

Name: _____

Serial Number: _____

Date: _____ Time: _____

Check here if personal service.

Receipt number if service by registered mail:



WRITTEN REPRIMAND EXEMPLAR

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department
> (1 space)
January 1, 2005

Telephone Device for the Deaf (510) 238-3227
Patrol Desk (510) 238-3455
Fax (510) 238-2251

Exemplar

> (4 – 6 spaces)

WRITTEN REPRIMAND

> (1 space)

Officer Byron Nelson, 5772P

> (1 space)

On October 19, 2004, in the 300 block of 52nd Street, you were driving police vehicle #1912 to the curb in front of a parked van. You made too sharp of a turn into the parking space and the passenger side door of the patrol vehicle collided with the left front bumper of the parked van. The patrol vehicle sustained minor damage. A review of the vehicle collision report determined the collision to be PREVENTABLE.

> (1 space)

By your actions, you violated the following Section of the Manual of Rules:

> (1 space)

342.00

DEPARTMENT PROPERTY AND EQUIPMENT: Members and employees are responsible for the proper care of Department property and equipment assigned to or used by them.

> (1 space)

You are hereby officially reprimanded and admonished that future incidents of a similar nature will result in a more severe form of disciplinary action.

> (1 space)

By order of

(1 space)

Approved

> (5 spaces)

Peter W. Dunbar
Deputy Chief of Police
Bureau of Field Operations

(5 spaces)

XXXXXXXXX
Chief of Police

> (1 space)

Reprimand Acknowledged

> (4 spaces)

Officer Byron Nelson, 5772P

> (1 space)

Date: _____ Time: _____



DEMOTION LETTER EXEMPLAR

(Demotion Recommended by Chief of Police)

POLICE ADMINISTRATION BUILDING • 455 – 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department
> **(1 space)**
December 3, 2004

Telephone Device for the Deaf (510) 238-3227
Patrol Desk (510) 238-3455
Fax (510) 238-2251

> **(4 – 6 spaces)**
Mr. Paul Boone
900 Davis Avenue
Happyville, CA 94621

Exemplar

> **(1 space)**
Dear Mr. Boone:

> **(1 space)**

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have demoted you from your rank as a Lieutenant of Police to the rank of Sergeant of Police, commencing January 2, 2005.

> **(1 space)**

The demotion results from an Internal Affairs Division investigation, Case number 04-1234, which revealed that on May 28, 2004, you used inappropriate use of physical force while taking a suspect into custody.

> **(1 space)**

By your actions, you violated the following Departmental Manual of Rules Section:

> **(1 space)**

- 370.27 USE OF PHYSICAL FORCE**
- 398.80 TRUTHFULNESS**
- 314.48 REPORTING VIOLATIONS OF LAWS, ORDINANCES, RULES OR ORDERS**
- 314.39 PERFORMANCE OF DUTY**

> **(1 space)**

This disciplinary action takes into consideration your past disciplinary record.

June 30, 2003	CONDUCT TOWARD OTHERS	3-Day suspension
August 20, 2003	CONDUCT TOWARD OTHERS	Oral Reprimand
September 30, 2003	ATTENDANCE (AWOL)	Oral Reprimand
October 7, 2003	CONDUCT TOWARD OTHERS	Written Reprimand

> **(1 space)**

You are hereby notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and the Oakland Police Officers' Association.

> (1 space)

Sincerely,

> (5 spaces)

Wayne G. Tucker

Chief of Police

> (3 spaces)

Service Certification:

> (1 space)

Served by: _____

Serial Number: _____

Date: _____ Time: _____

Check here ___ if personal service.

Receipt number if service by registered mail:



DEMOTION FROM CITY ADMINISTRATOR EXEMPLAR

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

Exemplar

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

> (1 space)
December 12, 2004
(Date & signature block in line with City of Oakland)

> (4 - 5 spaces)
Mr. Joseph Baloney
132 Sack Avenue
Blissville, CA 94782

> (1 space)
Dear Mr. Baloney:

> (1 space)
Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have demoted you from your rank as a Sergeant of Police to the rank of Police Officer commencing January 9, 2005.

> (1 space)
This discipline results from the findings of two internal investigations. On June 27, 2004, you used excessive physical force against a person being taken into custody and then you were untruthful during the investigation. On July 14, 2004, you feigned an illness to avoid reporting to work and then you were untruthful during the investigation.

> (1 space)
By your actions, you violated the following Sections of the Police Department Manual of Rules:

- > (1 space)
- | | |
|---------------|------------------------------|
| 370.27 | USE OF PHYSICAL FORCE |
| 328.53 | MALINGERING |
| 398.80 | TRUTHFULNESS |

> (1 space)
This discipline takes into consideration your disciplinary history as set forth below:

> (1 space)

April 24, 2004	PERFORMANCE OF DUTY	Written Reprimand
November 3, 2003	PERFORMANCE OF DUTY	Oral Reprimand
June 8, 2002	ABSENCE FROM DUTY	Oral Reprimand
December 3, 2001	ATTENDANCE	One-Day Suspension
July 17, 2001	ATTENDANCE	Written Reprimand
January 29, 2001	ATTENDANCE	Oral Reprimand
December 5, 2000	ATTENDANCE	Oral Reprimand
October 16, 2000	USE OF PHYSICAL FORCE	3-Day Suspension
June 10, 2000	PERFORMANCE OF DUTY	Written Reprimand
May 30, 2000	PERFORMANCE OF DUTY	Oral Reprimand

> (1 space)

You are further notified that you may file a grievance within seven (7) days as provided in the Memorandum of Understanding between the City of Oakland and United Public Employees Local 790.

> (1 space)

Sincerely,

> (5 spaces)

DEBORAH A. EDGERLY
City Administrator

> (3 spaces)

Service Certification:

> (1 space)

Served by:

Serial No.: _____

Date: _____ Time: _____

Check here if personal service.

> (1 space)

Receipt number if service by registered mail:



**COMPLAINT INVESTIGATION REPORT
OAKLAND POLICE DEPARTMENT**

Received By	Case Number
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**Document Counsel and/or Training in the
ACTION TAKEN section.**

Complaint Made By:

LOCATION OF INCIDENT	BEAT	DATE OF INCIDENT
	DATE OF COMPLAINT	DATE OF 3304 EXPIRATION
		COMPLETION DATE

Summary of Complaint

<input type="checkbox"/> CASE FILED (REASON) _____
<input type="checkbox"/> CASE ASSIGNED TO: _____
IA SUPERVISOR: _____
DATE _____

REVIEW		
SUPERVISOR	DATE	<input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE <input type="checkbox"/> COMMENTS
COMMANDER	DATE	<input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE <input type="checkbox"/> COMMENTS
COMMANDER	DATE	<input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE <input type="checkbox"/> COMMENTS
DEPUTY CHIEF	DATE	<input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE <input type="checkbox"/> COMMENTS
CHIEF	DATE	<input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE <input type="checkbox"/> COMMENTS

When one or both boxes are checked indicate where file should be forwarded.

TRAINING NEED IDENTIFIED: DEPARTMENTAL INDIVIDUAL FORWARDED TO: _____

COMMENTS:

ACTION TAKEN: **COUNSELING AND/OR TRAINING IS DOCUMENTED IN THIS SECTION.**

Be specific as to what corrective action was taken (e.g., Specific individual training with supervisor, subject matter expert, or instructor; City training module; outside agency instruction.)



Appendix 6

Departmental Publication References

DGO M-3, Complaints Against Departmental Personnel or Procedures

DGO M-3.1, Informal Complaint Resolution Process

DGO M-3.2, Citizens' Police Review Board

TB V-T, Departmental Discipline Policy w/ Discipline Matrix Appendix

TB V-T.1, Internal Investigation Manual

TB V-T.2, Internal Investigation and Discipline Appendices

DGO E-1, Department Subpoena Service

DGO E-2, Warrant Service on Department Personnel

DGO E-3, Civil Action Proceedings

DGO M-4, Coordination of Criminal Investigations

DGO M-4.1, Criminal Investigations Involving Active Law Enforcement, or a Member or Employee of the Department

Department *Manual of Rules*

IAD Policy and Procedures 05-01 thru 05-04

Communications Division Policy and Procedure C-1

OPOA MOU

City of Oakland MOU (Local 21 & 790)

FORMS AND BOOKLETS

Your Guide to Filing a Complaint Against the Police (TF-3208)

Acknowledgement of Rights and Obligations Pursuant to Penal Code Section 148.6 and Notice and Releases (TF 3039a)

Complaint Form (TF-3039b)

Informal Complaint Resolution and Agreement (TF-3132)

Acknowledgement of Rights and Obligations (TF-722)