

Butte County DA's Office  
Bureau of Investigation

**PERSONNEL FILES**

**1026.1 PURPOSE AND SCOPE**

This section governs the maintenance, retention and access to peace officer personnel files in accordance with established law. It is the policy of this department to maintain the confidentiality of peace officer personnel records pursuant to Penal Code § 832.7.

**1026.2 PERSONNEL FILES DEFINED**

Pursuant to Penal Code § 832.8, peace officer personnel records shall include any file maintained under an individual officer's name relating to:

- (a) Personal data, including marital status, family members, educational and employment history, or similar information.
- (b) Medical history including medical leave of absence forms, fitness for duty examinations, workers compensation records, medical releases and all other records which reveal an employee's past, current or anticipated future medical conditions.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which the officer perceived, and pertaining to the manner in which the officer performed official duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

**1026.3 EMPLOYEE RECORD LOCATIONS**

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

Department File - That file which is maintained in the office of the Chief of Police as a permanent record of a sworn officer's employment with this department.

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

Supervisor Log Entries - Any written comment, excluding actual performance evaluations, made by a supervisor concerning the conduct of an employee of this department which is usually kept within the Division File.

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

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

Medical File - That file which is maintained separately that exclusively contains material relating to an employee's medical history.

## Butte County DA's Office Bureau of Investigation

### **1026.4 CONFIDENTIALITY OF ALL PERSONNEL FILES**

Pursuant to Penal Code § 832.7, all of the above-defined personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code § 1043, et seq. or in accordance with applicable federal discovery laws. Nothing in this section is intended to preclude review of personnel files by the County Manager, County Attorney or other attorneys or representatives of the County in connection with official business.

### **1026.5 REQUESTS FOR DISCLOSURE**

Only written requests for the disclosure of any information contained in any peace officer personnel record will be considered. Since the format of such requests may be strictly governed by law with specific responses required, all such requests shall be promptly brought to the attention of the Chief Investigator.

Upon receipt of any such request, the responsible person shall notify the affected employee(s) as soon as practicable that such a request has been made (Evidence Code § 1043(a)). The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this will require assistance of approved and available legal counsel.

All requests for disclosure, which result in access to an employee's personnel file(s), shall be logged in the corresponding file.

#### **1026.5.1 RELEASE OF CONFIDENTIAL INFORMATION**

Except as provided by this policy or pursuant to lawful process, no information contained in any confidential peace officer personnel file shall be disclosed to any unauthorized person(s) without the express consent of the involved officer or written authorization of the Chief Investigator or his or her designee.

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e). Pursuant to Penal Code § 832.7(e), the disposition of any citizen's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any was imposed.

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

#### **1026.6 EMPLOYEE ACCESS TO OWN FILE**

Any employee may request access to his/her own personnel file(s) during the normal business hours of the individual(s) responsible for maintaining such file(s). Any employee seeking the removal of any item from his/her personnel file shall file a written request to the Chief Investigator through the chain of command. The Department shall thereafter remove any such item, if appropriate, or within 30 days provide the employee with a written explanation why the contested item will not be removed (Government Code 3306.5). If the contested item is not

## Butte County DA's Office Bureau of Investigation

removed from the file, the employee's request and the department's written response shall be retained with the contested item in the employee's personnel file.

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

- (a) Ongoing Internal affairs investigations to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the employee of the intent to discipline.
- (b) Confidential portions of Internal Affairs files which have not been sustained against the Employee

### **1026.7 TYPES OF PERSONNEL FILES**

Peace officer personnel files can be located in any of the following places:

#### **1026.7.1 DEPARTMENT FILE**

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

- (a) Performance evaluation reports regularly completed by appropriate supervisor and signed by the affected employee shall be permanently maintained.
- (b) Disciplinary action:
  - 1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained in the individual employee's department file at least two years (Government Code § 34090).
  - 2. Disciplinary action resulting from a sustained citizen's complaint shall be maintained in the individual employee's department file at least five years (Penal Code § 832.5).
  - 3. Investigations of complaints which result in a finding of not-sustained, unfounded or exonerated shall not be placed in the employee's department file, but will be separately maintained for the appropriate retention period in the internal affairs file.
- (c) Adverse comments such as supervisor log entries may be retained in the department file or division file after the employee has had the opportunity to read and initial the comment and for a period up to two years (Government Code § 3305).
  - 1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days (Government Code § 3306).
  - 2. Any such employee response shall be attached to and retained with the original adverse comment.
  - 3. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.
- (d) Commendations shall be retained in the employee's department file, with a copy provided to the involved employee.

## Butte County DA's Office Bureau of Investigation

(e) Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status shall be permanently retained.

(f) A photograph of the employee shall be permanently retained.

### **1026.7.2 DIVISION FILE**

The Division File should contain, but is not limited to, the following:

(a) Supervisor log entries, notices to correct and other materials intended to serve as a foundation for the completion of timely Performance Evaluations

1. All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code §§ 3305 and 3306.
2. Duplicate copies of items that will also be included in the employee's department file may be placed in this interim file in anticipation of completing any upcoming performance evaluation.
3. Once the permanent performance evaluation form has been made final, the underlying foundational material(s) and/or duplicate copies may be purged in accordance with this policy.

(b) All rules of confidentiality and disclosure shall apply equally to the division file.

### **1026.7.3 INTERNAL AFFAIRS FILE**

Internal affairs files shall be maintained under the exclusive control of the Chief Investigator. Access to these files may only be approved by the Chief Investigator or the District Attorney. These files shall contain:

(a) The complete investigation of all formal complaints of employee misconduct, regardless of disposition

1. Each investigation file shall be sequentially numbered within a calendar year (e.g. yy-001, yy-002).
2. Each investigation file arising out of a formal citizen's complaint or a complaint involving a discriminatory harassment or hostile work environment shall be maintained no less than five years (Penal Code § 832.5(b)). Investigation files arising out of other internally generated complaints shall be maintained no less than two years (Government Code § 34090).

(b) Investigations that result in other than a sustained finding shall be maintained for the minimum statutory period but may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5 (c)).

### **1026.7.4 TRAINING FILES**

An individual training file shall be maintained by the District Attorney Administrative Analysis or Training Investigative Lieutenant for each employee. Training files will contain records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education mandated by law or the Department, including firearms qualifications and mandated annual proficiency requalification.

(a) It shall be the responsibility of the involved employee to provide the Training Lieutenant or immediate supervisor with evidence of completed training/education in a timely manner.

## Butte County DA's Office Bureau of Investigation

(b) Any certificates or evidence of course completion should be provided to the administrative analyst to be placed in the employees personnel file.

### **1026.7.5 MEDICAL FILE**

A medical file is maintained by Human Resources and shall be maintained separately from all other files and shall contain all documents relating to the employee's medical condition and history, including but not limited to the following:

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

### **1026.8 PURGING OF FILES**

Formal citizen complaints and all related files not pending litigation or other ongoing legal proceedings may be purged no sooner than five years from the underlying complaint date (Penal Code § 832.5). All other disciplinary files and investigations of non-citizen initiated complaints not pending litigation or other ongoing legal proceedings may be purged no sooner than two years from the underlying complaint date (Government Code § 34090; Government Code § 26202).

- (a) Each supervisor responsible for completing the employee's performance evaluation shall also determine whether any prior sustained disciplinary file should be retained beyond the statutory period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the applicable statutory period, approval for such retention shall be obtained through the chain of command from the Chief Investigator.
- (c) During the preparation of each employee's performance evaluation, all complaints and discipline should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. If, in the opinion of the Chief Investigator, a complaint or disciplinary action beyond the statutory retention period is no longer relevant, all records of such matter may be destroyed pursuant to resolution.