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# Oakland Police Officers' Association v. City of Oakland

Court of Appeal, First Appellate District,  
Division One

A158662, filed 4/26/21

## Officers DENIED Opportunity to Review Reports Before Supplemental Interrogation

## Decision in Conflict with Fourth Appellate District

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### Background

The Public Safety Officers Procedural Bill of Rights Act (POBRA) mandates the disclosure of complaints, reports, and other materials to a peace officer under investigation for misconduct. (Government Code §3303(g).)

A complaint filed against Oakland Police Department alleged that the officers violated a citizen's rights in various ways while conducting a mental health welfare check. After an internal investigation, the Department cleared the officers of misconduct. The Oakland Community Police Review Agency (CPRA), a civilian oversight agency with independent authority to investigate claims of

police misconduct, conducted its own investigation. Before the CPRA's formal interrogation of the officers, counsel for the officers demanded, pursuant to §3303(g), copies of all "reports and complaints" prepared or compiled by investigators. The CPRA refused to disclose these materials before the officers were interrogated. Based on its investigation, the CPRA recommended discipline because it found the officers knowingly violated the complainant's civil rights by entering the home and seizing property without a warrant and then concealing this violation from investigators.

The involved officers and their police association filed a petition for writ of mandate alleging that the City of Oakland violated their POBRA rights by refusing to disclose reports and complaints before conducting the supplemental interviews. The Fourth District Court of Appeal previously considered the same issue in Santa Ana Police Officers' Association v. City of Santa Ana (2017) 13 Cal.App.5th 317, 328, holding that POBRA requires the disclosure of such materials after an initial interrogation and "prior to any further interrogation". The trial court in Oakland relied upon the Santa Ana case and granted the petition - ordering the City to disregard the interrogation testimony in any current or future disciplinary proceedings against the officers. The City appealed.

### Discussion

The Court of Appeal, in this case, found that the mandatory disclosure of complaints and reports prior to any subsequent interview of an officer suspected of misconduct is inconsistent with the plain language of the statute and undermines a core objective under POBRA to maintain the public's confidence in the effectiveness and integrity of agencies to ensure that investigations



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into officer misconduct are conducted promptly, thoroughly, and fairly. The Court explained as the Supreme Court stated in Pasadena Police Officers Assn. v. City of Pasadena (1990) 51 Cal.3d 564, granting discovery before the interview could “frustrate the effectiveness of any investigation”, “color the recollection” and “would be contrary to sound investigative practices.”

This Court interprets §3303(g) to mean no materials may be disclosed prior to an initial interview and “if any further proceedings are contemplated or prior to any further interrogation at a subsequent time” any tape recording of the interrogation must be disclosed. Reports and complaints should also be disclosed upon request unless the agency designates such material as confidential “to protect the integrity of an ongoing investigation”. If, however, discipline is contemplated, the agency must decide whether to “de-designate” and disclose any confidential materials to the officer or decline to use those materials when bringing misconduct charges. Because an investigating agency can designate (and then de-designate) disclosable material as confidential, the Court reversed the ruling and sent the matter back to the trial court.

### **Take-away.**

This is an important decision. With more agencies having the possibility of internal investigations followed by “oversight” investigations, it will become increasingly common for officers to be interviewed multiple times regarding the same incident. Now, depending on where the law enforcement agency is located, and which appellate district has jurisdiction, an officer’s ability to review the “reports and complaints” before a second interview will be impacted. Officers in the geographical area of the First Appellate District, (ex: Alameda, Contra Costa,

Napa counties) will not be able to review the relevant reports and complaints, while officers in the Fourth Appellate District, (ex: San Bernardino, Riverside, Orange, and San Diego counties) should be able to obtain such review. Anticipate the California Supreme Court steps in to resolve this conflict.

### **Stay Safe and Stay Informed!**

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