



LEGAL DEFENSE TRUST TRAINING BULLETIN

MICHAEL P. STONE, GENERAL COUNSEL

6215 River Crest Drive, Suite A, Riverside, CA 92507

Phone (909) 653-5152 Fax (909) 656-0854

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GOVERNOR SIGNS IMPORTANT NEW LAW REGARDING PERSONNEL RECORDS

*BILL OF RIGHTS ACT AMENDMENT RESTORES PEACE OFFICERS' RIGHTS TO REVIEW
ANY "PERSONNEL RECORD" AND SEEK CORRECTIONS AND DELETIONS*

AB 2267 (Cedillo) was signed by the Governor on July 24, 2000, and will be effective the first of the year, 2001.

This new law amends the Bill of Rights Act (*Government Code §§3300, et. seq.*) by adding new §3306.5 to the Act.

It is an important refinement of the statutory scheme affecting "peace officer personnel records" and rounds out the protections already present in the Act under §§ 3305 and 3306, all of which need to be considered together; and we shall do so below, but first a little history is in order to place all of this in perspective.

All employees, private and public, including peace officers, were entitled, under *Labor Code §1198.5*, to access and review of any files "which are used or have been used to determine...qualifications for employment, promotion, additional compensation, or termination, or other disciplinary action."

Then, in the 1980's, the section was amended to *delete* application to public employees as a class. Since that time, public employees and particularly peace officers have had no statutory

protection comparable to what they had under §1198.5.

So, the new law fills that void. §3306.5 reads:

(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 therefor 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.

Notice that subsection (a) reads nearly the same as *Labor Code §1198.5*. What is different from §1198.5, is the language in subsections (c) and (d), which permit the officer an opportunity to protest, correct and delete entries that are "mistaken" or "unlawful".

The beauty of §3306.5 really comes into focus when it is read in conjunction with §3305 and 3306. §3305 reads:

Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign.

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 be noted on that document, and signed or initialed by such officer.

§3306 reads:

Response to adverse comment entered in

personnel file; time.

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.

Regardless of how the employer characterizes the file, if its contents have been used by the employer for any of the reasons indicated in §3306 (a), the officer is entitled to access, and to the other protections set forth in all of the sections noted above. Often, these files are not within, nor do they constitute part of the officer's official "personnel record." Many employers in the past have drawn a distinction between the "personnel record" (to which access is routinely admitted) and other "files" which are labeled "confidential" (background, special, and other variants), and to which access is often denied, because these are not part of the officer's "personnel record".

New §3306.5 abolishes this artificial distinction: If it is a "file" that is or has been used for personnel purposes as described, it cannot be withheld from the officer.

Stay safe!

- Michael P. Stone-

Pasadena Office
600 South Lake Avenue, Suite 401
Pasadena, California 91106
office (626) 683-5600
fax (626) 683-5656

Riverside County Office
6215 River Crest Drive, Suite A
Riverside, California 92507
office (909) 653-5152 or (800) 655-4772
fax (909) 653-1943