

# The Ultimate Backup

A Client News Bulletin

RAINS, LUCIA & WILKINSON LLP

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## KNOW YOUR RIGHTS:

### The Ability to Inspect Internal Affairs Investigation Reports

**The Scenario:** You get called into the Captain's office and are advised that, at long last, the internal misconduct investigation is finished. After you are told the disposition, you ask: "Can I see the report?" The Captain tells you: "No. There's no discipline being imposed, so there's no reason for you to see it."

**The Question:** What are my rights? Am I entitled to see the investigation report even if no discipline is imposed?

**The Answer:** Yes. There are two separate sections of the Public Safety Officers Procedural Bill of Rights Act, Government Code section 3300 *et seq.*, give you the right to review the investigation report, no matter whether the allegations were unfounded, exonerated, not sustained or sustained.

Government Code section 3306.5(a) requires your employer to let you inspect personnel files that are used or have been used to determine whether you qualify for disciplinary action. Since the purpose of every internal misconduct investigation is, fundamentally, to determine whether an officer should be subject to discipline, it is subject to inspection under 3306.5(a), regardless of the outcome.

Additionally, officers are entitled to read and review the investigation report because it qualifies as an adverse comment under Government Code section 3305.

In *Aguilar v. Johnson* (1988) 202 Cal. App. 3d 241, the court found that a citizen's complaint, even if uninvestigated, constituted an adverse comment. Thus, any misconduct complaint, regardless of its disposition, is *per se* an adverse comment that an officer is entitled to read and review.

The right to review internal affairs investigation reports was strengthened by *Sacramento Police Officers Association v. Venegas*, (2002) 101 Cal. App. 4<sup>th</sup>. There, the court found that because an internal affairs file is used for a personnel purpose", an officer has a right to read the final investigation report regardless of whether the employer contemplates discipline.

Often, an employer will claim that the employee is not entitled to review the information because it is "confidential". If that is the claim, be sure to remind the employer that, under Government Code section 3303(g), "No notes or reports deemed to be confidential may be entered in the officer's personnel file."

The attorneys at Rains, Lucia & Wilkinson LLP stand ready to assist you with this and any other issues that impact your collective bargaining rights. For more information, please do not hesitate to contact us.

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1

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