

The Ultimate Backup

A Client News Bulletin

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April 10, 2009

Court of Appeal Decides That an Officer's Right to Inspect Internal Affairs Materials Under the Peace Officer Bill of Rights Contains Limitations

By Mike Rains

Introduction and Overview

The Second District Court of Appeal has just decided a case entitled *McMahon v. City of Los Angeles*. In this decision, the Court of Appeal has provided some guidance on the right of a public safety officer to inspect, "during usual business hours...files that are used or have been used to determine an officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action." Under this decision, in its most simplest terms, officers are not permitted to see every single document, every single interview, and every single piece of paper that may be gathered by Internal Affairs in an investigation which is determined to be either "unfounded" or "exonerated."

Summary of Facts

The plaintiff, Walter McMahon, is employed as a police officer in the Los Angeles Police Department. While working at the Police Department's southeast area gang impact team, where he investigated illegal gang activity, Officer McMahon was the subject of approximately twenty citizen complaints. All of the citizen complaints were investigated by the Department's

Internal Affairs unit and determined to be either "unfounded" or "exonerated."

Within a month of each complaint decision, McMahon received a copy of the complaint, along with various other documents mandated by the Police Department's Internal Affairs regulations, including the complaint adjudication form, the employee interview form, and the commanding officer's letter of transmittal. Officer McMahon was also given the opportunity to respond to the documents he was provided, to the extent that those documents contained "adverse comments."

A separate comprehensive investigation into the complaints against Officer McMahon resulted in a finding by Internal Affairs that the complaints were spurious and were undertaken to drive Officer McMahon out of the assignment where he had been so effective.

Beginning in May 2006, Officer McMahon, through his attorney, sent demands to LAPD requesting additional written and recorded materials generated by the Internal Affairs investigations into the complaints.

Specifically, the demands requested the following materials:

- Audiotapes of all interviews
- Transcript of witness interviews
- Surveillance notes
- Case notes
- Chronological files
- Summaries
- Other memoranda

The Department declined to provide McMahan and his attorney the above materials, stating that McMahan had been provided with copies of all materials used by the commanding officers who had adjudicated the complaints. The Department pointed out that the fact sheet provided to McMahan had given him a comprehensive summary of the complaints, including the identities of the complainants.

McMahan filed a petition for writ of mandate in Superior Court stating that he was entitled to be provided all of the additional materials he had requested pursuant to Section 3306.5. The trial court denied his petition for writ of mandate and he filed an appeal in the Court of Appeal.

The Court of Appeal Decision

The Court of Appeal affirmed the trial court's ruling. The Court of Appeal held that Government Code Section 3306.5 did not require disclosure to Officer McMahan of the materials he had requested, as those materials did not qualify as "personnel files that are used or have been used to determine (the) officer's qualifications for employment, promotion, additional compensation, or termination, or other disciplinary action."

In upholding the Superior Court's decision to deny McMahan access to these materials, the Court of Appeal emphasized that, pursuant to Penal Code Section 832.5, citizen complaints that are determined to be either unfounded or exonerated cannot be kept in the officer's general personnel file, and more importantly, cannot be used by the employer for making any type of "personnel decisions." The Court pointed out that it was undisputed that the Internal Affairs investigations and any documents related to them had not been placed into McMahan's general personnel file, and could not and were not used by the LAPD to determine Officer McMahan's qualifications for promotion, additional compensation, or other disciplinary action.

The Court of Appeal emphasized that McMahan's desire to receive the additional undisclosed materials was based on speculation—for instance, he argued that such materials could contain "gratuitous accusations" which needed to be responded to. In essence, McMahan indicated that he did not entirely trust summaries of some of the interviews or other documents to be entirely accurate, and that the actual tapes and/or transcripts of witness interviews or other documents may contain additional adverse information which required a response. To this, the Court stated as follows: "Again, his unsupported assertion that there may be 'secret, unanswered stigmatizing allegations' lurking in the Internal Affairs investigative files that may undermine his chances for future employment amounts to mere speculation."

What This Decision Really Means

I think this decision should be read narrowly based upon the specific facts of this case. There is no question that, under Government Code Section 3306.5, an officer can review documents in “personnel files” that are used “...to determine that officer’s qualifications for employment, promotion, additional compensation, termination, or other disciplinary action.” In this case, all of the complaints made against Officer McMahon were either “unfounded” or “exonerated,” which, according to Penal Code Section 832.5, could not be used by the LAPD to determine McMahon’s qualifications for promotion, additional compensation, termination, or other disciplinary action. The LAPD provided Officer McMahon very extensive summaries of the complaints and the investigatory decision-making in each of these “unfounded” or “exonerated” complaints, and the Court, relying upon the language of both Government Code Section 3306.5 and Penal Code Section 832.5, stated that McMahon was given sufficient documents to respond to if he wanted to respond to comments which he considered to be “adverse” to him.

In essence, I think the Court of Appeal has clearly said that where a Department’s Internal Affairs investigation has resulted in either an “unfounded” or an “exonerated” finding from an Internal Affairs complaint, the Department does not have to give the officer every single document, every single interview, and every single piece of paper that related to that particular investigation.

However, I caution both police departments and management lawyers not to read too much into this decision—if an Internal Affairs investigation results in either a

“sustained” finding or even a “not sustained” finding, for that matter, I do not think the same conclusion follows. In other words, for our clients, if an Internal Affairs investigation results in either a “sustained” or a “not sustained” finding, I think the Department continues to have an obligation to provide the officer with all of the materials gathered in the Internal Affairs investigation, and not merely the limited types of materials that the Court permitted to be given to Officer McMahon in the context of this case.

While it is entirely possible that neither officers nor their attorneys will really want to review every single document, tape recorded interview, transcript, et cetera, when a complaint investigation is determined to be “not sustained,” that will certainly not be the case when a Department has “sustained” a complaint. In that case, it will continue to be the position of this office that the failure or refusal of the Department to supply an officer with every single piece of documentary evidence, audio-taped interview, investigator notes, et cetera, may well violate the provisions of Penal Code Section 135.5, a misdemeanor criminal offense.

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