



LEGAL DEFENSE TRUST TRAINING BULLETIN

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COURT OF APPEAL RULES NAMES OF PEACE OFFICERS INVOLVED IN SHOOTINGS ARE NOT CONFIDENTIAL

By
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In December 2010, Long Beach police officers shot and killed an intoxicated man who was holding a garden hose nozzle that from a distance the officers believed to be a gun. A reporter for the *Los Angeles Times* made a request to the City of Long Beach under the California Public Records Act (CPRA) for the names of the officers involved in that shooting, as well as the names of Long Beach officers involved in shootings for the preceding five years. *Long Beach Police Officers Association v. City of Long Beach*, case no. B231245, February 7, 2012 (California Court of Appeal, Second Appellate District), slip op. at 3.

The Long Beach Police Officers Association (LBPOA) brought a complaint against the City, seeking a temporary restraining order and preliminary and permanent injunctions to prevent the City from releasing the officers' names. After a temporary restraining order was issued, the *Times* intervened and opposed the request for an injunction. The City essentially sided with the LBPOA, arguing that the officers' names should be protected.

The trial court ruled in favor of the *Times* on the issue of a preliminary injunction. The court determined that the officers' names were not protected as a part of the officers' "personnel records," and that the public interest in keeping the names private did not outweigh the public interest in disclosing the names. The LBPOA and the City appealed. Slip op. at 3-5.

Stone Busailah, LLP, Michael P. Stone and Melanie C. Smith joined in the case as *Amicus Curiae* ("Friend of the Court") on behalf of the Los Angeles Police Protective League, in support of the LBPOA.

The question for the Court of Appeal was whether the CPRA, *Government Code* § 6250 *et seq.*, requires disclosure of the requested names, or whether an exemption under the CPRA applies to prevent disclosure of the names. Specifically, the Court considered whether the names of officers involved in shootings are considered confidential "personnel records" under *Penal Code* § 832.7 and § 832.8, and therefore exempt from

disclosure under *Government Code* § 6254(k). The Court also considered whether the disclosure of the names constitutes an unwarranted invasion of personal privacy under § 6254© or whether the public interest in nondisclosure outweighs the public interest in disclosure under § 6255. The Court ruled that none of these exemptions apply to protect the names of officers involved in shootings.

The CPRA declares that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state” (§ 6250), and provides that state and local agencies must make copies of public records available to a person who requests them (§ 6253). However, the CPRA also contains provisions safeguarding certain privacy interests. The provisions at issue in this case are:

§ 6254: Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

...

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

...

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

§ 6255: (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on

the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

The LBPOA and the City argued that the names of officers involved in shootings are exempt from disclosure under § 6254(k) because they are part of the officers’ confidential personnel records under *Penal Code* § 832.7 and § 832.8. Section 832.7 provides in part that “[p]eace officer or custodial officer personnel records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential...” Section 832.8 defines personnel records as records relating to personal data (marital status, home addresses, family members, etc.); medical history; election of employee benefits; employee advancement, appraisal, or discipline; complaints or investigations of complaints; and “[a]ny other information the disclosure of which would constitute an unwarranted invasion of personal privacy.”

In rejecting the application of § 6254(k) (*see generally* slip op. at 9-20), the Court relied in part on *Commission on Peace Officer Standards and Training* (2007) 42 Cal. 4th 278 (“*POST*”), which held that the mere identification of an individual as a police officer is not part of a confidential “personnel record” under § 832.8, and that the CPRA requires disclosure of peace officers’ names in connection with the basic fact of their employment as peace officers, their employing department(s), and dates of their employment. *POST* stated that “the legislative concern [behind § 832.7 and § 832.8] appears to have been with linking a named officer to the private or sensitive information listed in

section 832.8.” 42 Cal. 4th at 295.

POST made it clear that the mere identities of peace officers are not confidential, but the LBPOA and the City argued that since shootings by police officers are investigated internally, releasing the names of officers involved in shootings necessarily reveals the names of officers under internal investigation. *Copley Press, Inc. v. Superior Court* (2006) 39 Cal. 4th 1272, held that a peace officer’s identity is confidential when it is sought in connection with information concerning an internal investigation or discipline, because records of disciplinary matters, including administrative appeals of discipline, are confidential under § 832.7. Under *Copley Press*, a department could not release the names of officers who, for example, have been disciplined or are appealing discipline.

In the *Long Beach* case, the Court of Appeal concluded, as did the trial court, that releasing the names of officers in connection with an event like a shooting is not the same as releasing the names of officers in connection with internal disciplinary matters, even though shootings are internally investigated. The Court held that an officer’s identity cannot be “transform[ed]...into confidential information by asserting that the officer’s involvement in a shooting has resulted in an appraisal or discipline.” The fact of an officer’s involvement in an activity like a shooting does not reveal any information about what may have ultimately resulted in terms of internal discipline. Slip op. at 18, *citing POST*, 42 Cal. 4th at 291 (“we do not believe that the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in a file that contains the type of information specified in section 832.8”). The Court then pointed out

that an investigation following a shooting is not the same as a “complaint” under § 832.8(e). Slip op. at 19-20.

The Court also considered an Attorney General opinion which concluded that the names of police officers involved in a critical incident must be disclosed in response to a CPRA request, unless under the facts of a particular case the public interest in nondisclosure outweighs the public interest in disclosure. *See* 91 Ops. Cal. Atty. Gen. 11.

Turning its attention to § 6254© and § 6255, the Court rejected the LBPOA’s and the City’s arguments that safety concerns justify withholding the names of officers involved in shootings. *See generally* slip op. at 20-26.

The Court affirmed that “[t]he public interest in the conduct of peace officers is substantial” (slip op. at 21), and that police officers “carry upon their shoulders the cloak of authority” and “the public must be kept fully informed of the activities its peace officers” (slip op. at 21, *quoting POST*, 42 Cal. 4th at 297). Moreover, the Court recognized that there is a “heightened public interest in disclosure when an officer is involved in a shooting.” Slip op. at 21, *citing New York Times Co. v. Superior Court* (1997) 52 Cal. App. 4th 97, disapproved on another point in *Copley Press*, 39 Cal. 4th 1272.

While in particular cases the facts and circumstances may demonstrate that anonymity is essential to an officer’s safety, in this case the Court of Appeal agreed with the trial court that the safety concerns presented by LBPOA and the City were too generalized and speculative to justify withholding the officers’ names; there were no facts suggesting that the specific officers whose

names were requested in this case have been threatened. *See generally* slip op. at 22-25.

The *Long Beach* holding, while no doubt disappointing to many, and with widespread impact on tens of thousands of peace officers in California, is not wholly surprising or unexpected, based on the holdings of previous cases, particularly *New York Times*, *POST*, and *Copley Press*. Indeed, many law enforcement agencies in this state or across the country routinely choose to release the names of officers involved in shootings or other critical incidents even without a formal request. Even in this case, the names of the officers involved in the December 2010 shooting were released when the District Attorney's Office completed its criminal investigation, which is *not* confidential.

It should be kept in mind, however, that officers' names in connection with a critical incident *may* still be withheld from disclosure if the agency can *specifically* demonstrate on a *case-by-case basis* that an officer's anonymity is essential to his or her safety and that the need to protect the officer outweighs the considerable public interest in disclosure.

Stay Safe!
Mike Stone
Melanie Smith

Michael P. Stone is the firm's founding partner and principal shareholder. He has practiced almost exclusively in police law and litigation for 32 years, following 13 years as a police officer, supervisor and police attorney.

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