

March 30, 2007

Honorable Mark Leno, Member  
California State Assembly  
State Capitol, Room 2114  
Sacramento, CA 95814

RE: AB 1648 –OPPOSE

Dear Assemblymember Leno:

The Riverside Sheriffs' Association, which represents over 2,800 rank and file Deputy Sheriffs, Deputy Probation Officers, Deputy Correctional Officers, District Attorney Investigators, and Deputy Coroners – the entire law enforcement team in Riverside County - strongly opposes your bill, AB 1648. The purpose of your bill is to abrogate the California Supreme Court's decision in *Copley Press v. Superior Court*, 39 Cal 4<sup>th</sup> 1272 (2006.) We believe your bill is not only unwise and dangerous precedent, it undermines decades of well settled case law on this subject and confiscates a police officer's right to confidentiality and privacy.

In *Copley Press*, the California Supreme Court ruled 6 to 1 that neither the media nor members of the public may access police discipline records filed or enacted during administrative appeals, *including the identity of an officer*, unless that officer waives his or her privacy rights.

In 1978, the California Legislature enacted Penal Code Sections 832.7 and 832.8 and Evidence Code Section 1043 through 1046 in response to the Court's 1974 decision in *Pitchess v. Superior Court*. The Legislature designed these so-called "*Pitchess* Statutes" to limit "fishing expeditions" into peace officers' personnel files by criminal defendants and their defense attorney by providing that peace officer personnel records "maintained" under the officer's name "by his or her employing agency" ***are all confidential cases and may be disclosed only after a judge finds good cause for the disclosure and that the requested records are material to the case before the court.***

Notwithstanding these codifications of a peace officer's right to privacy in his or her employment-related affairs, the media and criminal defense attorneys have been monitoring civil service commission hearings, civilian review boards, and other panels that hear police discipline cases for information about disciplined police officers. For example, for nearly a decade the Los Angeles Times, the San Diego and Los Angeles

Public Defenders' Offices have been assembling databases of information on individual peace officers to later use to unfairly taint officers in criminal trials. This practice has also allowed defense attorneys to obtain records that would have never been released by a judge on a *Pitchess* Motion.

AB 1648 would amend Sections 832.5 and 832.7 of the Penal Code by making public the following information from all sustained complaints or out of policy findings against an officer:

- Name and badge number.
- Name and address of complainant.
- Summary of factual allegations.
- Charges brought against the officer.
- Factual findings.
- Discipline imposed or corrective actions taken.

Excluding civil service commissions, civilian review boards, and other panels that hear police discipline cases from the definition of "employing agency" would "frustrate" the Legislature's decision to allow municipalities to decide for themselves whether to conduct disciplinary appeals within the law enforcement department or to delegate that responsibility to a municipality-wide review body. *It is prejudicially unfair to make the extent of confidentiality available to a peace officer turn on whether he or she works in a jurisdiction where responsibility for administrative appeals has been assigned to someone outside the law enforcement department.*

Similarly, this bill's definitions of the term "employing agency" would "chill" officer's exercise of their rights to an evidentiary appeal in jurisdictions, like Los Angeles and San Diego Counties, where administrative appeals are handled outside the Sheriff's Department. *The bill would present peace officers with a Hobson's choice between their right to confidentiality and their right to administrative appeal. The Legislature should not force peace officers to make such a choice!*

The mandated disclosure of officer's personnel records called for in this bill will subject officers to increased risk of retribution on the streets, lost credibility, diminished effectiveness on the beat, diminished credibility on the witness stand, increased civil liability, and general embarrassment. *Maintaining the confidentiality of these records best serves the important policy goal of maintaining confidence in law enforcement by avoiding premature disclosure of groundless claims of police misconduct.*

Quite literally for decades, California police officers from across the state have fought through the courts to keep information in their personnel and internal affairs files from the prying eyes of the media and criminal defendants, whose purpose, so often, is to impugn the good character and reputation of individual police officers. Historically, this battle has been waged to defend the ideal laid down by the U. S. Supreme Court thirty years ago: *"Policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights."* *Garrity v. State of New Jersey, 385 U.S. 493 (1967.)*

In the criminal context, it has long been the practice of defense lawyers to file *Pitchess* Motions seeking the internal affairs files of witness police officers almost as a matter of course, in an effort to find some complaint or other information with which to attack the officer's integrity and credibility on the witness stand. Fortunately, it has also long been the practice of lawyers for police officers to appear in court and fight to keep the information contained in those files private. These efforts have historically prevented the disclosure of internal affairs files to criminal defendants and even in those rare cases where a judge determines that some information in a police officer's file is relevant and therefore disclosable to the defense, the courts have invariably issued extremely severe protective orders at the demand of the officer's counsel.

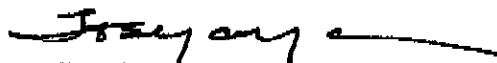
The potential danger of this bill is immediately obvious.

Were the Legislature to agree with you and hold that police officers never have a reasonable expectation of privacy or confidentiality in their internal affairs files, the ability of criminal defendants and civil plaintiffs to gain access to these sensitive materials would be almost without limit. *This bill would be devastating, and the potential for abuse would be extraordinary. Indeed, if the bill was to become law, not only would the public be given unfettered access to much of a peace officer's preciously-guarded information, they would be free to provide that information to the media or disseminate it in any way they saw fit.* There would no longer be a need for *Pitchess* Motions and prosecutors' obligations under *Brady v. Maryland* would disappear.

Police officers are no different than any other public employee, except only by the special and extraordinary risks of danger that many of them face daily. The California Public Records Act protects *all* public employees' privacy by ensuring that disciplinary proceedings are *not* public information. It even protects members and staff of the Legislature. *AB 1648 would create a new and dangerous precedent and single out police officers in a manner that is both prejudicial and discriminatory. No public employee should idly stand by while the Legislature strips and takes employee rights to privacy away. These bills set a dangerous precedent, not just for police officers, but for every working man and woman in California.*

Very truly yours,

  
Pat McNamara  
President

  
Timothy H. B. Yaryan  
Legislative Counsel and Advocate

cc: Members/Consultants – Assembly Committee on Public Safety  
RSA