

## Personnel Records

### 1011.1 PURPOSE AND SCOPE

State **MODIFIED**

This section governs the maintenance, retention and access to peace officer personnel records or information obtained from the personnel records in accordance with established law. It is the policy of DSH to maintain the confidentiality of peace officer personnel records pursuant to Penal Code section 832.7. Non-sworn employee personnel records will comport with hospital policy.

### 1011.2 POLICY

State **MODIFIED**

It is the policy of DSH to maintain peace officer personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California, including, but not limited to Penal Code section 832.7.

### 1011.3 PERSONNEL RECORDS DEFINED

Agency Content

Pursuant to Penal Code section 832.8, peace officer personnel records shall include any file maintained under an individual officer's name by his or her employing agency and containing records relating to any of the following:

- (a) Personal data, including marital status, family members, home addresses, educational and employment history, or similar information.
- (b) Medical history including, but not limited to, medical leave of absence forms, fitness for duty examinations, workers compensation records, medical releases and all other records which reveal an employee's past, current or anticipated future medical conditions.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which the officer perceived, and pertaining to the manner in which the officer performed official duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

### 1011.4 EMPLOYEE RECORD LOCATIONS

Agency Content

Employee records will generally be maintained in any of the following:

**Official Personnel File** - That file which is maintained in the Human Resource Department.

**Supervisory File** - Any file which is separately maintained internally by an employee's Hospital Police Chief or designee for the purpose of completing timely performance evaluations.

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**Supervisor Note** - Any written comment, excluding actual performance evaluations, made by a supervisor concerning the conduct of an employee of OPS, and maintained in the Supervisory File.

**Training File** - Any file which documents the training records of an employee.

**Internal Affairs Files** - Those files that contain complaints of employee misconduct and all materials relating to the investigation into such allegations, regardless of disposition.

**Medical File** - That file which is maintained separately that exclusively contains material relating to an employee's medical history.

### **1011.5 OPS FILE**

#### **State**

The OPS file shall be maintained as a record of a person's employment/appointment with this OPS. The OPS file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Election of employee benefits.
- (c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.
- (d) Original performance evaluations. These should be permanently retained.
- (e) Discipline records, including copies of sustained personnel complaints (see the Personnel Complaints Policy).
  1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least four years (Government Code § 12946).
  2. Disciplinary action resulting from a sustained civilian's complaint involving misconduct shall be maintained pursuant to the established records retention schedule and at least 15 years (Penal Code § 832.5).
  3. A civilian's complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- (f) Adverse comments such as supervisor notes or memos may be retained in the OPS file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
  1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
  2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).

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3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).
- (g) Commendations and awards.
  - (h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

### 1011.6 CONFIDENTIALITY OF ALL PERSONNEL RECORDS

#### Agency Content

Pursuant to Penal Code section 832.7, all of the above-defined personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code section 1043, et seq. or in accordance with applicable federal discovery laws. Nothing in this section is intended to preclude review of personnel files by the Director of DSH, Chief Counsel or other attorneys or representatives of the State in connection with official business.

### 1011.7 DIVISION RECORDS

#### State MODIFIED

Division files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Division file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code section 3305, and Government Code section 3306.

### 1011.8 REQUESTS FOR DISCLOSURE OF INFORMATION

#### Agency Content

Only written requests for the disclosure of any information contained in any peace officer personnel record will be considered. Since the format of such requests may be strictly governed by law with specific responses required, all such requests shall be promptly brought to the attention of the Chief of Police, the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected employee(s) as soon as practicable that such a request has been made (Evid. Code §, subd.1043(a)).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this will require assistance of approved and available legal counsel.

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All requests for disclosure which result in access to an employee's personnel record(s) shall be logged in the corresponding file.

### 1011.8.1 RELEASE OF CONFIDENTIAL INFORMATION

#### Agency Content

Except as provided by this policy or pursuant to lawful process, no personnel record or information contained in any confidential peace officer personnel record shall be disclosed to any unauthorized person(s) without the express consent of the involved officer or written authorization of the Chief of Police or designee.

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any employee of OPS may be guilty of a misdemeanor (Pen. Code § 146e).

Pursuant to Penal Code section 832.7, subdivision (f), written notification of the disposition of any citizen's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any was imposed.

DSH may also release any factual information concerning a disciplinary investigation if the officer who is the subject of the investigation (or the officer's representative) publicly makes a statement which is published in the media and which the officer (or representative) knew to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Pen. Code § 832.7, subd.(d).)

### 1011.9 TRAINING RECORDS

#### Best Practice MODIFIED

An individual training file shall be maintained by the Training Coordinator for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Training Coordinator or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Training Coordinator or supervisor shall ensure that copies of such training records are placed in the member's training file.

### 1011.10 MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS

#### State

Any member may request access to the member's own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from the member's personnel records shall file a written request to the Chief of Law Enforcement through the chain of command. The OPS shall remove any such item if appropriate,

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or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the OPS shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:

- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing, or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the OPS for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments, or other comments or ratings used for department planning purposes.
- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the OPS and the member that may be discovered in a judicial proceeding.

### **1011.11 INTERNAL AFFAIRS FILE**

#### **State**

Internal affairs files shall be maintained under the exclusive control of the Professional Standards Unit in conjunction with the office of the Chief of Law Enforcement. Access to these files may only be approved by the Chief of Law Enforcement or the Professional Standards Unit supervisor.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

Investigation files arising out of sustained civilian's complaints involving misconduct shall be maintained pursuant to the established records retention schedule and for a period of at least 15

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years. Investigations that resulted in other than a sustained finding may not be used by the OPS to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least four years (Government Code § 12946).

Investigation files arising out of a civilian complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and for at least five years (Penal Code § 832.5).

### **1011.12 TYPES OF PERSONNEL RECORDS**

#### **Agency Content**

Peace officer personnel records can be located in any of the following places:

#### **1011.12.1 OFFICIAL PERSONNEL RECORDS**

##### **Agency Content**

The Official Personnel File should contain, but is not limited to, the following:

- (a) Performance evaluation reports regularly completed by appropriate supervisor and signed by the affected employee shall be permanently maintained.
- (b) Records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education shall be maintained.
  1. It shall be the responsibility of the involved employee to provide the Training Coordinator or immediate supervisor with evidence of completed training/education in a timely manner.
  2. The Training Coordinator or supervisor shall ensure that copies of such training records are placed in the employee's Official Personnel File.
- (c) Disciplinary action:
  1. A letter of reprimand resulting from sustained internally initiated complaints or observation of misconduct shall be maintained in the individual employee's Official Personnel File at least three years unless modified during the discipline process (Gov. Code § 19589).
  2. Disciplinary actions resulting from a sustained citizen's complaint from performance/misconduct shall be maintained in the individual employee's Official Personnel File at least five years (Pen. Code § 832.5).
  3. Investigations of complaints which result in a finding of not-sustained, unfounded or exonerated shall not be placed in the employee's Official Personnel File, but will be separately maintained for the appropriate retention period in the internal affairs file.
- (d) Adverse comments such as supervisor log entries may be retained in the Official Personnel File or Supervisory File after the employee has had the opportunity to read and initial the comment and for a period up to three years (Gov. Code § 3305).

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1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days (Gov. Code § 3306).
  2. Any such employee response shall be attached to and retained with the original adverse comment.
  3. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.
- (e) Commendations shall be retained in the employee's Official Personnel File, with a copy provided to the involved employee.
- (f) Notice of Personnel Action reflecting assignments, promotions and other changes in the employee's employment status shall be permanently retained.
- (g) A photograph of the employee shall be permanently retained.

#### 1011.12.2 SUPERVISORY RECORD

##### **Agency Content**

The Supervisory Records should contain, but not be limited to, the following:

- (a) Supervisor log entries, notices to correct and other materials intended to serve as a foundation for the completion of timely Performance Evaluations
1. All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code sections 3305,3306.
  2. Duplicate copies of items that will also be included in the employee's Official Personnel File may be placed in the Supervisory File in anticipation of completing any upcoming performance evaluation.
  3. Once the permanent performance evaluation form has been made final, the underlying foundational material(s) and/or duplicate copies may be purged in accordance with this policy.
- (b) All rules of confidentiality and disclosure shall apply equally to the Supervisory File.

#### 1011.12.3 INTERNAL AFFAIRS RECORDS

##### **Agency Content**

Internal Affairs Files shall be maintained under the exclusive control of the Hospital Police Chief. Access to these files may only be approved by the Hospital Police Chief or the supervisor of the Professional Standards Unit. These files shall contain:

- (a) The complete investigation of all formal complaints of employee misconduct, regardless of disposition
1. Each investigation file shall be sequentially numbered within a calendar year (e.g., yy-001, yy-002).

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2. Each investigation file arising out of a formal citizen's complaint or a complaint involving a discriminatory harassment or hostile work environment shall be maintained no less than five years (Pen. Code § 832.5 subd. (b).) Investigation files arising out of other internally generated complaints shall be maintained no less than two years (Gov. Code § 34090).
- (b) Investigations that result in other than a sustained finding shall be maintained for the minimum statutory period but may not be used by DSH to adversely affect an employee's career (Pen. Code § 832.5, subd. (c).)

### 1011.12.4 LAW ENFORCEMENT TRAINING RECORDS

**Agency Content**

An individual Training File shall be maintained by the Training Unit for each employee. Training Files will contain records of all training and education mandated by law and DSH, including firearms qualifications and mandated annual proficiency requalification.

- (a) It shall be the responsibility of the involved employee to provide the Training Coordinator or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Training Coordinator or supervisor shall ensure that copies of such training records are placed in the employee's law enforcement Training File.

### 1011.12.5 MEDICAL RECORDS

**Agency Content**

A Medical File shall be maintained separately from all other files and shall contain all documents relating to the employee's medical condition and history, including but not limited to the following:

- (a) Materials relating to medical leaves of absence, including leave under the Family and Medical Leave Act (FMLA).
- (b) Documents relating to workers compensation claims or receipt of short or long term disability benefits.
- (c) Fitness for duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records which reveal an employee's medical condition.
- (e) Any other documents or material which reveals the employee's medical history or medical condition, including past, present, or future anticipated mental, psychological, or physical limitations.

### 1011.13 PURGING OF FILES

**Best Practice** **MODIFIED**

Formal citizen complaints and all related files not pending litigation or other ongoing legal proceedings may be purged no sooner than five years from the underlying complaint date (Pen. Code § 832.5).

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All other disciplinary files and investigations of non-citizen initiated complaints not pending litigation or other ongoing legal proceedings may be purged no sooner than three years from the underlying complaint date (Gov. Code §§ 34090; 26202).

- (a) Each supervisor responsible for completing the employee's performance evaluation shall also determine whether any prior sustained disciplinary file should be retained beyond the statutory period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the applicable statutory period, approval for such retention shall be obtained through the chain of command from the Chief of Police.
- (c) During the preparation of each employee's performance evaluation, all complaints and discipline should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. If, in the opinion of the Chief of Police, a complaint or disciplinary action beyond the statutory retention period is no longer relevant, all records of such matter may be destroyed pursuant to resolution.

### **1011.14 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS**

**State**

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Custodian of Records should work as appropriate with the Chief of Law Enforcement or the Professional Standards Unit supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(3):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and OPS policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the

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*Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(8) or other law, the following records (hereinafter qualifying records) shall be made available for public inspection no later than 45 days from the date of a request (Penal Code § 832.7(b)(1)):

- (a) Records relating to the report, investigation, or findings of:
  - 1. The discharge of a firearm at another person by an officer.
  - 2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an officer.
  - 3. A sustained finding involving a complaint that alleges unreasonable or excessive force.
  - 4. A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- (b) Records relating to an incident where a sustained finding was made by the OPS or oversight agency regarding:
  - 1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
  - 2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
  - 3. An officer engaged in conduct including but not limited to verbal statements, writings, online posts, recordings, and gestures involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
  - 4. An officer made an unlawful arrest or conducted an unlawful search.

Qualifying records will be made available regardless of whether the officer resigns before the OPS or an oversight agency concludes its investigation (Penal Code § 832.7(b)(3)).

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(4)).

When an investigation involves multiple officers, the OPS shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(5). However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a finding of the qualified allegation against another officer that is subject to release (Penal Code § 832.7(b)(5)).

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### 1011.14.1 REDACTION

**State**

The Custodian of Records, in consultation with the Chief of Law Enforcement or authorized designee, shall redact the following portions of qualifying records made available for release (Penal Code § 832.7(b)(6)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers
- (b) Information that would compromise the anonymity of whistleblowers, complainants, victims, and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(7)).

### 1011.14.2 DELAY OF RELEASE

**State**

Unless otherwise directed by the Chief of Law Enforcement, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of qualifying records due to any of the following conditions (Penal Code § 832.7):

- (a) Active criminal investigations
  1. Disclosure may be delayed 60 days from the date the misconduct or use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
  2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who engaged in misconduct or used the force.
- (b) Filed criminal charges
  1. When charges are filed related to an incident in which misconduct occurred or force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- (c) Administrative investigations
  1. Disclosure may be delayed until:

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- (a) There is a determination from the investigation whether the misconduct or use of force violated law or OPS policy, but no longer than 180 days after the date of the OPS's discovery of the misconduct or use of force or allegation of misconduct or use of force

### 1011.14.3 NOTICE OF DELAY OF RECORDS

**State**

When there is justification for delay of disclosure of qualifying records, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.
  - 1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
    - (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the OPS must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about misconduct or use of force by officers.

In cases where an action to compel disclosure is brought pursuant to Government Code § 7923.000, the OPS may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(8)).

### 1011.15 SECURITY

**Best Practice** **MODIFIED**

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

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Nothing in this policy is intended to preclude review of personnel records by the Director and/or the Chief Deputy Director of Department of State Hospitals, Chief Counsel or other attorneys or representatives of the State in connection with official business.

#### 1011.15.1 RELEASE OF LAW ENFORCEMENT GANG INFORMATION

##### **State**

Information relating to the termination of an officer from this OPS for participation in a law enforcement gang shall be disclosed to another law enforcement agency that is conducting a pre-employment background investigation except where specifically prohibited by law (Penal Code § 13670).

#### 1011.15.2 RELEASE OF PEACE OFFICER RECORDS RELATING TO HATE COMPLAINTS

##### **State**

Records relating to an officer for an investigation of a hate complaint described in Penal Code § 13682 with a sustained finding that the officer engaged in membership in a hate group, participated in a hate group activity, or advocacy of public expressions of hate are not confidential and shall be made available for public inspection through a public records request (Penal Code § 13683).

Records disclosed may be redacted as provided in Penal Code § 13683.