

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>June 10, 2011 9:00 a.m.</b>	<b>DEPT. NO</b>	<b>42</b>
<b>JUDGE</b>	<b>HON. ALLEN SUMNER</b>	<b>CLERK</b>	<b>M. GARCIA</b>
<b>MATTHEW MEDINA,</b> <b>Petitioner,</b> <b>v.</b> <b>STATE OF CALIFORNIA, DEPARTMENT OF</b> <b>JUSTICE, et al.,</b> <b>Respondent.</b>		<b>Case No.: 34-2011-80000790</b>	
<b>Nature of Proceedings:</b>		<b>PETITION FOR PEREMPTORY WRIT OF MANDATE</b>	

The following shall constitute the court's tentative ruling on the above-entitled matter, granting the petition for writ of mandate.

The tentative ruling shall become the ruling of the court unless a party desiring to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

**Summary**

Petitioner Matthew Medina is a public safety officer covered by the provisions of the Public Safety Officers Procedural Bill of Rights. (Gov. Code §§ 3300 et seq.)<sup>1</sup> Medina brings this petition to compel his employer, the Department of Justice, to permit Medina to review a citizen's complaint against him contained in his personnel file. The Department argues Medina is not entitled to review the complaint because: (1) the Department already disclosed to Medina the substance of the complaint and identity of the complainant, and (2) Medina failed to demonstrate a "legitimate reason" for reviewing the complaint itself.

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated.

The court does not agree.

### **Background**

At all relevant times, the Department employed Medina as a Special Agent, a public safety officer within the meaning of the Public Safety Officers Procedural Bill of Rights.

In September, 2010, the Department's internal affairs section initiated an investigation as a result of a citizen's complaint lodged against Medina by his former neighbor. The Department notified Medina of the investigation in a letter, which summarized the complaint as follows:

Specifically, from March of 2010 until September 2010, you are alleged to have been discourteous to your neighbors on no less than three occasions, alleged to have told them you checked into their background information, and engaged in verbal confrontations that have left the complainants questioning what the next verbal outburst will entail.

After completing its investigation, the Department notified Medina the allegations against him were not sustained, meaning the investigation disclosed insufficient evidence to prove or disprove the allegations.

Thereafter, Medina requested to review the complaint.

The Department acknowledges it maintains a file containing the citizen's complaint against Medina. However, the Department refuses to permit Medina to review the complaint. The Department contends that because Medina has been told the substance of the allegations against him and the identity of the complainant, he is not entitled to review the actual complaint. The Department argues there is no legitimate reason for Medina to have a verbatim copy of the complaint; providing the complaint would quell the citizen's ability and willingness to file a complaint; and releasing the complaint would inflame the dispute between Medina and his former neighbor. (Opposition to Petition, 2:6-10.)

## Discussion

Under the Public Safety Officers Procedural Bill of Rights, Medina has the right to "inspect" his personnel file (§ 3306.5(a)) and file a written response to any adverse comment entered in his file. (§ 3306.) The question in this case is whether Medina has a right under the Public Safety Officers Procedural Bill of Rights to see the actual complaint filed against him, or merely the general substance of the adverse comments filed against him.

The parties both contend the Third District Court of Appeal's holding in *Sacramento Police Officers Association v. Venegas* (2002) 101 Cal.App.4th 916, supports their contradictory conclusions: Petitioner argues *Venegas* held he is entitled to "disclosure of the comment" (Opening Memorandum, at p.8 ), whereas the Department asserts *Venegas* holds Medina is only entitled to be "made aware" of adverse comments. (Opposition, at p.3.)

The court finds *Venegas* instructive but not dispositive. The issue in *Venegas* was whether a police officer was entitled to read and respond to a negative comment maintained in an internal affairs file if the comment did not result in any disciplinary action against the officer. The Court in *Venegas* held the officer was entitled to disclosure of the adverse comment. However, the question of access to the complaint versus a summary was neither before, nor addressed by, the Court in *Venegas*.

The parties cite no case on point, and it appears the question of whether the Public Safety Officers Procedural Bill of Rights entitles Medina to review the actual complaint filed against him is one of first impression. The court therefore turns to the language of the Public Safety Officers Procedural Bill of Rights itself, giving the Legislature's language its ordinary, everyday meaning. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1010.)

Section 3305 provides that "[n]o public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes . . . without the public safety officer having first **read and signed the instrument containing the adverse comment** indicating he is aware of such comment . . . ." (Emphasis added; See also § 3303(g).)

Section 3306.5 grants officers the right to "*inspect*" their personnel files, and to request their employer to correct or remove information that has been unlawfully or mistakenly placed in the file.

Section 3306 allows the officer to file a written response to any adverse comment entered in the officer's personnel file.

The purpose of these statutes is clearly to provide officers covered by the Public Safety Officers Procedural Bill of Rights the right to review any adverse comment placed in their personnel file and respond. (See *McMahon v. City of Los Angeles* (2009) 172 Cal.App.4th 1324, 1332.) The language giving officers the right to "read" the "instrument containing the adverse comment" shows the Legislature intended to require disclosure of the actual adverse comments entered in the officer's personnel file -- not merely the general nature of the comments. Nothing in the language of the statutory scheme of the Public Safety Officers Procedural Bill of Rights indicates that officers are limited to the employing agency's summary of adverse comments contained in their files. (See *Seligoshn v. Day* (2004) 121 Cal.App.4th 518, 523.)

The plain reading of sections 3305, 3306 and 3306.5 thus gives Medina the right to inspect the actual complaint from his neighbor which the Department maintains in Medina's file. Additionally, the Court in *Venegas* expressly rejected the argument the Department advances that allowing such access would chill the willingness of citizens to file complaints. The Court explained:

It is true that some persons might be dissuaded from reporting peace officer misconduct if they cannot do so confidentially. On the other hand, it is equally true that some might view a shield of confidentiality as a license to make false allegations of police misconduct. Moreover, it takes no imagination to recognize that a shield of confidentiality would make it difficult for an accused peace officer to respond to and rebut a false claim of misconduct and could lead to serious employee discontent. The Legislature has resolved these policy conflicts in favor of peace officer employees. (*Sacramento Police Officers Association v. Venegas, supra*, 101 Cal.App.4th at p.930.)

Finally, the Department asserts that release of the neighbor's complaint against Medina would "inflare" their dispute. This may be true. However, the Department cites

no statutory basis for withholding the complaint. (e.g., Evid. Code § 1040, and Pen. Code § 832.7; see also *Pasadena Police Officers Association v. City of Pasadena* (1990) 51 Cal.3d 564, 580.) Accordingly, the court concludes that Medina has a right under the Public Safety Officers Procedural Bill of Rights to see the actual complaint filed against him.

### **Disposition**

For the foregoing reasons, the petition for a peremptory writ of mandate is GRANTED.

Counsel for Medina is directed to prepare a formal judgment incorporating this ruling as an exhibit, and a writ consistent with the judgment; submit them to opposing counsel for approval as to form; and thereafter submit them to the court for signature and entry of judgment in accordance with California Rule of Court, rule 3.1312.

Medina is entitled to recover his costs upon appropriate application. The court reserves jurisdiction on Medina's request for attorney fees pursuant to Code of Civil Procedure section 1021.5 pending filing of a timely and proper motion.