

The Ultimate Backup

A Client News Bulletin

RAINS, LUCIA & WILKINSON LLP

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SUPREME COURT STRENGTHENS PEACE OFFICER CONFIDENTIALITY RIGHTS

Copley Press v. Superior Court (August 31, 2006)

In a fabulous and strongly worded decision for law enforcement, on August 31, 2006 the California Supreme Court *rejected* a newspaper's effort to erode the confidentiality rights afforded to peace officers under Penal Code section 832.7.

Penal Code section 832.7 mandates that peace officer "personnel records," as well as records related to complaints of citizen misconduct that are maintained pursuant to Penal Code section 832.5, be kept *confidential*. However, the statute creates only a limited privilege, as it outlines several narrow and specific circumstances under which records can be released.

Over the last several years, newspapers have consistently and aggressively sought to expand the exceptions to the confidentiality rule under the guise of the "public's right to know." Indeed, *Copley Press v. Superior Court* (August 31, 2006) is the first of *three* cases currently pending before the California Supreme Court where public agencies and police unions have resisted newspaper attempts to erode the protections afforded under 832.7. Indeed, RLW has been on the front line of these battles, by taking aggressive positions to protect the privacy rights of our peace officer clients in the two remaining confidentiality cases currently pending before the Supreme Court: *California Commission on Peace Officers Standards*

and Training (POST) v. Superior Court, and *IFPTE Local 21 and the Oakland Police Officers Association v. Superior Court*. Those decisions should further define what material is protected from public disclosure under 832.7

The Copley Press Decision

The *Copley Press* case began when a newspaper requested access to a closed appeal hearing involving the termination of a deputy sheriff. The San Diego Civil Service Commission denied that request. But, after the hearing concluded, the newspaper filed several requests under the California Public Records Act (CPRA), Government Code §§ 6250 *et seq.*, asking for disclosure of documents filed with, submitted to, or created by the Commission concerning the appeal, including both the findings and decision, as well as any tape recordings of the hearing.

The trial court denied the requests finding the material confidential under 832.7 and 832.8. The newspapers appealed, and added a request that the court order the Commission to disclose not only the originally requested materials, but also the name of the deputy who was the subject of the appeal, as well as all documents, evidence and audiotapes from the appeal hearing.

1

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The appeals court granted partial relief. Although it imported the confidentiality provisions of 832.7 and 832.8 into the Public Records Act by way of Government Code §6254(k) [which indicates the act does not require disclosure of records which are “exempted or prohibited pursuant to state or federal law...”], the appeals court nonetheless held that the materials sought were not files maintained by the employing agency.

The case was then appealed to the California Supreme Court, and on August 31, 2006, the Court determined that the requested materials were confidential and not subject to disclosure.

In so ruling, the Supreme Court affirmed that “the right of access to public records under the CPRA is not absolute,” and noted that both the legislature and the statute carefully and clearly articulate a concern for individual privacy rights. The Court then turned to the question of whether the requested records were confidential under Penal Code section 832.7 and thus exempt under Government Code §6254(k).

In finding the records exempt, the court conducted an extensive analysis of the confidentiality protections provided by sections 832.7 and 832.8. *That discussion makes it clear that all records related to misconduct investigations, as well as hearings related thereto, as well as the name of the individual officer who is the subject of the hearing, are not accessible to the public.*

The Supreme Court started its analysis by noting that section 832.7 applies to two categories of records: (1) “Personnel records” as that term is defined by 832.8; and (2) “records maintained by any state or local agency pursuant to Penal Code 832.5.” Penal Code section 832.8 defines personnel records to include investigations of misconduct complaints. Penal Code section 832.5 is the section requiring that public agencies establish a procedure to investigate citizen complaints of police misconduct.

The first significant aspect of the *Copley Press* decision is that the court held that Section 832.7 is applicable to *administrative* proceedings. In so doing, the court

disapproved of the decision issued in *Bradshaw v. City of Los Angeles*, (1990) 221 Cal. App. 3d 908, and specifically adopted the rationale of *City of Hemet v. Superior Court*, (1995) 37 Cal. App. 4th 1411, and *City of Richmond v. Superior Court*, (1995) 32 Cal. App. 4th 1430. Thus, the Court interpreted the word “confidential” in section 832.7 as “establish[ing] a general condition of confidentiality,” to which the limited exception was disclosure in criminal and civil proceedings pursuant to Evidence Code section 1043. The *Copley Press* decision stated:

[I]t would be unreasonable to assume the Legislature intended to put strict limits on the discovery of police personnel records in the context of civil and criminal discovery, and then to broadly permit any member of the public to obtain those records through the CPRA. . . . We cannot conclude the Legislature intended to enable third parties, by invoking the CPRA, so easily to circumvent the privacy protection granted under 832.7. . . .

The Court then went on to hold that Civil Service Commission records related to disciplinary appeals, including the officer’s name, are protected by the confidentiality provisions of section 832.7. In so doing, the Court engaged in a practical interpretation of the language in Penal Code section 832.8 that defines “personnel records” as “any file maintained under that individual’s name by his or her employing agency.” The Court found the newspaper’s reading of that section to be overbroad and likely to cause inconsistent application of the statute. The Court noted that because employers are free to determine the procedures to be used in appealing a discipline imposed following a misconduct investigation, the protections of 832.7 could easily be circumvented if an agency chose to have those appeals conducted by another department rather than the agency. Of significance, the Supreme Court stated:

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[I]t is doubtful the Legislature intended 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. In enacting section 832.7, the Legislature did not *directly* give a local agency discretion to release records of disciplinary appeals. Thus, although a particular local agency might have good reasons for wanting to grant public access to disciplinary records regarding peace officers, in jurisdictions where all aspects of disciplinary matters and citizen complaints – including appeals – are handled *within* the law enforcement department, the statutes do not give the employing agency discretion to disclose disciplinary records without consent of the involved peace officer. It is unlikely the Legislature, in declining to confer this discretion directly, nevertheless intended to allow an officer’s employer to exercise such discretion *indirectly*, by designating someone outside the agency to hear these matters.

Opinion at p. 25. The court concluded:

[W]e find no evidence the Legislature intended that one officer’s privacy rights would be less protected than another’s simply because his or her employer, for whatever reason, conducts administrative appeals using an entity like the Commission.

Opinion at p. 26.

Even the Name of the Officer Disciplined is Protected from Disclosure:

The *Copley Press* court found that the appellate court also erred in disclosing the *name* of the individual officer who had filed his appeal, and in a significant step, expressly disapproved of the decision in *New York*

Times v. Superior Court, (1997) 52 Cal. App. 4th 97, a case which previously broadly declared that under section 832.7, the name of the officer involved in a shooting is not exempt from disclosure. The Supreme Court found the *New York Times* rule to be incorrect insofar as it applies to disciplinary matters.

Policy Considerations Favoring Public Scrutiny Do Not Override the Confidentiality Requirements of Penal Code section 832.7

Last, but by no means least, the Supreme Court strongly and unequivocally rejected the newspaper’s argument that policy considerations favor public scrutiny of police officers. The Court stated:

There are, of course, competing policy considerations that may favor confidentiality, such as protecting complainants and witnesses against recrimination or retaliation, protecting peace officers from publication of frivolous or unwarranted charges, and maintaining confidence in law enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct. . . . In enacting and amending sections 832.5, 832.7, and 832.8, the Legislature, though presented with arguments similar to *Copley’s*, made the policy decision “that the desirability of confidentiality in police personnel matters *does* outweigh the public interest in openness.”

Opinion at p. 32 (emphasis in original).

Thus, the California Supreme Court’s decision in *Copley Press* is a welcome and refreshing endorsement of the legislative mandate that peace officer personnel records, including records of

discipline, are confidential and not subject to public disclosure.

If you have any questions or concerns about how this

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decision impacts you or your agency, please feel free to contact Rains, Lucia & Wilkinson LLP.

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