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— Labor & Employment Law —

SPECIAL UPDATE

LAW ENFORCEMENT/POLICE AND PUBLIC EMPLOYERS

May 30, 2014

CALIFORNIA PUBLIC RECORDS ACT;
DISCLOSURE OF PEACE OFFICER NAMES

The California Supreme Court Upholds Ruling Requiring Disclosure of the Names of Officers Involved In Shooting Cases Unless There is Specific Evidence of a Concern for an Officer's Safety
(following up on our special update of February 17, 2012)

Yesterday, the California Supreme Court, in a 6-1 vote, rejected blanket policies by a growing number of police agencies against disclosure of the names of officers involved in shootings. The Court held that officers' names can be withheld from disclosure only if there is specific evidence that their safety would be imperiled.

In 2010, the Los Angeles Times attempted to obtain the names of Long Beach police officers involved in the fatal shooting of Douglas Zerby, when the officers mistook a garden hose nozzle for a gun. The LA Times made a California Public Records Act (CPRA) request asking for the names of the officers who shot Zerby and the identities of all Long Beach officers who had been involved in on-duty shootings in the prior five years. The Long Beach Police Officers Association went to court to prevent the City from disclosing the names, citing confidentiality of personnel records and arguing that revealing identities would endanger officers and their families because home addresses and phone numbers can be obtained on the Internet.

The California Government Code allows a public agency to justify withholding any record by demonstrating on the facts of the particular case that the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure. Thus, the courts must perform a case-by-case balancing process, with the burden of proof on the party attempting to prevent disclosure to be able to demonstrate a clear overbalance on the side of confidentiality.

Here, the Police Officers Union and the City of Long Beach had argued for a blanket rule preventing disclosure of officer names *every time* an officer is involved in a shooting, and provided the following rationale: (1) general safety concerns associated with releasing the names of officers involved in shootings; (2) death threats made against specific officers involved in past shootings; (3) the ease with which a name can be used to gather personal information over the internet; and (4) that the disclosure could lead to harassment of those officers and their families.

In this case however, because the Union and the City offered no evidence of a specific safety concern regarding any particular officer, the California Supreme Court held that "the particularized showing" necessary to outweigh the public's interest was not made here, and the officers' names will have to be disclosed.

The Court stated, "in a case such as this one, which concerns officer-involved shootings, the public's interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death. Here, therefore, in weighing the competing interests, the balance tips strongly in favor of identity disclosure and against the personal privacy interests of the officers involved." "Of course, if it is essential to protect an officer's anonymity for safety reasons or for reasons peculiar to the officer's duties – as, for example, in the case of an undercover officer – then the public interest in disclosure of the officer's name may need to give way. That determination, however, would need to be based on a particularized showing."

The one dissenting opinion of the Court said the ruling would "impose an obvious and substantial burden on law enforcement agencies that want to protect their officers. Absent a showing of some greater public need for the information, we should allow law enforcement agencies to protect the very officers who are out there every day protecting us. They deserve at least that much for their brave service."

In sum, general concerns for the safety of an officer involved in a shooting will not suffice to prevent disclosure of the name of the officer. In order to tip the balance against disclosure, a specific reason why a particular officer requires anonymity will be required.

Long Beach Police Officers Assn. v. City of Long Beach (May 29, 2014) ___ Cal.4th ___.
http://www.courts.ca.gov/opinions/documents/S200872.PDF

Following is our Special Update from February 17, 2012 for your review

SPECIAL UPDATE

CALIFORNIA PUBLIC RECORDS ACT;
DISCLOSURE OF PEACE OFFICER NAMES

February 17, 2012

Court Orders Public Disclosure of the Names of
Police Officers Involved in Shootings in the Past Five Years:

In *Long Beach Police Officers Assn. v. City of Long Beach* (Feb. 7, 2012) ___ Cal.App.4th ___, the Court ordered the City of Long Beach to disclose the names of peace officers involved in shootings in the past five years.

On December 12, 2010, Long Beach police officers shot and killed Douglas Zerby, an intoxicated, unarmed 35-year-old man who was carrying a garden hose nozzle that officers mistook for a gun. Following the shooting, Los Angeles Times reporter Richard Winton made a California Public Records Act request to the City seeking "[t]he names of Long Beach police officers involved in the December 12 office[r] involved shooting in the 5300 block of East Ocean Boulevard" and "[t]he names of Long Beach police officers involved in officer involved shootings from Jan. 1[,] 2005 to Dec. 11, 2010." The City initially responded that it intended to comply with the request by January 10, 2011. After the City informed the LBPOA of the request and its intent to comply, the Long Beach Police Officers' Association filed a complaint against the City and Police Chief, seeking an order restraining the City of disclosing the officers' names.

The police union argued that disclosure of the officers' names raised safety concerns, as officers involved in shootings had received death threats in the past. Further, investigations into officer-involved shootings often become part of the officer's confidential personnel files.

The trial court ruled that the officers' names alone were not confidential information exempt from Public Records Act requests, and the Court of Appeal agreed. In another extensive opinion, the Court noted that, although courts are mindful of individuals' privacy rights when evaluating public records requests, the Court held:

> "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) Since 2004, the California Constitution has confirmed the principle: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny."

(However, the Court did note that withholding an officer's name from public disclosure could be warranted in a situation where there is specific and particularized evidence that disclosing the officer's name could jeopardize the officer's safety. Further, the only information requested was the officers' names, and not any subsequent confidential personnel information regarding whether the officers were disciplined for any shooting incident.

> *Long Beach Police Officers Assn. v. City of Long Beach* (Feb. 7, 2012) ___ Cal.App.4th ___.
> http://www.courtinfo.ca.gov/opinions/documents/B231245.PDF

NOTE: California courts continue to liberally construe the California Public Records Act in favor of the public's interest in disclosure of public/governmental records, even when there are legitimate individual privacy or safety concerns at issue. However, this cases appears to be limited to the facts of this case, and presents "significant" public interest warranting disclosure of the private information, that is, the public's interest in knowing police officers' conduct, and if any officers have a propensity for violence or excessive use of force.