

California Supreme Court Decision Limiting Firefighter Access To Personnel Records Will Affect Similar Rights for Peace Officers

By Christopher W. Miller, Esq.
SCOPO General Counsel

A new decision from the California Supreme Court limiting employee access to supervisor files under the Firefighters Procedural Bill of Rights Act likely will place the same limits on public safety officers. The case, *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, involved a provision of the Bill of Rights Act giving firefighters the right to review and respond to any adverse comment that is entered in the firefighter's personnel file, "or any other file used for personnel purposes by his or her employer." (Gov. Code § 3255.) The court ruled firefighters are not permitted under the companion statute to the Public Safety Officers Procedural Bill of Rights Act to see a supervisor's personal notes, even when those notes are used to prepare a performance evaluation.

Poole, a firefighter, asked the court to order his supervisor, a captain, to provide him with access to any negative comments the supervisor made about Poole in daily notes or logs he kept on a computer and in a paper file. The Fourth District Court of Appeal reversed the trial court and issued the order, reasoning that the daily notes were part of a "file used for personnel purposes" because the supervisor used them to prepare Poole's performance evaluation.

Supreme Court Reverses Court of Appeal

The Supreme Court, however, reversed that ruling, finding the daily notes were simply a log or diary kept by the captain for his own use in preparing Poole's annual evaluation. The Court held the notes did not constitute a personnel file because the supervisor did not share them with anyone else or use the notes themselves to make decisions about Poole's employment.

In reaching that conclusion, the Court redefined "file used for personnel purposes" in a way that will make it more difficult for both peace officers and firefighters to see adverse comments maintained by supervisors. The Court relied on another provision of the statute, Government Code section 3256.5(a), to limit "file used for personnel purposes" to files relating to "qualifications for employment, promotion, additional compensation, or termination or other disciplinary action." The court distinguished cases in which the personnel records of peace officers and other public employees were ordered disclosed to the employee because adverse comments appeared in those records or were used by the employer to make personnel decisions. (See, e.g., *Seligsohn v. Day* (2004) 121 Cal.App.4th 518; *Aguilar v. Johnson* (1988) 202 Cal.App.3d 241.)

A supervisor's log, notes or "drop file", commonly used to prepare the employee's performance evaluation, does not meet this definition of a "personnel file" under *Poole* unless the notes are used for one of the "personnel purposes" described in the statute. A supervisor now can refuse to provide his or her notes to an employee, or to allow the employee to rebut those notes in writing, when the notes are solely for the supervisor's own use.

Decision Affects Access to Peace Officer Records

Government Code section 3305 provides public safety officers the same right of access to personnel files as section 3255. In deciding *Poole*, the Supreme Court relied on cases interpreting the personnel record provisions of the Public Safety Officers Procedural Bill of Rights Act (POBRA), making it likely the courts would rule the same way in a case involving peace officer records.

Whether a public safety officer still can access a supervisor's adverse comments after *Poole* will depend upon how the comments are maintained and used. Adverse comments maintained by one supervisor and transferred to another during an evaluation period, for example, might constitute a file used for personnel purposes because the notes have been disclosed to another person. Written comments that are used solely to support a verbal admonishment, however, probably are no longer subject to disclosure.

The *Poole* decision does appear to be contrary to the legislative goal of the POBRA, as well as the firefighter statute, to promote "stable employer-employee relations between public safety employees and their employers." That purpose previously has been used by the courts to expand peace officer rights, including access to personnel records. The best practice for public safety supervisors after *Poole* is to maintain notes, logs or diaries in a confidential manner, without disclosure to anyone until the contents of the notes are used in evaluations or discipline.