

David Gotfredson

From: Floyd, Dennis I [Dennis.Floyd@sdcounty.ca.gov]
Sent: Thursday, November 05, 2009 1:58 PM
To: David Gotfredson
Cc: Workman, Michael E; Songer, William H
Subject: FW: KFMB News 8 - Public Records Act Request - Daniel Luis Rodriguez
Attachments: Bakersfield_v_Superior.pdf

Dear Mr. Gotfredson:

This is in response to your October 26th public records request for "all disciplinary records contained in County personnel files or County Civil Service Commission files of prosecutor Daniel Luis Rodriguez." As of the date of this response, the records you request relate to an ongoing disciplinary investigation and are exempt from public disclosure. They are personnel records and are exempt from disclosure pursuant to Government Code §6254(c). Moreover, the public interest served by withholding the records at this stage outweighs the public's interest served by disclosure. (Government Code §6255.) No records will be provided in response to your request.

While the Bakersfield decision would apply to make many disciplinary actions public records, it does not make all of them public. Public employees do have a privacy interest when disciplinary charges are made. The test under Bakersfield is to determine whether that privacy interest is outweighed by the public's interest in the disclosure of charges which are "substantial" and "well founded". The Bakersfield decision, and all of the cases upon which it relied, involved disciplinary investigations that had been completed. One of the expressed justifications for the disclosure of confidential disciplinary matters is that the employee's privacy interest is outweighed by the public's interest in determining whether the public entity properly handled a disciplinary investigation involving substantial, founded charges. Disclosure while the investigation is pending is premature. The public cannot claim an interest in evaluating the entity's investigation or disciplinary decisions until the process is completed. Disclosure of a pending investigation would also place the integrity of the investigation at risk - and would not provide an adequate record upon which to evaluate whether the allegations were substantial or well founded.

I will be out of the office until next Thursday. If you have question that needs to be answered you may contact Bill Songer. Otherwise, I can get back to you on the 12th.

Dennis Floyd, Senior Deputy
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 San Diego, CA 92101-2469
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From: David Gotfredson [<mailto:dgotfredson@kfmb.com>]
Sent: Monday, October 26, 2009 10:46 PM
To: Floyd, Dennis I; Songer, William H
Cc: Levikow, Paul [SDCDA]
Subject: KFMB News 8 - Public Records Act Request - Daniel Luis Rodriguez

PUBLIC RECORDS ACT REQUEST

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.) and the California Constitution, as amended by passage of Prop 59 on November 3, 2004, I am writing to request copies of records, which I understand to be in the possession of your agency:

REQUESTED RECORDS:

News 8 is interested in obtaining copies of all disciplinary records contained in County personnel files or County Civil Service Commission files of prosecutor Daniel Luis Rodriguez, a current or former public employee, including but not limited to:

- 1. Complaint(s) or charge(s) filed.**
- 2. Notice(s) of proposed action.**
- 3. Order(s) of reprimand, reduction in compensation, suspension, demotion or removal.**
- 4. Response(s), appeal(s), and/or answer(s) to the above actions.**

In making your determination for disclosure, I request that you review the attached case [Bakersfield City School Dist. v. Superior Court (Bakersfield Californian) (2004)118 Cal.App.4th 1041, Cal.Rptr.3d], in which the court reviewed existing case law on personnel records disclosure and concluded:

"The cases do not stand for the premise that either a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure." And that public disclosure is mandated when the "complaint is of a substantial nature" and there is a "reasonable conclusion that the complaint was well founded."

I ask for a determination on this request within 10 days of your receipt of it, and an even earlier reply if you can make that determination without having to review the record(s) in question.

If you determine that any or all of the information is exempt from disclosure, I ask that you reconsider that determination in view of Prop 59, which has amended the state Constitution to require that all exemptions be "narrowly construed." Prop 59 may modify or overturn authorities on which you have relied in the past.

If you nonetheless determine that the requested records are subject to a still-valid exemption, I would further request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) that, with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest.

Should you deny part or all of this request, you are required to provide a written response describing the legal authority or authorities on which you rely. Please also address the question whether Prop 59 requires disclosure even though authorities predating Prop 59 may appear to support your exemption claim.

If I can provide any clarification that will help expedite your attention to this request, please contact me on my cell phone below.

Thank you for your time and attention to this matter.

Sincerely,

David Gotfredson
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San Diego, CA 92111
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