Stone Busailah, LLP

A Partnership of Professional Law Corporations

1055 East Colorado Boulevard, Suite 320, Pasadena, California 91106 Tel (626) 683-5600 Fax (626) 683-5656

**April 2019**

# CALIFORNIA APPEALS COURT ISSUES FIRST PUBLISHED DECISION REGARDING SB 1421

*Walnut Creek Police Officers' Association v. City of Walnut Creek et al.,*

*"What the Legislature gives, it can take away."*

***By Maurice E. Sinsley, Esq.***

### 1. *The Impact of SB 1421*

As we discussed in our October 2018 *New Legislation Update*, then-Governor Brown signed the historic Senate Bill 1421 into law allowing public access to certain police officer personnel records under a Public Records Act request (PRA).[1]

Prior to January 1, 2019, Penal Code Section 832.7 protected peace officer personnel records through the long standing *Pitchess*[2] procedure as the exclusive means for seeking access to such personnel records. Such records could not be obtained through a PRA request and made California one of the most restrictive states in the country regarding access to police personnel records.

All of that changed on January 1, 2019 when SB 1421 became law bypassing the *Pitchess* procedure and making certain categories of police personnel records available through a PRA request. SB 1421 eliminated the requirement to obtain a court order for such records and allowed anyone, regardless of their reason for doing so, to obtain previously protected records by simply completing a request form.

### 2. *The Consolidated Cases.*

In the wake of SB 1421 becoming law, six fellow police and sheriffs' associations[3] in Contra Costa County, as well as others statewide, sought injunctions to stop counties and local governments from releasing police officer personnel records created before January 1, 2019. The main opposition

[1] California Government Code §6250.

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 became the basis for the California Legislature's enactment of Penal Code §832.7 in 1978.

[3] Walnut Creek, Concord, Martinez and Antioch POA's and Contra Costa Sheriffs' Association.

to these cases came from the ACLU and several media related groups.

The Contra Costa cases were consolidated into a single trial where the main legal argument was that SB 1421 was not intended to be applied *retroactively* to records created before January 1, 2019. Rather, the associations argued the law should only apply to personnel records created *after* SB 1421 became law.

### 3. *The Public's Right to Access Records vs. Peace Officer's Right to Privacy*

In early February 2019, the trial court denied the injunction but issued a ten-day stay to allow the associations time to appeal. In a major published decision, the First District Court of Appeals denied the association's appeal upholding the trial court's decision that SB 1421 should apply *retroactively* to include records created before January 1, 2019.

The trial court's decision made clear that its analysis did not include balancing a peace officer's privacy interest vs. the public's right to access such records. Rather, the court held it was the Legislature's job to balance those interests and the Legislature did so by enacting SB 1421, making the records accessible through a PRA.

The court cited the Legislature's declaration[4] in the enactment of SB 1421 that states "The public has a right to know all about serious police misconduct, . . .", and the 2007 Supreme Court ruling in *Commission on Peace Officer Standards & Training v. Superior Court* as the basis for concluding that the Legislature intended SB 1421 to apply retroactively. In the *POST v. Superior Court* (2007) 42 Cal.4th 278, 297-98, the Supreme Court held, *"The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant."*

[4] SB 1421 Section 1. (b)

### 4. *"What the Legislature gives, it can take away."*

Although the trial court included other considerations in its decision, the court's analysis of whether SB 1421 takes away a peace officer's existing right to confidentiality is most important. The court confirmed that prior to SB 1421, a peace officer had a right to privacy under previous state law.[5]

However, the court stated that a peace officer had the right to privacy *"because the Legislature said so",* and that the right no longer exists *"because again, the Legislature said so."* In its short analysis of this important aspect of peace officer privacy concerns, the court stated, *"But what the Legislature gives, it can take away."*

### 5. *What's next?*

The Appellate Court's ruling in this case creates a binding precedent that will affect similar cases unless another Appeals Court or the California Supreme Court issues a different ruling. One such case[6] coming before the California Supreme Court this year involves challenges to *Pitchess* procedures and *Brady* notifications in pending criminal prosecutions. Our firm has filed an amicus brief in this case urging the Supreme Court leave the *Pitchess* procedures in place.

Stay Safe!

***Maurice E. Sinsley*** is an associate attorney with Stone Busailah, LLP., who has 30-years of fire service experience in Southern California.

[5] California Penal Code §832.7.

[6] *Association of Los Angeles County Deputy Sheriffs* v. *Superior Court of Los Angeles County,* No. S243855.