
**NEVADA COUNTY
SHERIFF'S OFFICE**



GENERAL ORDER
71
Effective Date 01/31/2019

SUBJECT Release of Personnel Records

POLICY It shall be the policy of the Nevada County Sheriff's Office to comply with California State law in making public records available for inspection and copying. Only those personnel records described in paragraph (A) below are subject to release under this policy. The remaining records are considered confidential and shall not be released except by discovery pursuant to Penal Code §1043 and §1046.

PURPOSE The purpose of this policy is to ensure compliance with California State law regarding the release of certain personnel records.

CODE REFERENCE California Penal Code §832.7 & §1018
California Government Code §§6250-276.48
California Code of Civil Procedure §128.5 Rule 2.550 of the California Rules of Court

CASE LAW

DEFINITIONS Sustained - Means a final determination by the Sheriff, or other person with authority to make such a determination, as may be applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or, any County or Sheriff's Office policy.

Personnel Records - Means any file maintained under an employee's name by the Nevada County Sheriff's Office and containing records relating to personal data, including marital status, family members, educational and employment history, home addresses, or similar information; medical history; election of employment benefits; employee advancement, appraisal or

discipline; complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties; or any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

Unfounded - Means that an investigation clearly establishes that the allegation is not true.

Frivolous - Means totally and completely without merit or for the sole purpose of harassing an opposing party.

Great Bodily Injury – Means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm. (*CalCrim No. 3160 ref. Penal Code §§ 667.5(c)(8), 667.61(d)(6), 1192.7(c)(8), 12022.7, 12022.8.*)

Personnel Records subject to release

- A. The following peace officer or custodial officer personnel records and records maintained by the Nevada County Sheriff's Office (NCSO) shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
1. A record relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 2. A record relating to the report, investigation, or findings of an incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
 3. Any record relating to an incident in which a sustained finding was made that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
 - a) "Sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of

this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

b) "Member of the public" means any person not employed by the NCSO and includes any participant in a cadet, explorer, or other youth program affiliated with the NCSO.

4. Any record relating to an incident in which a sustained finding was made of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

B. Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law, and the County and NCSO policy, for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

C. A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this policy.

D. If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (3) or (4) of paragraph (A), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (3) or (4) of paragraph (A).

- E. Records to be disclosed shall be redacted pursuant to this policy only for any of the following purposes, and only after conferring with the Sheriff or their designee:
1. To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.
 2. To preserve the anonymity of complainants and witnesses.
 3. To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.
 4. Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.
- F. Notwithstanding paragraph (E), the NCSO may redact a record disclosed pursuant to this policy, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. Sheriff or their designee shall approve any redactions.
- G. The NCSO may withhold a record of an incident described in subparagraph (1) or (2) of paragraph (A) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:
1. During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

2. After 60 days from the use of force, the NCSO may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If the NCSO delays disclosure pursuant to this clause, this agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by this agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

 3. After 60 days from the use of force, the NCSO may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If this agency delays disclosure under this clause, this agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the NCSO shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the NCSO must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The NCSO shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

 4. In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, the NCSO may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule thereto, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.
- H. If criminal charges are filed related to the incident in which force was used, the NCSO may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Penal Code § 1018.

- I. During an administrative investigation into an incident described in subparagraph (1) & (2) of paragraph (A), the NCSO may delay the disclosure of records or information until the NCSO determines whether the use of force violated a law, or County or NCSO policy, but no longer than 180 days after the date of the NCSO's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

- J. A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this policy if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded. Refer to General Order 17 for information on citizen complaints procedures.

- K. The District Attorney should be notified when there is reason to believe there is an active criminal enforcement proceeding to ensure no interference with a criminal enforcement proceeding. This notification should occur upon receiving and before responding to a request for releasable records pursuant to this policy.

- L. The employee whose personnel records are to be released pursuant to this policy, should be notified as soon as practicable.

- M. NCSO personnel shall consult with the Office of County Counsel anytime a record is to be disclosed, to include identifying any information to be redacted, or when there is a need to delay release of a record, pursuant to this policy.

- N. This policy does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Evidence Code Section 1043, *Pitchess v. Superior Court*, (1974) 11 Cal.3d 531, or *Long Beach Police Officers Association v. City of Long Beach* (214) 59 Cal.4th 59.