



**The Supreme Court of California holds that California law does not give an officer who is the subject of an internal affairs investigation the right to obtain pre-interrogation discovery; instead, the officer is only entitled to such discovery post-interrogation**



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In Pasadena Police Officers Ass'n v. City of Pasadena, 51 Cal. 3d 564, 797 P.2d 608 (Cal. 1990), the Supreme Court of California was asked to determine a narrow but important issue concerning the procedures governing internal police department investigations into suspected officer misconduct. The specific issue before the California Supreme Court was whether California law manifested a legislative intent to grant pre-interrogation discovery rights to a police officer who is the subject of an internal affairs investigation. Ultimately, the California Supreme Court concluded that California law does not grant such a right; instead, the Court held that an officer is only entitled to such discovery after the subject officer's interrogation, not before. The relevant facts are as follows.

The statute at issue in this case was Government Code Section 3303. The California Supreme Court explained that the lawsuit arose from a labor dispute between the police department for the City of Pasadena ("the Department") and the Pasadena Police Officers Association ("PPOA"), which is the recognized bargaining agent for the Department's non-supervisory sworn police personnel. In early 1986, the Department and the PPOA were engaged in negotiations intended to produce a memorandum of understanding. However, negotiations broke down, and an impasse was declared when the parties could not agree on a wage package.

Shortly thereafter, Officer Robert Ford, PPOA's vice-president, asked Commander Richard Emerson, a divisional supervisor for the Department, for a computer printout of the names and addresses of individuals designated as block captains in the Pasadena Neighborhood Watch program. Ford wanted the list for the PPOA so that it could send letters to the block captains to solicit their support for the wage package favored by the officers. Because the Department used the list solely to administer the Neighborhood Watch program, Emerson considered it confidential and, therefore, denied Ford's request.

In May 1986 (apparently as the result of information from Officer Ford), the Department learned that Officer Dennis Diaz, PPOA's president, had obtained an "unauthorized" copy of the list. Diaz used the list to distribute a letter from the PPOA to block captains of Neighborhood Watch soliciting their support for the PPOA's proposed resolution of the wage dispute.

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On May 26, 1986, the Department began an internal affairs investigation into the circumstances surrounding the PPOA's use of the list to determine whether there was sufficient cause to charge Officer Diaz with insubordination. During that investigation, Lieutenant Donnie Burwell interviewed Officer Ford. Burwell, then, notified Diaz to appear on June 5, 1986, for an administrative interrogation. Because Diaz was under investigation and because the interrogation might lead to punitive action, Burwell complied with Section 3303 by advising Diaz of the general nature of the investigation.

Officer Diaz appeared as scheduled with counsel. Before Diaz would respond to questioning, however, he demanded to see the notes that Lieutenant Burwell had taken during his interview of Officer Ford. Relying on Section 3303(f), which allows officers who are subject to interrogation to have access to "reports or complaints made by investigators or other persons," Diaz maintained he did not have to submit to an administrative interrogation until the Department gave him access to its notes of Ford's interview. Based on his understanding of the requirements of subdivision (f) and the Department's policy, Burwell refused to turn over the notes.

Thereafter, Officer Diaz and the PPOA filed a lawsuit to enjoin the Department from interrogating Diaz until it had disclosed to him the notes of Ford's interview. The trial court interpreted Section 3303(f) as requiring pre-interrogation disclosure of reports and complaints and issued a preliminary injunction prohibiting the Department from proceeding with the interrogation of Officer Diaz until it had provided him with its notes of Ford's interview. The Department appealed, and the Court of Appeal affirmed the trial court's order granting the preliminary injunction. The Court of Appeals interpreted Section 3303(f) as entitling "a public safety officer who is the subject of an internal affairs investigation . . . to copies of nonconfidential reports or complaints . . . prior to being interrogated." The Court of Appeals rejected the Department's claim that the notes of Ford's interview were confidential, but it did not define the appropriate standard for determining confidentiality.

The California Supreme Court began its Opinion by noting that, to keep the peace and to enforce the law, a police department needs the confidence and cooperation of the community that it serves. Even if not criminal in nature, acts of a police officer that tend to impair the public's trust in its police department can be harmful to the department's efficiency and morale. Therefore, when allegations of officer misconduct are raised, it is essential that the police department conduct a prompt, thorough, and fair investigation. Nothing can more swiftly destroy the community's confidence in its police force than its perception that concerns raised about an officer's honesty or integrity will go unheeded or will lead only to a superficial investigation

The California Supreme Court further explained that the law enforcement agency conducting an investigation into alleged misconduct by an officer employee represents the public interest in maintaining the efficiency and integrity of its police force, which, in enforcing the law, is entrusted with the protection of the community it serves. The officer under investigation, on the other hand, has a personal interest in receiving fair treatment. The procedural protections that Section 3303 affords in this regard reflect the California General Assembly's balancing of these competing interests. In the end, the California Supreme Court concluded that, in allowing an officer under administrative investigation access to reports and complaints, the Legislature intended the right to such access to arise after, rather than before, the officer's interrogation.

The California Supreme Court came to this conclusion for several reasons. The California Supreme Court noted that the purpose of Section 3303 was to maintain stable employer-employee relations and, thereby, assure effective law enforcement. Although off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be above suspicion of violation of the very laws that they are sworn to enforce, and historically, peace officers have been held to a higher standard than other public employees, in part, because they alone are the guardians of peace and security of the community. Indeed, the efficiency of the whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them. To maintain the public's confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.

Nevertheless, Section 3303 requires that law enforcement agencies in California afford minimum procedural rights to their peace officer employees. Although notions of fundamental fairness for police officers underlie Section 3303, a number of its provisions also reflect the California General Assembly's recognition of the necessity for internal affairs investigations to maintain the efficiency and integrity of the police force serving the community. This balancing of two competing interests is reflected in Section 3303. In fact, protection of peace officers from abusive or arbitrary treatment in their employment is the essence of the Act.

But, the California Supreme Court determined that, unlike other protections set forth in Section 3303, a right to pre-interrogation discovery is not essential to the fundamental fairness of an internal affairs investigation. The California Supreme Court noted that granting discovery before interrogation could frustrate the effectiveness of any investigation, whether criminal or administrative, because underlying every administrative inquiry into suspected officer misconduct is the obligation of the law enforcement agency to assure public confidence in the integrity of its officers. The purpose of the inquiry is to determine whether there is any truth to the allegations of misconduct made against an officer and, if so, whether to commence disciplinary proceedings. The California Supreme Court held that the PPOA's interpretation of Section 3303(f) would impair the reliability of such a determination and the effectiveness of the agency's efforts to police itself.

Furthermore, the California Supreme Court held that disclosure before interrogation might color the recollection of the person to be questioned or lead that person to conform his or her version of an event to that given by witnesses already questioned. Presumably, a related concern led the General Assembly to limit an officer's choice of a representative during interrogation to someone who is not a subject of the same investigation. That limitation seeks to ensure that participants in the same incident are not privy to evidence provided by other witnesses. In this case, furnishing Officer Diaz before his interrogation with the notes of Ford's interview would require the Department to disclose the same type of information that Section 3303(h) seeks to shield from exposure.

Finally, the California Supreme Court held that to require disclosure of crucial information about an ongoing investigation to its subject before interrogation would be contrary to sound investigative practices. During an interrogation, investigators might want to use some of the information they have amassed to aid in eliciting truthful statements from the person they are questioning. Mandatory pre-interrogation discovery would deprive investigators of this potentially effective tool and impair the reliability of the investigation. This is true in any interrogation, whether its purpose is to ferret out

criminal culpability or, as in this case, to determine if a peace officer used a mailing list in contravention of a direct order by his superiors.

Therefore, the California Supreme Court concluded that the California General Assembly intended Section 3303(f) to require law enforcement agencies to disclose reports and complaints to an officer under an internal affairs investigation only after the officer's interrogation, not before. Accordingly, the California Supreme Court reversed the Court of Appeals' decision and remanded the case with directions to vacate the trial court's order granting a preliminary injunction.

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**Note:** *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*