



DATE: OCTOBER 23, 2024

TO: Public Safety Advisory Committee

FROM: Jordan Green, Assistant City Attorney

SUBJECT: Review and Discuss the San Francisco Chronicle's 2024 articles about "Clean Record Agreements"

RECOMMENDATION

It is recommended that the Public Safety Advisory Committee discuss San Francisco's article about Clean Record Agreements and their allegation that they exist in the city of Petaluma.

BACKGROUND

On September 17, 2024, the San Francisco Chronicle posted Part 1 of a series of articles about public entities, specifically law enforcement agencies, allegedly promising to hide misconduct and/or promising an Industrial Disability Retirement (IDR) in exchange for the officer who has been accused of misconduct to quietly resign. See article here: [This is the secret system that covers up police misconduct — and ensures problem officers can get hired again \(sfchronicle.com\)](https://www.sfchronicle.com/police/article/This-is-the-secret-system-that-covers-up-police-misconduct-and-sfchronicle.com)

The SF Chronicle named the City of Petaluma (City) as engaging in this practice. As you can see in Attachment 1 - City Manager Peggy Flynn's email to the City Council, the City does not engage in this practice.

Further, the confidentiality of peace officer personnel records are governed by California Penal Code section 832.7. The City has and continues to comply with the law relating to peace officer misconduct as well as the related records.

DISCUSSION

We have searched our records and located agreements involving two former peace officers that were previously sent to Katey Rusch, who is a co-author of these articles. These agreements are also attached to this staff report as Attachment 2. Settlement agreements between a public agency, such as the City, and other parties, including employees, are public records. However,

in these cases, there were no related public documents to disclose. As we previously discussed with you and discussed above, peace officer personnel records are confidential unless an exemption applies. No exemption applied, therefore, to comply with the law, no related documents were disclosed.

As you can see from the settlement agreements, the city of Petaluma did not engage in any promises to hide discipline and/or promise an industrial disability retirement. Rather, all agreements were consistent with the law at the time and subject to approval by the applicable State agencies.

As discussed in Attachment 1, officers who are subjects of an investigation are provided notice of investigation and interviewed. Officers sometimes conclude based on a notice of investigation that their misconduct will likely result in termination, and resign their employment before the City concludes the investigation and/or begins the discipline process. There is no law that prevents an officer from resigning during or at the conclusion of an investigation. If the officer resigns with discipline pending, the City still completes the investigation and places the completed investigation report in the officer's file, where it is available for CalPERS review in case of a disability retirement application, or for subsequent background check if an officer applies to be a peace officer in another jurisdiction. Officers have the right to review completed investigation reports and to provide a written response for their file.

In summary, the City does not offer disability retirements to officers accused of misconduct as an incentive to resign. The City engages in an integrated system of checks and balances to hold police officers accountable for their actions in accordance with City policy and applicable law, to protect the community at large, to promote public safety transparency and accountability through the work of the City's Independent Police Auditor, and to safeguard officers' due process rights.

CASE STUDIES

Not applicable.

ENVIRONMENTAL REVIEW

Not applicable.

CITYWIDE GOALS & PRIORITIES

This effort aligns with and achieves the City Council's goal of "A Safe Community that Thrives."

FURTHER RECOMMENDATION

The City will continue to follow the law as it relates to alleged misconduct by peace officers. Similarly, the City staff will continue to follow the California Public Records Act and California Penal Code section 832.7 relating to the disclosure of peace officer personnel records.

ATTACHMENTS

Attachment 1 – City Manager Peggy Flynn’s email to City Council and Assistant City Attorney’s forward of that email to members of the Public Safety Advisory Committee.

Attachment 2 – Bailey and Sears Settlement Agreements