

Court of Appeal Takes Practical Approach to Police Discipline Statute of Limitations

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ATTORNEYS

Rebecca Green

The one-year statute of limitations for disciplining a public safety officer begins when “a person authorized to initiate an investigation” discovers the misconduct. The California Court of Appeal recently held that the one-year period in the Public Safety Officers Procedural Bill of Rights Act (POBRA) did not run where the information concerning the misconduct came into the possession of a criminal investigation supervisor barred from sharing the information with administrative discipline investigators. Where the trial court had taken an expansive view of the superior officer authorized to investigate, the Court of Appeal concluded that the local agency’s policies and procedures must be consulted to make this determination.

The information involved racist, sexist, homophobic and anti-Semitic text messages discovered during a lengthy federal criminal investigation of local police corruption. Federal authorities leading the investigation intentionally kept evidence of misconduct confidential from the local unit that handled disciplinary investigations. The supervisor of the criminal unit of the San Francisco Police Department (“SFPD”) Internal Affairs Division (“IAD-Crim”) learned in December of 2012 that the offensive text messages existed and involved several officers. IAD-Crim only handles internal investigations into allegations of criminal misconduct. A separate unit handles administrative disciplinary investigations. The FBI and U.S. Attorney’s Office required IAD-Crim to “firewall” the criminal investigation, which included the messages, from the disciplinary unit and to keep the information confidential within an authorized group of SFPD employees only.

The federal criminal case eventually proceeded to trial, ending with a guilty verdict against an officer not involved in this case. The U.S. Attorney’s office then lifted the confidentiality order. IAD-Crim released “voluminous records,” including the text messages, for disciplinary review. The Department filed disciplinary proceedings against nine officers for the offensive text messages almost 2 ½ years after they were first disclosed to IAD-Crim. The officers challenged the proceedings in superior court, arguing that the one-year statute of limitations began to run in December, 2012 when the supervising Lieutenant

in IAD-Crim discovered the messages, and hence the proceedings violated POBRA. The trial court found in favor of the officers and the Court of Appeal unanimously reversed. The Court of Appeal concluded that the statute of limitations did not run during the criminal proceeding because the IAD-Crim Lieutenant did not have authority to initiate an investigation and the federal government's confidentiality order made it impossible to disclose the information to the administrative unit responsible for starting disciplinary action within the one-year period under POBRA. In the alternative, the Court held there was no violation under a "tolling" exception because the text messages were the subject of a criminal investigation as part of the information collected in connection with investigation of a criminal conspiracy.

The case is ***Daugherty v. City and County of San Francisco***, (A145863, A147385 filed 5/30/18, pub. ordered 6/22/18). If you have any questions regarding POBRA or any labor and employment issue, please contact **Roy Clarke** or **Rebecca Green** in the Labor and Employment Department.