



Office of the Public Defender
City and County of San Francisco

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Assembly Member Jose Solorio
Public Safety Committee of the California Assembly
State Capitol, Room 111
Sacramento, CA 95814
Fax: (916) 319-3745

RE: AB 2377 - Custodial Records; personnel records - OPPOSE

Dear Assembly Member Solorio,

As the elected Public Defender of San Francisco, I write to express my strong opposition to AB 2377. California Evidence Code section 1043 sets forth the current procedure for defense attorneys to obtain records of police misconduct, while protecting the privacy interests of police officers. If passed, AB 2377 would make it more difficult for criminal defendants to access records that are material to their defense and upset a balance that has been in place for over three decades.

The current codified process, derived from the California Supreme Court case *Pitchess v. Superior Court*, 11 Cal.3d 53 (1974), allows a criminal defendant to access information in the personnel file of an arresting police officer that might bear on the defendant's claim that the officer had engaged in misconduct. Both the legislature and the courts have recognized that police officers have an equally compelling interest in maintaining the privacy of personnel files. For this reason a hearing process is designed to ensure an appropriate balance of those two competing interests. AB 2377 will not improve or streamline this already effective and efficient process.

Instead, this proposal would augment the basic evidentiary showing to obtain records of police misconduct in a way that would obstruct justice. A defendant's right to discovery is based on the fundamental proposition that the defendant is entitled to a fair trial and should be entitled to any information relevant to that person's defense. Of course, a mere desire for information by the defense is an insufficient basis for discovery. *San Francisco v. Superior Court (Phillips)*, 21 Cal.App.4th 1031, 1035 (1993). In order to obtain police records of misconduct, a defendant must show good cause, defined as a specific factual scenario establishing a "plausible factual foundation" for alleged misconduct connected to the defendant. *City of Santa Cruz v. Municipal Court*, 49 Cal.3d 74, 84-86 (1989). Furthermore, the records must be material to the subject matter of the litigation. *Id.* Requirements that would elevate the established criteria necessary to access police records will only serve as another unnecessary cog in the wheels of justice. It will also unjustifiably impose a new and different standard than is applied in determining other discovery requests.

Issues concerning the credibility of police officers are often raised in criminal cases, and have an important place in ensuring both fairness and accountability in our criminal justice system. Cases where the personnel records of a police officer would be relevant often involve situations where the facts turn on the contradictory statements of the accused and the arresting officer. In these cases, it is essential that all objective and relevant evidence related to officer credibility, in addition to evidence of prior complaints of excessive force, are made available to the defense. AB 2377's language would limit the scope of records requests in a way that would hamper the defense's ability to obtain evidence that would tend to reveal an officer's capacity to lie or cover up the truth.

In 2006, the California Supreme Court barred public access to all police disciplinary proceedings in the case *Copley Press v. Superior Court*, 29 Cal.4th 1272 (2006). The decision effectively drew a cloak of secrecy over police misconduct hearings and ended years of public access to police disciplinary records. We cannot continue to cloud the transparency of our state's system of government accountability by now limiting access to information essential to a criminal defense.

For the foregoing reasons, I strongly oppose AB 2377. I look forward to speaking with you further about this matter and can be reached by phone at 415-553-9620.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Adachi". The signature is fluid and cursive, with a prominent initial "J" and "A".

Jeff Adachi
Public Defender