



PERSONNEL POLICIES AND PROCEDURES

Subject: PERSONNEL FILES AND RECORDS

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I. POLICY STATEMENT

It is the intent of the City to ensure that all personnel records are properly maintained and released in compliance with all applicable laws, regulations, and procedures.

II. PROCEDURES

A. Categories of Personnel Files

1. Central Personnel Files - The Department of Human Resources shall maintain personnel files for all current and terminated employees working in City Manager departments. Central personnel files mainly contain Personnel Transaction Forms (P-1's) and advanced disciplinary letters that affect an employee's job status (e.g. "Skelly" and charge letters). Personnel files for terminated employees shall be maintained in accordance with Sections C-2 and C-3.
2. Departmental Personnel Files - Departments shall maintain a personnel file for each current employee in their department. This is considered the employee's primary personnel file. The files contain, but are not limited to, disciplinary letters and rebuttal, written commendations, efficiency ratings, Personnel Transaction Forms (P-1's), and Injury Reports (H6-733 and SF 312).
3. Departmental Confidential Files - Department heads or designees shall maintain a confidential file for sensitive personnel records. The files must be in a secure location separate from the department personnel files. Confidential files contain, but are not limited to, sensitive personnel information such as medical records, drug-test results, progress reports pertaining to mandatory participation in the Employee Assistance Program (EAP), investigative reports, etc. Only employees who have a specific authorization by the department head or designee and a legitimate "need-to-know" shall have access to these records.

B. Types of Personnel Records

1. Divisional Personnel Records - Division supervisors may maintain records of subordinates concerning work performance and attendance. These records may include but are not limited to notes taken during counseling sessions, hearings, disciplinary investigations, and oral reprimands/warnings.
2. Miscellaneous Personnel and Payroll Records - The Central Payroll Section in the Financial Management Department processes and maintains miscellaneous personnel and payroll records for all current and terminated employees. These records may include but are not limited to information on earnings, tax withholdings, deduction authorizations, health/dental/life insurance, deferred compensation, workers' compensation, retirement, sick leave, vacations, personal holidays, overtime, and other compensation and benefit information.

The Department of Human Resources also maintains or has access to the miscellaneous personnel and payroll records referred to above for their current employees.

3. Medical Records - The Department of Health and Human Services maintains all medical records pertaining to pre-employment physical examinations, on-the-job injuries, Employee Assistance Program, retention physical examinations, and any other medical information relating to employment. Only persons who have a specific authorization by the Director of Health and Human Services or designee and a legitimate "need-to-know" shall have access to these records in compliance with all applicable laws, regulations, and procedures.
4. Civil Service Personnel and Applicant Records - The Civil Service Department maintains personnel and applicant records pertaining to recruitment, testing, selection, efficiency ratings, and disciplinary actions.

C. Transferred or Terminated Employee's Personnel Files

1. Interdepartmental Transfers - The departmental personnel file for an employee who transfers from a City Manager department shall be transmitted directly to the receiving department.

The departmental personnel file for an employee who transfers from a non-City Manager department shall be transmitted to the Department

of Human Resources. After a central personnel file is established, the Department of Human Resources shall transmit the departmental personnel file to the receiving department.

The central personnel file for an employee transferring to a non-City Manager department shall also be transmitted to the receiving department.

Divisional personnel records shall remain in the custody of the originating department.

2. Terminations - The departmental personnel file for a terminated employee shall be sent to the Department of Human Resources upon receipt of the department's copy of the Personnel Transaction form (P-1).

The Department of Human Resources shall merge the departmental personnel file with the central personnel file. The file shall be retained in the Department of Human Resources for one year after the fiscal year in which the termination was effective. After that period, the file will be stored in the Records Center.

3. Review/Release of Personnel Files for Terminated Employees - All requests to review or release personnel files for terminated employees must be directed to the Department of Human Resources, not the Records Center.

D. Employee Access to Personnel File

1. Review Prior to Filing - An employee must be given the opportunity to read and sign any written material of a derogatory nature prior to it being placed in the employee's personnel file. Tardy slips and notes regarding absenteeism are excluded from this requirement since they are not considered disciplinary statements.
2. Review After Filing - An employee or authorized representative may be permitted to inspect the employee's personnel file at a reasonable time in accordance with Section F-2. However, an employee shall not have access to confidential personnel records relating to the investigation of a possible criminal offense or to reference letters.
3. Challenges to Disciplinary Materials - An employee is entitled to challenge any disciplinary material by attaching rebuttal comments. An employee's rebuttal to disciplinary material shall be placed in all appropriate categories of the employee's personnel file where the disciplinary material is located.
4. Removal/Sealing of Materials in Personnel Files - The removal or sealing of

disciplinary personnel materials is governed by applicable agreements (MOU's) with employee associations and departmental policies. Personnel materials shall not be removed or sealed without prior approval from either the City Manager, Director of Human Resources, or an employee's department head or designee. Personnel records shall not be destroyed except as provided under Long Beach Municipal Code, Chapter 1.28 and California Government Code, Section 34090.

E. Internal Access to Personnel Information

1. The City Manger, Director of Human Resources, City Attorney, City Prosecutor, or designees with a legitimate "need-to-know", shall have access to personnel files and records without an employee's consent.
2. The heads of departments, bureaus, divisions, or designees, and supervisors with a legitimate "need-to-know", shall have access to a subordinate's personnel file and records without the employee's consent.
3. Prior to any other internal sources obtaining access to personnel information, approval by the Director of Human Resources or designee or an employee's written consent is required. Note the exceptions under Section F-1 through F-4.

F. Disclosure of Personnel Information

1. Disclosure of Limited Employment Information - The dates of employment and title of the current or last position held may be disclosed without an employee's consent.
2. Disclosure of All Other Personnel Information - Except as provided under Sections E and F, an employee's original written authorization is required prior to permitting the disclosure of any other personnel information.

The following procedures shall be utilized when responding to requests for the disclosure of personnel information:

- Unless an employee is physically present to sign a written authorization before the custodian of records, an original of the employee's written authorization is required. The employee's written authorization must be placed in the personnel file from which personnel records were disclosed.
 - Verify the authenticity of the employee's signature. Matching the authorization signature with the employee's signature on personnel documents on file is sufficient.
 - Ensure that the employee has explicitly authorized disclosure of the type of information requested. Disclose no information unless explicitly authorized by the employee.
 - Schedule a time and place for the review, and ensure that information is not removed.
 - If a request for copies exceeds a few pages, charge \$.10 per page and deposit the fees with the City Treasurer.
 - Do not disclose any personnel information over the telephone except as provided under Section F-1 above.
3. Disclosure of Sworn Peace Officer Personnel Information - All requests for disclosure of personnel records of sworn police officers without an officer's notarized original written authorization shall be directed to the City Attorney's office to ensure compliance with statutory requirements.
4. Disclosure to Government Agencies - All federal, state, and local agencies with statutory or regulatory authority for access to personnel records may be provided the specific information requested without an employee's consent. Examples include court orders, inquiries from the District Attorney regarding an employee's financial ability to pay court-ordered child support, Internal Revenue Service inquiries regarding employee's earnings and declared withholding exemptions, Employment Development Department¹ inquiries regarding an employee's eligibility for unemployment insurance. The information requested is usually quite narrow and deals only with current employment, wages, address, or point of contact.

¹ Any request from the Employment Development Department regarding an employee's eligibility for unemployment insurance shall be referred to R. E. Harrington, the firm contracted to handle unemployment insurance matters.

Do not disclose any personnel information over the telephone except as provided under Section F-1. The identity and authority of the individual or agency making the request must be verified prior to disclosing the information (i.e., a telephone call to the requesting agency to confirm their request). Contact the City Attorney's office for assistance, if needed.

G. Responding to Subpoena Duces Tecum

1. Subpoenas for City-Related Actions - In accordance with Administrative Regulation 2-2, all employees shall contact the office of the City Attorney and/or City Prosecutor upon receipt of a subpoena from an outside source relating to court action involving the City. Examples would be all workers' compensation-related cases or cases where the City and/or its officials, employees, or agents are involved in litigation with the City. Check the names of the parties on the captions and read the complete subpoena to determine if the case involved the City (Jones vs. City of Long Beach, Jones vs. Hankla, et. al).
2. Subpoenas for Sworn Police Officers' Personnel Records - All subpoenas or outside requests for personnel records of sworn police personnel shall be directed to the City Attorney's Office to ensure compliance with statutory requirements.
3. Service of Subpoena - Except as provided in Sections G-1 and G-2, all other subpoenas for personnel records are to be directed to the "Custodian of Record." Mark the date of receipt of the subpoena since failure to comply within the time limits may result in a contempt of court charge.
4. Time Limit on Compliance - Subpoenas command compliance by the custodian of records within 20 days after the subpoena's issuance or 15 days after service, whichever is later.
5. Description of Records - The records to be produced must be designated either by specifically describing each one or by "reasonably particularizing" each category.

6. Dangers with Overly Broad Subpoenas - Even though documents are produced pursuant to a subpoena duces tecum, the City could be held liable for defamation or invasion of privacy by producing critical performance appraisals, memoranda of counseling, or sensitive and confidential information (medical reports, injuries, illness, insurance beneficiaries, etc.). To minimize the City's liability, the individual or agency issuing the subpoena must be contacted to determine precisely what information is needed. Contact the City Attorney's office for assistance, if needed.
7. Deposition Subpoenas - A deposition subpoena may require only the copying of records, or may require that the custodian appear and testify, as well as produce records or other physical evidence. If required to attend a deposition, the custodian is entitled to be paid witness fees and mileage reimbursement.

The copies of records are to be delivered to the deposition officer either by:

- Allowing the deposition officer to photocopy the records at the custodian's office; or
 - Allowing the deposition officer to pick up photocopies prepared by the custodian;
 - Sending the copies to the deposition officer in a sealed envelope, with the records enclosed in a sealed inner envelope marked with the name and number of the lawsuit, the custodian's name, and date of deposition.
8. Costs - The custodian is entitled to reasonable costs incurred in producing the records or copies. Reasonable costs include: the custodian's clerical expense in locating the records (computed at \$28.00 per hour), copying costs (computed at \$.25 per page), and expenses incurred in retrieving and returning records held either in storage or by a third person. If the deposition officer does the photocopying, the fee payable to the custodian must not exceed \$12.00, unless otherwise ordered by the court. (see Ordinance No. C-6930)

H. Depositing Fees with the City Treasurer

All fees collected for costs incurred in producing personnel records (witness fees, photocopying, retrieving, and returning personnel records) must be deposited with the City Treasurer in accordance with Administrative Regulation 21-1.

III. DEFINITIONS

- A. Custodian of Records - The employee(s) designated by a department head to be responsible for maintaining and controlling personnel records.
- B. Need-to-Know - A need to know implies a legitimate interest as opposed to a mere desire in accessing the particular personnel information. A legitimate interest is one which satisfies a job requirement of the person seeking access. The information to which this person has access must be limited to that which is needed solely to satisfy that job requirement.

IV. REFERENCES

- A. Administrative Regulation 2-2: Procedure for Officials and City Employees Receiving Subpoenas for City-Related Actions
- B. Administrative Regulation 21-1: Procedure for Deposit of Monies with the City Treasurer
- C. Long Beach Municipal Code: Chapter 1.28 - Records Retention
- D. Memorandum of Understanding (MOU) between the City of Long Beach and the Long Beach City Employees' Association: Article Six, Section III - Personnel Files