6-10/200.00 Confidential Records

Procedures for subpoenaing the personal records of a consumer and the personnel records of a peace officer or other public employee are aimed at protecting the rights to privacy of those individuals. The following definitions are applicable to consumer, peace officer and public employee records. Not included is a subpoena which does not request the records of any particular consumer or consumers and which requires the custodian of records to delete all information which would identify any consumer. (CCP 1985.3)

“Consumer” means any individual, partnership of five or fewer persons, association, or trust which has used the services of the witness. “Consumer” also includes a non-peace officer public employee whose personnel records are subpoenaed.

“Deposition officer” means an impartial professional photocopier.

“Personal records” means records of a consumer maintained by any witness.

“Subpoenaing party” means the person causing a subpoena duces tecum to be issued or served, but does not include public agencies.

“Witness” includes:

acupuncturist
accountant
anyone authorized to make loans secured by real property attorney
chiropractor
clinic
clinical or diagnostic laboratory l
dentist
escrow agent hospital
insurance company
institution of the Farm Credit System
medical center
ophthalmologist,
optometrist
pharmacist
pharmacy
physical therapist
physician
podiatrist
private or public preschool, elementary, ~~or~~ secondary school, or postsecondary school
psychotherapist
radiaology or MRI center
security brokerage firm state or national
bank
state or federal association per FIN 102 state or federal credit union
telephone corporation which is a public utility title insurance

company
trust company
underwritten title company veterinarian
veterinary hospital veterinary clinic

• 6-10/200.10 Consumer Records

• 6-10/200.20 Consumer Notification

The date for the production of personal records shall not be less than 20days from the subpoena's issuance date. The subpoenaing party shall serve on the consumer a copy of the subpoena, an affidavit supporting the subpoena, a notice of privacy rights and, a notice of deposition, if a deposition is sought, and proof of service of notice.

Service on the consumer shall be by: personal delivery, leaving the documents at the consumer's residence with some person 18 years of age or older, between 8 a.m. and 8 p.m. If a person 18 years or older cannot be found at the party's residence, the notice may be served by mail. If the party's residence is not known, attempts may be made by delivering the notice to the clerk of the court, for that party. If the consumer is a party, service shall be made on the consumer's attorney between 9 a.m. and 5 p.m. If serving the party's attorney, please review CCP 1011 fully for a full description of the manner of service.

If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, similar fiduciary, or on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age. Service shall be made not less than 10 days prior to the date specified in the subpoena duces tecum, plus mailing time (5,10 or 20 days) if service is by mail, and at least five days prior to service upon the witness custodian of the records, plus mailing time (5,10 or 20 days). (CCP 1985.3)

The notice of privacy rights shall inform the consumer that the consumer's records are being subpoenaed, that the consumer may make a motion to quash the subpoena or serve a written objection, and that the consumer may consult an attorney to protect the consumer's rights to privacy. (CCP 1985.3)

• 6-10/200.30 Service on Witness

Prior to the production of the records, the subpoenaing party shall either: serve upon the witness a proof of service of the subpoena, affidavit and notice of privacy rights, or furnish the witness a written authorization to release the records signed by the consumer or by the consumer's attorney. (CCP 1985.3)

• 6-10/200.40 Quash Subpoena

A consumer who is a party may make a motion to quash or modify the subpoena duces tecum. Notice of motion shall be given to the witness and deposition officer prior to production. Any other consumer may serve on the subpoenaing party and the witness a written objection specifying grounds for prohibiting production of the records. No witness or deposition officer shall be required to produce personal records after receipt of a motion to quash the subpoena or an objection except upon court order or by agreement of the affected parties, witnesses and consumers. The subpoenaing party may make a motion to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the subpoenaing party and the consumer. (CCP 1985.3 (g))

• 6-10/200.50 Telephone Records

A subpoena duces tecum for telephone company records must include the consumer's consent to release the records signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code. (CCP 1985.3 (f))

• 6-10/200.60 Peace Officer Personnel Files

Immediately notify and mail to Discovery Unit ,Risk Management Bureau~~,~~ a copy of any subpoena received for the personnel records of a peace officer member of this Department. (MPP 5-07/240.00)

Peace officer personnel records concerning citizen complaints are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to a Pitchess Motion (PC 832.7, Evidence Code 1043, 1046). Confidentiality does not apply to investigations or proceedings concerning the conduct of police officers conducted by a grand jury, district attorney, or the Attorney General. A police agency may release factual information concerning a disciplinary investigation if the peace officer knowingly makes a false statement concerning the investigation or disciplinary action. The false statement must have been published by an established medium of communication, such as television, radio, or a newspaper.

In any case in which disclosure is sought of peace officer personnel records, the party seeking discovery shall file a motion with the court or administrative body and give notice to

the officer's agency, which shall immediately notify the officer. The discovery motion shall identify: the proceeding in which discovery is sought; the party seeking discovery; the officer; the agency; the time and place of the discovery hearing; the type of records sought; and, shall include affidavits showing good cause for the discovery and setting forth the materiality of the information. Notice of the discovery hearing may be waived for good cause or by the police agency.

• 6-10/200.70 Public Employee Personnel Records

The procedures to produce personnel records of a state or local agency employees, except peace officers, are governed by those required to produce personal records of a consumer. (CCP 1985.4)