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All Correspondence to Sacramento Office
www.mastagni.com

November 9, 2022

Via Electronic Mail & U.S. Mail

Jake Castellow
Chief of Police
350 N. "D' Street
Porterville, CA 93257

Attention: Melinda Rios, Assistant
Email: mrios@ci.porterville.ca.us

Re: Request for Pre-disciplinary Hearing and Request for Discovery
Officer James Guy (Our File No. RET/22-0978)

Dear Chief Castellow:

I will be representing James Guy during all pre-disciplinary ("*Skelly*") hearings and any post-disciplinary proceedings. I am also General Counsel for Porterville Police Officers Association.

Please accept this letter as a written request for a pre-disciplinary hearing. Prior to any disciplinary proceeding my client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency within reason to prove or disprove any disputed fact that is of consequence to the determination of the action or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See Evidence Code §§ 210, 780, 1202).

Some information that may not have been relevant to you in making the decision to discipline my client, a public safety officer, is relevant to disproving the allegations or mitigating the facts or the level of proposed discipline. Therefore, I have provided a list of information I consider relevant to defending my client from the allegations in the proposed notice of discipline. Please keep in mind the information I am requesting is in addition to that information that must be provided pursuant to the case of *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194. However,

this information is discoverable pursuant to the MMBA, Government Code section 3500 et.seq.[1] as well as at appeal stages beyond the *Skelly* hearing which extends your duty to preserve and disclose this information.

My client is entitled to all information necessary and relevant to the discharge of its duty of representation. (*Stockton Unified School District ("Stockton")* (1980) PERB Decision No. 143.) POA's duty of representation includes representation in potential disciplinary matters and determining whether conduct is retaliatory based on concerted activity. (*See State of California (Department of Consumer Affairs*) *("Consumer Affairs")* (2004) PERB Decision No. 1711-S.) PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (*California State University* (1986) PERB Decision No. 613-H.)

The City has a duty to notify its employees of this request and their obligation to retain records. (*See City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 627-28.) When a union is considering whether to exercise its right to represent employees in a meeting or proceeding that may adversely affect employment status, or the union does exercise that right, an employer may not deny the union's related information request on the basis that the meeting or proceeding is extra-contractual or that the union has no duty of fair representation, as union has right to information necessary or relevant to its right to represent bargaining unit employees. *(United Faculty of Contra Costa County Community* College (2019) PERB Decision No. 2652.).

Furthermore, claims of privilege due to the deliberative process are not a valid defense to the information request. (*See Trustees of the California State University* (2004) PERB Decision No. 1591-H, pp. 2-3). Fina

Penal Code § 135.5 places requirements on information that must be provided to a public safety officer during any disciplinary proceeding. It is unlawful to conceal any relevant evidence during the disciplinary process. Concealment would include knowingly not providing any relevant evidence.

While some of the following materials have been previously provided, please identify the items which have not been already provided and forward them to my office at your earliest convenience. On behalf of my client, I request the following information:

1. A current copy of all policies and procedures alleged to have been violated by my client.

2. All written reports prepared as a result of the allegations against my client.

3. All investigator notes.

[1] *United Faculty of Contra Costa County Community College* (2019) PERB Decision No. 2652.

4. A copy of James Guy's personnel file.

5. A copy of all radio transmissions related to this investigation.

6. All written or recorded statements of any potential witness.

7. All prior criminal history of any known potential witness related to this investigation.

8. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.

9. All statements or utterances by my client, oral or written, however, recorded or preserved, whether or not signed or acknowledged by my client.

10. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.

11. The opportunity to examine all physical evidence obtained in the investigation against my client.

12. All reports of experts, made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental, or comparisons which relate to the allegations as set forth in the notice of proposed discipline.

13. All photographs, motion pictures, or videotapes taken during the investigation.

14. Any exculpatory or mitigating evidence in the possession of your agency.

15. Any information relevant to the credibility of any witness.

16. Any potential rebuttal evidence in the possession of your agency.

17. Any or all relevant evidence known or in the possession of your agency.

18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.

Please treat this request as a continuing request until this matter has been settled or adjudicated. This means, if you or another representative of the Department or its agents become aware of the existence of these requested items in the future, you must disclose it immediately.

Additionally, this letter constitutes notice that we demand that you preserve all evidence, including documents, tangible things and electronically stored information, that may contain evidence important to the above legal matter. This notice applies to all department or affiliated on- and off-site written notes, computer systems, cellular telephones and removable electronic media plus all computer systems, services, and devices (including all remote access and wireless devices) used for your overall operation. This includes, but is not limited to, e-mail, text messages and other electronic communications; electronically stored documents, records, images, graphics, recordings, spreadsheets, databases, calendars, cache files, user information, and other data. Further, this notice applies to archives, backup and disaster recovery tapes, discs, drives, cartridges, voicemail and other data.

You are obliged to preserve potentially relevant evidence, even if you do not anticipate producing such evidence, in the condition in which it was in at the time of the initiation of this matter. You are directed to immediately initiate a litigation hold for potentially relevant electronically stored information, documents and tangible things, and to act diligently and in good faith to secure compliance with such litigation hold.

The aforementioned evidence cannot be sold or otherwise disposed of until the conclusion of the above referenced cases. Upon notification of resolution of the above referenced cases, you will be free to dispose of the evidence as they please. I apologize in advance for any inconvenience this may cause; however, you are legally obligated to preserve the aforementioned evidence, and certain consequences flow from breach of that obligation as set forth below.

The importance of immediate action cannot be overstated. Electronically stored information is easily corrupted, altered, and deleted in normal daily operations. Even booting a drive, running an application, or reviewing a document can permanently alter evidence. An important method for preserving data in its original state is to have a forensic image (mirror image or clone image) made of pertinent hard drives of both office and home computers used for business and of network servers. This image captures all current data, including background or metadata about each document. Simply copying data to a CD-ROM or other common backup medium is not adequate. For each captured image file, record and identify the person creating the image and the date of creation. Secure the file to prevent subsequent alteration or corruption and create a chain of custody log.

Once the forensic data image file is created, the pertinent computer or other device can be placed back into operation. The persons computers or other devices who this applies to include, but are not limited to, the Chief of Police, his command staff (Lieutenants) and any computer system used by an investigator utilized by the department to investigate this matter. This preservation notice covers the above items and information between the following dates: September 23, 2022 until present.

You, your agents, insurers, third party administrators, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions have duties

to preserve aforementioned evidence for all future hearings. You are on NOTICE that if the evidence is spoiled, sold, destroyed, altered, or otherwise dispose all aforementioned parties will face Spoilation of Evidence Sanctions, including, but not limited to, issue sanctions, deemed admissions, sanctions imposing duty, breach, and causation for my clients' injuries, monetary sanctions, and other sanctions in accordance with *Williams v. Russ* (2008) 167 Cal.App.4th 1215.

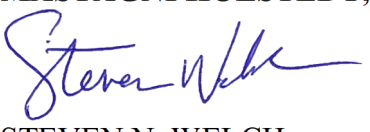
You should anticipate that your employees, officers or others may seek to hide, destroy or alter electronically stored information, documents and tangible things, and act to prevent or guard against such actions. You should take affirmative steps to prevent anyone with access to your paper and electronic files, data, systems and archives from seeking to modify, destroy or hide any and all paper and electronic evidence. This includes, but is not limited to, an obligation to discontinue all data destruction, backup tape recycling policies and the sale, gift or destruction of hardware.

Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmative steps to comply with the duty to preserve evidence. Compliance with preservation obligations includes forwarding a copy of this letter to all individuals or organizations that are responsible for any of the items referred to in this letter.

Once we receive the above requested documents, we will schedule the *Skelly* hearing. Please feel free to contact me by phone at (909) 552-5118 or by email at swelch@mastagni.com. Thank you for your anticipated cooperation.

Very truly yours,

MASTAGNI HOLSTEDT, APC



STEVEN N. WELCH
Attorney at Law

SNW/ydv

cc: James Guy