

UC DAVIS HUMAN RESOURCES – EMPLOYEE & LABOR RELATIONS
EMPLOYEE ACCESS TO RECORDS & SUBPOENA PROTOCOLS
Police & Fire Procedures under Police & Firefighter Bill of Rights

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Background

University personnel records are governed by University records policies, personnel policies and collective bargaining agreements. Police officer and Fire Fighter employees have additional rights under California statutes commonly referred to as the Police Officer Bill of Rights and the Fire Fighter Bill of Rights. Generally speaking University records policy accords employees equal or greater rights than do the POBR or the FFBR with regard to access to their own records. However in certain circumstances additional legal procedures are required when outside agencies or third parties subpoena personnel records of Safety employees. This protocol defines how UC Davis Campus Custodian of Records for Staff Personnel Files will respond to requests to review employee personnel files or to subpoenas for those records. In addition to routine campus requests to review records, this protocol specifically addresses the role of Sedgwick Risk Services, the University's third party administrator for workers compensation and general liability claims, with regard to the gathering of documents in order to determine compensability of a worker's comp claim filed by a police officer or fire fighter employee

Personnel File Types

Personnel files are maintained in several locations of the campus, but are all considered employee records that are subject to internal review and subpoenas. This protocol defines campus practice as to the "Official Personnel" file, the "Official Grievance file", (both of which are held in the HR department) the Departmental Personnel File, and the Supervisor's file.

There are also files maintained in the police department related to internal affairs investigations. These files are sensitive and, are clearly the focus of much of the personnel file component of the Police Officer Bill of Rights. As a matter of campus practice, the internal affairs files will not be produced to Sedgwick Risk Services unless they are specifically or separately subpoenaed. When a subpoena for internal affairs files is received a separate notice to the employee will be required. This process will give the employee the ability to object to the subpoena. This separate process is intended as a safeguard to insure that the police officer/fire fighter employee is clearly on notice that these most sensitive records have been subpoenaed and also is intended as a safeguard for the University to insure that we are in compliance with the Police Officer Bill of Rights. Such subpoenas or internal requests for access will be referred to Campus Counsel for advice and response. The Campus Custodian of Records will be responsible for transmitting such requests to the Campus Counsel's office for action and final disposition.

Analysis

Workers Compensation Issues - in the workers compensation context, Police & Fire personnel records are being requested by Sedgwick Risk Services (or its successor), which is the third party administrator (TPA) retained by the University to determine compensability of workers compensation claims, to administer benefits if the claim is accepted, and to defend the University if litigation ensues as a result of that determination. In that regard, it is routine that personnel records be requested and provided. As our agent, Sedgwick is charged with using these records in accord with University policy and applicable law. They are also required to seek legal counsel through duly retained workers compensation attorneys. They are charged with, among other things, interpreting the relationship between University policy and applicable law, and to advise us through Sedgwick or directly on such matters. The Police Officer Bill of Rights should be well known to outside counsel as there is a high frequency of workers compensation claims in this system. As the fire fighters now also have a Bill of Rights, we would apply these same principles to the fire fighters as well.

When a police officer/fire fighter initiates a worker's compensation claim based on an alleged work incurred injury or illness s/he is initiating an action that requires an investigative process that s/he agrees to by filing the claim; as s/he cannot receive benefits unless the injury/illness is investigated. As such, the law and University policy require that an AOE/COE determination be made through an investigation and review of relevant documents. Personnel files are routinely reviewed for this purpose. This is an internal administrative process conducted under the provisions of the labor code. Medical records related to workers compensation treatment may be disclosed under HIPAA, and employees who file a worker's comp claim must provide access to personal medical records in order for a determination of compensability to be made.

Protection of Records under University Policy - The University's personnel records are governed by the Regents Standing Orders, Business & Finance Bulletin regulations, Policy & Procedure, Personnel Policies for Staff and relevant collective bargaining agreements. All governing University policies allow for appropriate administrative access to University employees and their agents on a need to know basis in order to conduct business in the course and scope of university work. Records are not disclosed to third parties outside of these policies, but for example the Official Personnel File maintained in HR is available for review by potential supervisors, within the context of a hiring decision. In the case of a police officer/fire fighter who applies for a position within the campus or med center, the file would be made available without a waiver. However, if a police officer/fire fighter is applying for a position outside of the campus, we would require a signed waiver from the officer before we would allow a third party, usually an investigator hired by the potential hiring agency to review the file.

Pitchess Motion as it relates to workers compensation and other internal to the University business needs - The FUPOA contract section on personnel files is silent on the POBR and the IAFF contract and PPSM are as well. However, we comply with POBR/FFBOR because our regular access to records policies are more protective than the POBR/FFBOR with the exception these statutes actually requires a signature when discipline is placed in the file. Business need to know access is not restricted by these laws. Records are routinely provided to our counsel and internal offices without a

subpoena. The official personnel file and the departmental personnel file should routinely be provided to internal UC offices and agents. The Pitchess motion should not be required for internal purposes and should not be required for workers compensation purposes as long as we are dealing with our own employee. On the other hand, if that employee moves to another agency and that agency or their TPA requests files we would not release them without a subpoena or a waiver. Pitchess motions should only be required in criminal or civil litigation when a party other than the University or its agent subpoena's the records. In the case of subpoenaed records our standard practice is to provide notice to the employee or former employee within a specified time frame. This is done to allow the employee to quash the subpoena if they wish. It is not the University's obligation to make a motion to quash unless it is in the course of litigation in which case our attorney's will make that determination.

Process for Providing Access to or Copies of Safety Personnel Files

The following files and procedures will be used when University employees or agents of the University request access to or copies of safety employee personnel files:

Official Personnel File (Location HR) will be provided to;

- Employee on request by appointment
- Direct Supervisor on request by appointment for University business purposes
- Campus Based hiring supervisors in the course of a recruitment process only
- HR Personnel, Campus Counsel, OP Personnel for grievance administration
- Other administrative officers or agents in order to administer University business or policies in the course and scope of their duties, including investigators charged to conduct a variety of internal personnel investigations, and Sedgwick Risk Services or its successor upon request for the purposes of administering the University's general liability or workers compensation programs including adjusting employee claims

Official Grievance File (Location HR) will be provided to:

- Employee upon request by appointment
- HR Personnel administering or adjudicating the grievance/complaint process
- Campus Counsel/Outside Counsel/Arbitrators or Hearing Officers in the course and scope of their role in the grievance/complaint process
- Other administrative officers or agents in order to administer University business or policies in the course and scope of their duties, including investigators charged to conduct a variety of internal personnel investigations, and Sedgwick Risk Services or its successor upon request for the purposes of administering the University's general liability or workers compensation programs including adjusting employee claims

Department Personnel File (Location Department Personnel Office) will be provided to:

- Employee on request by appointment
- Direct Supervisor on request by appointment for University business purposes
- HR Personnel, Campus Counsel, OP Personnel for grievance administration purposes
- Other administrative officers or agents in order to administer University business or policies in the course and scope of their duties, including investigators charged to conduct a variety of internal personnel investigations, and Sedgwick Risk Services or its successor upon request for the purposes of administering the University's general liability or workers compensation programs including adjusting employee claims

Supervisor's File (Location Supervisor's Office)

- Will generally not be provided unless specifically requested by an employee or employee representative in a grievance process or potentially through a union information request. Such requests will be reviewed on a case by case basis by the custodian of records or counsel and will only be released through the HR custodian or records after review and approval by either the custodian of records and/or Campus Counsel as appropriate.

Internal Affairs File (Location Chief of Police)

- To the employee upon written request, redacted as appropriate under the direction of campus or outside counsel
- Will be released by the police department under attorney client privilege through Campus Counsel's Office to university officials or their agents for internal University business use only
- To outside investigators with a signed waiver from the employee

All records will be released upon subpoena or order of any court or adjudicating agency following notice to the employee.

Attachment