



Dear Legally Liz,

I recently participated in a Los Angeles Police Department “Department” operation that ended in a homicide suspect being killed by LAPD police officers. Force Investigation Division “FID,” within the Department, conducted an 18-month investigation of the shootings and turned their findings over to Justice System Integrity Division “JSID” with the Los Angeles County District Attorney’s Office. In a letter issued last month, JSID found that none of the officers involved committed crimes and declined to prosecute.

However, I recently received an Official Reprimand for returning to the scene of the shooting to retrieve my sunglasses without authorization, despite the fact that I disclosed my return to the scene within days of the shooting. The Department is claiming that it is still within the one year statute of limitations because the FID investigation was a criminal investigation and that the statute of limitations did not run until JSID issued its letter declining to prosecute. The Department is also arguing that the statute was extended because there was a multijurisdictional investigation. Is the Department correct?

Sincerely, Officer Jay Sid

Dear Officer Sid,

Government Code section 3304(d) (1), part of the Public Safety Officers Procedural Bill of Rights Act “POBRA” contains a statute of limitations on punitive action as follows:

“Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency’s discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.”

“[T]he one-year limitations period under Government Code section 3304, subdivision (d)(1) begins to run when a person authorized to initiate an investigation discovers, or through the use of reasonable diligence should have discovered, the allegation of misconduct.” (*Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 106; see also *Haney v. City of Los Angeles* (2003) 109

Cal.App.4th 1, 8.)

However, Government Code section 3304(d)(2) also contains several exceptions to the one-year statute of limitations. One of those exceptions (Government Code section 3304(d) (2)(A)) applies if “the act, omission, or other allegation of misconduct is also *the subject* of a criminal investigation or criminal prosecution.” (Emphasis added.) In that case, the statute of limitations is said to be “tolled” during the period of the criminal investigation or criminal prosecution. There is also an exception if there is a multijurisdictional that requires a reasonable extension for coordination of the involved agencies. (Government Code section 3304(d) (2)(C).) Presumably, these are the two exceptions the Department is claiming apply in your case.

As to the exception for criminal investigations, you could certainly argue that the specific conduct upon which your Official Reprimand is based was not “the subject” of any criminal investigation, even though it may have tangentially involved the same incident. As a result, the Department should have notified you of any intent to discipline you within one year of discovery, by an authorized individual (sergeant I or detective II or above) (see *Jackson v. City of Los Angeles* *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 910) without waiting until FID investigation regarding the shooting was complete.

Furthermore, with respect to the exception for multijurisdictional investigations in *Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1084, the court held that “the issue of whether the investigation was a multijurisdictional one turns on whether one entity had reasonable control over the investigation.” Based on the information in your question, it seems like FID, within the Department, was the only entity that conducted any investigation. Therefore, the fact that FID may have turned over its findings to JSID does not convert their investigation into a multijurisdictional investigation, and an extension on the statute of limitations should not be allowed pursuant to this section.

League Panel Attorney Jacob Kalinski recently prevailed on a Petition for Writ of Mandate in the Los Angeles Superior Court (*Casey v. City of Los Angeles*) where the City raised similar arguments in response to an officer’s contention that the statute of limitations with respect to alleged misconduct against him had expired.

Legally,
Liz

Names have been changed to protect privacy. Send your anonymous questions to LegallyLiz@lappl.org.