



MCOLES

Michigan Commission on Law Enforcement Standards

MEMORANDUM

DATE: November 4, 2020

RE: Separation Information Reporting Required by the MCOLES Act May Not be Subsequently Modified or Replaced After Timely and Mandated Submission by a Law Enforcement Agency

I. Introduction

Under the Michigan Commission on Law Enforcement Standards Act, 1965 PA 203, MCL 28.601, *et seq.* (hereinafter, the MCOLES Act), when a licensed law enforcement officer separates employment for any reason, the agency must report the separation to the Michigan Commission on Law Enforcement Standards (Commission) within 3 days of the separation. This memorandum addresses the Commission's authority to require the submission of separation information and the legal restrictions against modification of this separation reporting once properly submitted to the Commission.

II. Administrative Agency Access to Information

Administrative agencies have the power to acquire information necessary for the effective operation of the agency and to fulfill its legislative mandates.¹ This authority allows an agency to access information it needs to intelligently exercise its statutory duties.²

¹ *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643 (1950); *Chesapeake & O. R. Co. v. Michigan Public Service Com.*, 59 Mich. App. 88, 102, (1975).

² *Id.*

To acquire this information, an administrative agency may require entities it regulates or licenses to:

- Create, maintain, and submit, information, records, and reports;
- Allow the inspection of books, records, and premises; and
- Submit witnesses, information, and documents upon subpoena.

An administrative agency may use this information to:

- Regulate, promulgate administrative rules, and adjudicate within its authority;
- Determine compliance with the requirements of its statute and administrative rules; and
- Fulfill its licensing authority and ensure compliance with mandated selection, employment, and licensing standards.

III. Ownership and Integrity of Administrative Agency Records

In Michigan, administrative agencies are required to maintain records needed for effective operation and compliance with state law. Section 285(1) of the Management and Budget Act, MCL 18.1285, provides:

- (1) The head of each state agency shall maintain records which are necessary for all the following:
 - (a) The continued effective operation of the state agency;
 - (b) An adequate and proper recording of the activities of the state agency; and
 - (c) The protection of the legal rights of the state.

When an administrative agency acquires information it has sought or received in performing its statutory duties, it becomes the legal custodian of the information.

Section 285 not only requires the head of a state agency to maintain records necessary for the effective operation of the agency, it also underscores those records are the agency's property. Section 285(3) provides:

- (3) Legal custody and physical possession of a record shall be vested in the state agency that created, received, or maintains the record until such time as it is transferred to the state archives or destroyed [pursuant to the retention and disposal schedule].

In light of the reliance an administrative agency places on the information it receives to effectively carry out its statutory functions, it is imperative the records contain timely, accurate, whole, and reliable information. Thus, reports submitted to the agency cannot be subsequently altered.

The legislature has recognized the importance of maintaining the integrity of agency records. It is *illegal* to dispose of, mutilate, remove, or destroy a public record.

MCL 399.811(2) states, in part:

(2) A record that is required to be kept by a public officer in the discharge of duties imposed by law, that is required to be filed in a public office, or that is a memorial of a transaction of a public officer made in the discharge of a duty is the property of this state and shall not be disposed of, mutilated, or destroyed except as provided by law.

In fact, to do so is a crime. Under MCL 750.491, a person who willfully carries away, alters, mutilates, or destroys a public record is guilty of a two-year misdemeanor, punishable by imprisonment of up to two years and is subject to a fine of up to \$1,000.

IV. The Commission Collects Information to Fulfill its Licensing Authority under the MCOLES Act

As an administrative agency, and pursuant to the MCOLES Act, the Commission has the authority to acquire information to determine compliance with the requirements of its statute and administrative rules.³ This includes the authority to require entities it regulates or licenses, including law enforcement agencies, to create, maintain, and submit information and reports it needs for the effective operation of the agency⁴

This access to information is particularly necessary for the Commission to responsibly exercise its licensing authority.⁵ The reporting requirements found in the MCOLES Act and the administrative rules allow the Commission to collect and maintain information it needs to fulfill its licensing authority and ensure compliance with the mandated standards.

³ MCL 28.609 and 28.610.

⁴ See, MCL 18.1285.

⁵ MCL 28.609.

A. Reporting Separation Information to the Commission

The MCOLES Act and its promulgated administrative rules require law enforcement agencies to report all personnel transactions affecting employment and licensing status including separations and law enforcement authority removals.⁶ MCOLES Administrative Rule 28.14509 requires a law enforcement agency to report when one of its licensed law enforcement officers separates or is separated from employment. Importantly, the rule requires that this report must be submitted *within 3 days* of the separation and *must provide a complete and accurate description of the reason(s) for separation*. The Commission needs this information to responsibly exercise its licensing authority. Rule 509 provides:

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- (1) An agency shall report to the commission the separation from employment of a licensed law enforcement officer within 3 business days of separation using the MCOLES information and tracking network.
- (2) The report of separation shall include both of the following:
 - (a) The reason for the separation.
 - (b) The total hours worked by that officer during the calendar year of the separation.
- (3) The agency shall return to the commission the officer's original license that verified employment and licensing with the agency, if such a license was issued to the agency, along with a signed copy of the law enforcement officer separation report. The agency shall collect and forward to the commission the identification card that may have been issued to the officer by the commission

B. Law Enforcement Agency Requests to Change the Separation Information Previously Provided to the Commission

The Commission has been receiving requests from law enforcement agencies for it to change information that had been properly submitted within the mandated 3-day period. These requests are often made months after the submission. Most commonly, we are asked to change the reason for the separation provided from “terminated” to “resigned.” These requests are

⁶ MCL 28.609(8).

typically triggered as a result of an agreement reached in a subsequent arbitration or in lieu of arbitration.⁷

Once separation information is received, it is the property of the Commission and cannot be altered. This proposition is not only supported by the general tenets of administrative law and the specific state statutes governing agency records discussed above, it is also common sense. If separation information collected by the Commission pursuant to statute and administrative rules can be subsequently changed, the Commission's ability to make accurate standards compliance determinations would be significantly undermined when exercising its licensing authority to the detriment of the public. Without truthful information, it is impossible to make informed decisions regarding the individual's suitability to be licensed as a law enforcement officer.

C. The Separation Information Reported to the Commission under PA 203 of 1965 and the Separation of Service Record created under PA 128 of 2017 are Distinctly Separate Obligations.

In addition to the reporting requirements under the MCOLES Act, the Law Enforcement Officer Separation of Service Record Act, 2017 PA 128, MCL 28.561, *et seq* (hereinafter PA 128) requires law enforcement agencies to “maintain a record regarding the reason or reasons for, and circumstances surrounding, a separation of service” of a law enforcement officer from the employing law enforcement agency.

This **Separation of Service Record** is a separate and distinct obligation from the agency's obligation to submit **separation information** required by the MCOLES Act. PA 128 specifically acknowledges that the Separation of Service Record is “[i]n addition to the employment history record required to be maintained under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to MCL 28.615 . . .” [emphasis added] MCL 28.563(1).

⁷ There are also implications under the Law Enforcement Officer Separation of Service Record Act, 2017 PA 128, MCL 28.561, *et seq.*, which are addressed separately.