
Internal Investigation of Allegations of Misconduct

1020.1 PURPOSE AND SCOPE

The Department's internal investigative process is critically important to preserve the integrity and morale of the Department. It fosters public trust and confidence in law enforcement, and ensures accountability at all levels of the Department.

This policy incorporates the Department's values, with commitment to the following:

- Fair and impartial enforcement of laws, ordinances and District Resolutions, and respect for fundamental human rights;
- High ideals of honor and integrity to maintain the respect and confidence of superiors, peers, subordinates, the public, District employees, and other government and criminal justice agencies;
- Friendly and courteous service by striving to improve communications and relationships with all District employees and patrons at all times seeking improvement in the quality and image of public service.

The purpose of this policy is to provide guidelines for receiving, classifying, investigating, and determining the disposition of allegations of misconduct regarding members of this department.

1020.1.1 DEFINITIONS

Personnel complaints shall be defined as any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law. When an allegation warrants investigation, such complaints will be referred to the Office of Internal Affairs for assignment.

If a person alleges or raises an issue that does not qualify as a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as either an inquiry or a comment of non-complaint. These issues are of such a minor nature, that they do not rise to the level of a complaint.

Definitions:

- Complaint:** An expression of dissatisfaction or disapproval in regards to the performance of a Police Department employee.
- Allegation:** An unproven accusation that a member of the Police Department violated Department/District policy or procedure, or the law.
- Misconduct:** An act or omission by a Department member that is a violation of Department/District policy or procedure, or the law; which if sustained, could result in disciplinary action.
- Inquiry:** A question regarding the actions of a Department employee or the implementation of Department policy, with no allegation of misconduct.
- Comment of Non-Complaint:** A comment on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (f) **Supervisory Referral:** For instances involving inquiries or comments of non-complaint, the Office of Internal Affairs may classify the issue as a Supervisory Referral. An assigned supervisor will then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Office of Internal Affairs. The involved employee will not be identified in the documentation or filing of Supervisory Referrals, instead the memorandum will be filed by the reporting person's name. Even in the absence of a formal complaint request, if the nature of the allegation(s) warrants investigation and/or could result in discipline, then the statements made by the reporting person and their contact information shall be documented on a complaint intake form and forwarded to the Office of Internal Affairs.

If a complaining party initiates a complaint but then either refuses to cooperate with the investigation or becomes unavailable, the Office of Internal Affairs will exercise due diligence and proceed with an investigation. Based on a lack of information, the Chief of Police may determine that a matter does not need to be classified as a personnel complaint and the investigation will be suspended. However, depending on the seriousness of the complaint and the availability of information, further investigation may be conducted by the Office of Internal Affairs.

1020.1.2 ALLEGATION CLASSIFICATIONS

The following classifications of allegations will be used. The purpose of these classifications is to objectively characterize the potential misconduct while avoiding the use of value-laden words that could prejudice the investigation.

- (a) **(AD) Arrest or Detention:** An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.
- (b) **(BBP) Bias-Based Policing:** An allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition, or disability.
- (c) **(C) Courtesy:** An allegation that a Department member inappropriately used profane or derogatory language, obscene gesture, or an unprofessional demeanor during a contact with a member of the public.
- (d) **(CU) Conduct Unbecoming an Officer:** An allegation that a member's conduct, either on or off-duty, was conduct that a reasonable person would find unbecoming a police employee. The nature of the conduct could potentially reflect adversely upon the Department.
- (e) **(F) Force:** An allegation that the amount of force used by a Department member was not objectively reasonable.
- (f) **(ND) Neglect of Duty:** An allegation that a Department member neglected his/her duties and failed to take action as required by law, or by Department policy or procedure, or in compliance with a lawfully given order from a supervisor.
- (g) **(P) Procedure:** An allegation that action taken by a Department member did not follow appropriate Department/District policy, procedures or guidelines.
- (h) **(PC) Policy Complaint:** An allegation regarding a current Department policy that was properly implemented by a Department member; but which the complainant believes is inappropriate or not valid. A policy complaint is not grounds for discipline.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (i) **(R) Reporting Misconduct:** An allegation that a Department member failed to notify a Department supervisor of misconduct that threatens the rights of private persons and/or the well being and reputation of the Department.
- (j) **(RA) Racial Animus:** An alleged expression or act of animosity toward an individual or group based on race or ethnicity.
- (k) **(S) Supervision:** An allegation that a supervisor did not detect a pattern of misconduct by a Department member that he/she reasonably should have known about; and/or an allegation that a supervisor did not properly supervise and take corrective action for misconduct that he/she knows or reasonably should have known about.
- (l) **(SS) Search Or Seizure:** An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.
- (m) **(T) Truthfulness:** An allegation that a Department member knowing made a false statement or purposely omitted pertinent facts to a supervisor, in a police report, court testimony, or investigative interview conducted by the Department; or the fabrication or destruction of evidence.
- (n) **(WD) Workplace Discrimination and (WH) Workplace Harassment:** See BART Operations Rules and Procedures Manual section 1307.

The definitions of Discrimination and Harassment only apply to workplace interactions between BART employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. Discrimination or harassment by Department members toward members of the public shall be characterized as an allegation of Biased Based Policing (BBP) that will be reported and investigated by the Internal Affairs Unit.

1020.2 PROCESS FOR RECEIVING AND DOCUMENTING ALLEGATIONS OF MISCONDUCT

All Department members will accept allegations from any source, whether made in person, by mail, by telephone, or by e-mail. Furthermore, the Department shall comply with Penal Code § 832.5 which reads, "Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public."

Anonymous complaints and third party complaints will be accepted and investigated to the extent that sufficient information is provided.

1020.2.1 AVAILABILITY OF COMPLAINT FORMS

Citizen Complaint and Commendation Forms will be maintained in all patrol vehicles, police reporting facilities, and in all station agent's booths throughout the district. Forms will be made readily available to the public upon request.

1020.2.2 SOURCE OF COMPLAINTS

- (a) A department employee becoming aware of alleged misconduct shall immediately notify a supervisor.
- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (c) Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

1020.2.3 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, by e-mail, or by telephoning the Department. Although not required, effort should be made to have the complainant appear in person.

- (a) Any department employee who is informed of potential misconduct shall immediately notify a supervisor.
- (b) During normal operational hours, allegations of misconduct shall be referred to the Office of Internal Affairs. When an Internal Affairs investigator is unavailable, the complainant will be put in contact with a Watch Commander, or lastly a Zone Sergeant.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.
- (d) Supervisors shall receive and document all complaints from any source alleging misconduct of an employee.
 1. If the reporting party states that they would like to make a formal complaint, the supervisor shall use a complaint intake form to document the reporting person's contact information and the nature of the allegation. The supervisor shall then forward the information to the Office of Internal Affairs.
 2. If the reporting person is either posing an inquiry or making a comment of non-complaint, the receiving supervisor will forward the information to the Office of Internal Affairs. The Office of Internal Affairs may then classify the issue as a Supervisory Referral. An assigned supervisor will then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Office of Internal Affairs. The involved employee will not be identified in the documentation or filing of Supervisory Referrals, instead the memorandum will be filed by the reporting person's name.
 3. Even in the absence of a formal complaint request, if the nature of the allegation(s) warrants investigation and/or could result in discipline, then the statements made by the reporting person and their contact information shall be documented on a complaint intake form and forwarded to the Office of Internal Affairs.

1020.2.4 ALLEGATION DOCUMENTATION

Complaints of alleged misconduct shall be documented on a Citizen Complaint and Commendation Form either by the complainant, or by a supervisor. The receiving supervisor shall ensure that the nature of the complaint is defined as clearly as possible as well as the contact information for the reporting party.

- (a) When a complainant completes a Citizen Complaint and Commendation Form in person, they should legibly write a detailed narrative of the complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. Whether handwritten or dictated, the complainant should sign the Citizen Complaint and Commendation Form, although refusal to sign shall not alone be grounds to disregard the complaint.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (b) The complainant shall be provided with a copy of his/her own original complaint per Penal Code § 832.7.
- (c) Whenever possible, the supervisor should record the complainant's verbal statement. A refusal by the complainant to be recorded shall not alone be grounds to disregard the complaint.

1020.2.5 DEPARTMENT INITIATED INVESTIGATIONS

Allegations of misconduct generated within the police department that cannot be addressed at the supervisory level will be investigated through the Office of Internal Affairs.

- (a) Any department employee who witnesses potential misconduct shall immediately notify a supervisor.
- (b) Allegations of misconduct may be reported to the Department by employees, union representatives, or supervisors.
- (c) The Office of Internal Affairs may initiate an allegation of misconduct based on cause.
- (d) If an investigation discloses misconduct or improper job performance which was not included in the original allegation(s), the investigation will address the additional allegation(s).

1020.3 SUPERVISOR RESPONSIBILITY

A supervisor who becomes aware of possible misconduct shall take reasonable steps to prevent aggravation of the situation. Moreover, supervisors shall also maintain the ability to engage in the interrogation of an employee in the normal course of duty, counseling, instruction, or informal verbal admonishment, or other routine or unplanned contact (Cal. Govt. Code 3303(i)).

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the Office of Internal Affairs. The Chief of Police may assign the investigation to a police supervisor or to a contracted entity. The investigator shall be responsible for the following:

- (a) A supervisor receiving or initiating a complaint involving allegations of serious misconduct shall ensure that the Watch Commander and Chief of Police are notified as soon as practicable.
- (b) A supervisor receiving a complaint shall ensure that a Citizen Complaint and Commendation Form has been completed as fully as possible. The original complaint form will then be directed via the chain of command to the employee's a command level supervisor, who will then forward the complaint to the Office of Internal Affairs for further action.
 1. During the preliminary intake of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses.
 2. Once immediate medical attention has been provided, photographs of alleged injuries as well as accessible areas of non-injury should be taken.
 3. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Bureau Commander or the Chief of Police who will initiate appropriate action.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (c) A supervisor interacting with an accused employee shall ensure that the procedural rights of the employee are followed pursuant to Government Code § 3303, et seq. When a supervisor is aware that an employee is the subject of an investigation which could lead to discipline, the following shall take place prior to asking the employee to document the incident in a memorandum and/or verbal questioning.
 - 1. The employee will be notified of the nature of the allegation(s).
 - 2. The employee will be informed of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation.
 - 3. Upon request, the employee will be notified that the investigation could result in discipline.
 - 4. Upon request, subject employees will be allowed representation. (Witness employees are not strictly entitled to representation.)

- (d) When the nature of a personnel complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall promptly notify the Chief of Police. The Chief may elect to contact the BART Office of Civil Rights for direction regarding their role in investigation and/or addressing the complaint.

1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

A department employee may be placed on administrative leave under the following circumstances:

- (a) When an allegation of misconduct is of a particularly serious nature;
- (b) Retaining the person on active duty would impose an unreasonable risk to the Department, the employee, other employees, or the public.

Personnel may be assigned to administrative leave pending further investigation, completion of the investigation, or the filing of administrative charges.

1020.4.1 ADMINISTRATIVE LEAVE

An employee placed on administrative leave may be subject to the following guidelines:

- (a) Under such circumstances, an employee placed on administrative leave shall continue to receive regular pay and benefits pending the imposition of any discipline.
- (b) An employee placed on administrative leave may be required by a supervisor to relinquish any badge, departmental identification, assigned weapon(s) and any other departmental equipment.
- (c) An employee placed on administrative leave may be ordered to refrain from taking any action as a departmental employee or in an official capacity. The employee shall be required to continue to comply with all policies, lawful orders of a supervisor, and court orders.
- (d) An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered.
- (e) It shall be the responsibility of the assigning supervisor to promptly notify the employee's Bureau Commander and the Chief of Police.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (f) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to their regularly assigned shift with all badges, identification card and other equipment returned.

1020.5 ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee of this department is accused of potential criminal conduct, a separate supervisor or assigned detective may be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

- (a) The Chief of Police shall be notified as soon as practical when an employee is formally accused of criminal conduct. In the event of serious criminal allegations, the Chief of Police may request a criminal investigation by an outside law enforcement agency.
- (b) An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian and the employee may not be administratively ordered to provide any information to a criminal detective.
- (c) No information or evidence administratively coerced from an employee may be provided to a criminal detective.
- (d) Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction, however, no disciplinary action, other than paid administrative leave shall be taken against the accused employee based solely on an arrest or crime report (Labor Code § 432.7(b)). An independent administrative investigation shall be conducted based upon the allegations in the report in accordance with department policy.

1020.6 INTERNAL INVESTIGATION OF ALLEGED MISCONDUCT

Whether conducted by the Office of Internal Affairs, an assigned supervisor, or authorized entity, the following procedures shall be followed with regard to the accused employee(s):

- (a) Interviews of accused employees shall be conducted during reasonable hours and, if the employee is off-duty, the employee shall be compensated (Government Code § 3303(a)).
- (b) No more than two interviewers may ask questions of an accused employee (Government Code § 3303(b)).
- (c) Prior to any interview, an employee shall be informed of the nature of the investigation (Government Code § 3303(c)).
- (d) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated (Government Code § 3303(d)).
- (e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Nothing administratively ordered may be provided to a criminal investigator (Government Code § 3303(e)).
- (f) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. The subject employee may also record the interview. If the subject employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview (Government Code § 3303(g)).

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (g) If the allegations involve potential criminal conduct, the employee shall be advised of his/her Constitutional rights pursuant to *Lybarger*. This admonishment shall be given administratively whether or not the employee was advised of these rights during any separate criminal investigation. (Government Code § 3303(h)).
- (h) All employees subjected to interviews that could result in punitive action shall have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual employee's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
- (i) All employees shall provide complete and truthful responses to questions posed during interviews.
- (j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

1020.6.1 ADMINISTRATIVE SEARCHES

An employee of this department may be administratively ordered to submit to a blood, breath, or urine test for alcohol and drugs under any of the following circumstances:

- When the employee, whether on or off-duty, is involved in a shooting or police related death.
- When the employee is involved in an injury or fatal accident while on duty.
- When the employee is involved in an injury or fatal accident while operating any District owned or leased vehicle whether on or off-duty.
- When the employee is found to be exhibiting objective symptoms of intoxication or drug influence while on duty.

The use of compelled testing results shall be restricted to the administrative investigation.

Any employee may be compelled to disclose personal financial information pursuant to proper legal process; if such information tends to indicate a conflict of interest with official duties, or, if the employee is assigned to or being considered for a special assignment with a potential for bribes (Government Code § 3308).

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Department.

Assigned lockers and storage spaces may only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant or where the employee has been given reasonable notice that the search will take place (Government Code § 3309).

All other departmentally assigned areas (e.g., desks, office space, assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes. (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

1020.6.2 INTERNAL AFFAIRS INVESTIGATION FORMAT

Internal investigations shall be detailed, complete and essentially follow this format:

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (a) Complainant name(s) and contact information
- (b) Identity of involved Department personnel
- (c) Classification of complaint
- (d) Associated police report numbers
- (e) Witness name(s) and contact information
- (f) Background
 - 1. Brief synopsis including the initial date, source, and nature of complaint
 - 2. Assigned Internal Affairs investigator(s)
- (g) Investigation
 - 1. Statements
 - 2. Dispatch audio
 - 3. Video
 - 4. Police reports
 - 5. Additional evidence
- (h) Department policy
- (i) Summary and conclusion
- (j) Exhibits

1020.6.3 INTERNAL AFFAIRS INVESTIGATION PROCESS

- (a) The Office of Internal Affairs shall be the principal entity for receiving, classifying, assigning, investigating, and filing allegations of misconduct. All allegations of misconduct will be forwarded to the Office of Internal Affairs.
- (b) The Office of Internal Affairs is responsible for case tracking and the assignment of due dates for allegation of misconduct investigations. The assigned investigator is expected to complete each investigation in a timely manner. The investigator will conduct a thorough, accurate, and objective investigation.
- (c) The Office of Internal Affairs will apprise the Chief of Police of all allegations of misconduct and status of investigations.
- (d) If a command-level officer is the subject of an allegation of misconduct, the Chief of Police will review the allegation and assign an appropriate investigator. If the Chief of Police is the subject of an allegation, the BART General Manager will review the allegation and assign an appropriate investigator.

1020.7 DISPOSITION OF INTERNAL INVESTIGATIONS

Upon completion of the investigative report, the investigator will write a memo, separate from the report, to the Chief of Police listing each allegation of misconduct.

The Chief of Police will determine a finding of disposition for each allegation as follows:

- (a) **Unfounded** - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).
- (b) **Exonerated** - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

- (c) **Sustained** - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.
- (d) **Not-Sustained** - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available.
- (e) **Policy Complaint** - The complaint is determined to be in opposition to an established policy which was properly followed and administered by an employee.

1020.8 COMPLETION OF INVESTIGATIONS

- (a) Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.
- (b) Upon completion, the report shall be forwarded through the chain of command to the Chief of Police who will make a determination of finding and associated disciplinary action when applicable.
- (c) The subject employee will receive a notice of finding from the Chief of Police, which will be signed by the employee and filed in the Office of Internal Affairs. If the employee refuses to sign, that fact will be noted on that document and signed or initialed by the employee as set forth in Government Code § 3304(d).
- (d) Within 30 days of the final review by the Chief of Police, written notice of the findings shall be sent to the complaining party. This notice shall indicate the findings, however, will not disclose the amount of discipline, if any imposed. The complaining party will also have been provided with a copy of his/her own original complaint (Penal Code § 832.7).
- (e) Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Chief of Police to discuss the matter further.

1020.8.1 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints shall be considered confidential peace officer personnel files. The contents of such files shall not be revealed to other than the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, the Department may disclose sufficient information from the employee's personnel file to refute such false representations (Penal Code § 832.5).

All formal personnel complaints shall be maintained for a period of no less than five years. (Penal Code § 832.5) All non-citizen (e.g., those that originate internally) initiated complaints shall be maintained no less than two years (Government Code § 34090 et seq.).

Bay Area Rapid Transit Police Department

Policy Manual

Internal Investigation of Allegations of Misconduct

Sustained complaints shall be maintained in the employee's personnel file. Complaints which are unfounded, exonerated or not sustained shall be maintained by the Office of Internal Affairs apart from the employee's personnel file.

1020.8.2 ACCESS TO INTERNAL AFFAIRS RECORDS

Only those members of the Department authorized by the Chief of Police will be allowed access to Internal Affairs records. Information within the record shall be kept with strict confidentiality. The following personnel are authorized access to a member's personnel file, with the indicated limitations:

- (a) The member: Members may review their own personnel file during normal business hours, after making the request through the Office of the Chief of Police.
- (b) Internal Affairs personnel: Any member assigned to the Office of Internal Affairs may review another member's Internal Affairs records for the purpose of effectively completing an internal investigation.
- (c) Outside requests: Any requests to review a member's Internal Affairs records by an outside agency must be approved by the BART Legal Department in accordance with California Evidence Code Section 1043, or requested pursuant to a Federal court order.