

January 31, 2019

Steven Mendoza, Acting City Manager
Sonia Carvalho, City Attorney
20 Civic Center Plaza
Santa Ana, CA 92701

Via email to jcastro-cardenas@santa-ana.org; scarvalho@santa-ana.org

Re: Proposed Destruction of Records of the Santa Ana Police Department

Mr. Mendoza and Ms. Carvalho:

On behalf of the ACLU of Southern California (“ACLU SoCal”), I write to express strong concerns about the proposed destruction of records currently in the possession of the Santa Ana Police Department (“Department”), and to urge you not to agendize for City Council any item authorizing the immediate destruction of police records related to use of force, that are responsive to ACLU SoCal’s request for records made on January 1, 2019. Such an item would authorize a blatant violation of the California Public Records Act that would require ACLU SoCal to seek immediate court intervention to protect its rights, and would violate guidance given by the Attorney General.

The January 15, 2019 City Council agenda included an item, at the behest of the Department, seeking the City Council’s permission to destroy Department records from 2012 relating to on-duty accidents, investigations of K-9 bite incidents, officer uses of force and in-custody injuries, and investigations of employee misconduct. It additionally sought permission to destroy documents relating to officer-involved shootings and in-custody deaths from 2009 through 2012. The Voice of OC reported that this item was pulled from the agenda at the request of Mr. Mendoza,¹ however we are concerned that it may be placed on the agenda once again, as early as the February 5, 2019 City Council meeting.

We have legal and policy concerns regarding the proposed destruction of these records, including that their destruction would violate the California Public Records Act (“CPRA”) Gov’t Code Sec. 6250, *et seq.* We strongly request that the City refrain from placing this item back on its agenda. If an item authorizing immediate destruction of these records returns to the agenda, ACLU SoCal may be required to file suit against the City to prevent any authorizing action by the City Council from taking effect.

¹ Brandon Pho and Nick Gerda, “Santa Ana Grapples with \$400,000 Payout, Police Records Destruction, During Leadership Vacuum,” Voice of OC, Jan. 17, 2019, available at <https://voiceofoc.org/2019/01/santa-ana-grapples-with-400000-payout-police-records-destruction-during-leadership-vacuum/>.

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First, as you may know, last year the California Legislature adopted S.B. 1421 (Skinner 2018), “The Right to Know Act,” which mandates that government agencies disclose records relating to uses of deadly force, sexual assault, and acts of dishonesty with respect to the reporting investigating or prosecution of a crime in response to a request made pursuant to the CPRA. *See* Penal Code Sec. 832.7(b)(1)(A)-(C). This law eliminated an agency’s ability to claim a basis for withholding documents in response to a CPRA request if those documents were deemed part of an officer’s personnel file. The law went into effect January 1, 2019 and pertains to all records in an agency’s possession at the time that it has an active CPRA request.

On about January 1, 2019, the ACLU SoCal filed a request with the Department for certain documents made accessible to the public under S.B. 1421, including, but not limited to:²

- Any use of force resulting in death from January 1, 1999 to the present
- Any use of force resulting in great bodily injury from January 1, 2009 to the present
- Any sustained act of dishonesty relating to the reporting, investigation or prosecution of a crime from January 1, 1999 to the present
- Any sustained act of sexual assault involving a member of the public from January 1, 2009 to the present

The records the Department seeks permission to destroy unquestionably include documents responsive to ACLU SoCal’s request.³

The Santa Ana Police Department cannot receive a public records request and then decide to destroy responsive documents rather than turn them over. Such destruction of those records would blatantly violate the CPRA’s requirement that, in response to a request for public records, the Department produce all “disclosable public records in the possession of the agency.” Gov’t Code Sec. 6253(c); *see also* Penal Code 832.7(b)(1) (requiring that the specified records “maintained by any state or local agency . . . shall be made available . . . pursuant to the [CPRA]”). The CPRA further prohibits agencies from taking action to “delay or obstruct the inspection or copying of public records,” Gov’t Code Sec. 6253(d), and destruction of records in an agency’s possession that are responsive to a requestor’s CPRA request undeniably violates the CPRA. *See, e.g., Community Youth Athletic Center v. National City*, 220 Cal.App.4th 1385 (2013).

The destruction of these records would also violate the instructions given by the California Attorney General. On January 3, 2019, the California Attorney General issued instructions to “All California Law Enforcement Agencies” to preserve such records:

In order to ensure compliance with California law, the California Attorney General’s Office is instructing you to preserve all records that may be subject to disclosure

² A copy of ACLU SoCal’s request is appended to this letter as Attachment A. The Department’s response, received January 24, 2019, acknowledging our request and stating that it “intends to make these files available for review and/or production” is appended as Attachment B.

³ This proposed destruction may also be in violation of the rights of other requestors under the CPRA if the Department has received other CPRA requests seeking information held within the files for which destruction is sought.

beginning January 1, 2019, pursuant to recent amendments to Penal Code Section 832.7 as a result of Senate Bill 1421

You should preserve all applicable files currently stored in paper files either onsite or in a remote location. You should also preserve any and all electronically stored information, including databases, electronic data files, hard drives, on- and offline storage drives, backups, logs, archives, personal computers and portable devices, and other removable and non-removable media, and electronic mail and attachments to electronic mail, pertaining to both records and preservation of records, including but not limited to electronic mail regarding potential destruction of covered information.

Information Bulletin No. 2019-DLE-01, California Department of Justice, Jan. 3, 2019 *available at* <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2019-dle-01-preserve-recs.pdf>.

If the item is placed back on the City Council’s agenda, ACLU SoCal will be forced to defend its rights under CPRA immediately by seeking a temporary restraining order to enjoin the Department from destroying the records as proposed. As you know, an agency may be held liable for attorneys’ fees incurred to enforce a requestor’s rights under the CPRA. Gov’t Code Sec. 6259(d).

Additionally, apart from violating rights specifically granted under CPRA and the instructions of the California Department of Justice, the City should be troubled by the Department’s attempt to destroy records regarding serious incidents of misconduct and deadly uses of force at the moment that those records become public. In particular, the request to destroy three years of records pertaining to officer-involved shootings and in-custody deaths indicates that purging these records is not a part of any regularly-scheduled destruction of records the Department now deems “obsolete.” As California enters a new era of increased transparency around peace officer records—one resoundingly endorsed by the public—we hope that Santa Ana embraces this new opportunity and does not attempt to impede it.

If you have any further questions, you may reach me at 213-977-5233 or at melanie@aclusocal.org.

Regards,

Melanie Ochoa
Staff Attorney

ATTACHMENT

A



January 1, 2019

Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Request for Public Records on Police Use of Force Investigations, Sustained Findings of Police Dishonesty and Sexual Assault

To Whom It May Concern:

I write to respectfully request records related to the investigation and discipline of peace officers employed by the Santa Ana Police Department (the "Department") under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution, as set forth below.

Last fall, the California legislature passed, and Governor Brown enacted, SB 1421 (Skinner), which amends California Penal Code section 832.7 to provide the public a right of access to records related to investigations into investigations and discipline of peace officers for shootings and serious uses of force, as well as sustained findings of dishonesty related to the investigation, reporting, and prosecution of a crime or police misconduct. We now respectfully request the records newly available under SB 1421. We make this request as the American Civil Liberties Union of Southern California, as requestor, on behalf of the ACLU of California (including the ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego and Imperial Counties) as well as a wide array of civil rights, government transparency, and criminal defense groups, including the Youth Justice Coalition, Justice Teams Network, Anti Police-Terror Project, California Faculty Association, PolicyLink, STOP Coalition, California Public Defender Association, and National Association of Criminal Defense Lawyers.

We have coordinated this request, and will share all records obtained, with this group of organizations, and further commit to making those records available to the public by posting on the Internet and other means, to help facilitate access to the records you produce.

I. Requests for Records

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. We have endeavored to tailor our request to a limited selection of the most important documents and most relevant timeframe for incidents.

As set forth below, for purposes Requests 1 through 7, we do not seek all records relating to the underlying incident, but only a limited set of "Decisional Documents" relating to the

administrative investigation of the incident. For purposes of these requests, “Decisional Documents” means all documents¹ reflecting or setting forth:

- The Department’s decision, prior to any administrative appeal, that an officer’s conduct did (or did not) violate the law or agency policy, and any reasons for that decision;
- The final investigative report (prior to any administrative appeal) of the Department, or any division of the Department, or any document setting out factual findings of, or recommended factual findings for, the person or body charged with deciding whether the officer’s conduct was within policy and/or warranted discipline or other corrective action;
- The punishment imposed or corrective action taken as the result of an administrative investigation, including letters of intent to impose discipline or other documents reflecting discipline imposed, changes in rank or assignment, training required, or changes to or examinations of Department policy, training or practice;
- A decision on appeal from the Department’s factual finding, or the discipline or corrective action imposed, including review by a superior or arbitration, including any statement of reasoning by an appeal body and any revised discipline or corrective action imposed, or any documents reflecting modifications of discipline due to the *Skelly* or grievance process,
- Any agreement to resolve an administrative investigation, including any agreement (or lack of agreement) as to the facts of what happened in the incident, or discipline or corrective action to be imposed;
- The final investigative report, factual findings, legal conclusions, or recommendations on discipline, policy, procedures or training, by the district attorney, independent civilian oversight body, or outside law enforcement agency brought on to conduct an investigation into an incident;
- The final imposition of discipline or implementation of corrective action.

For purposes of this request, records include, but are not limited to all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Cal. Penal Code §832.7(b)(2).

¹ The term “records” as used in this request is defined as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Cal. Govt. Code § 6252, subsection (e). “Writing” is defined as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” Cal. Govt. Code § 6252 (g).

For purposes of these requests, “Decisional Documents” does not include underlying evidence, expert reports, witness statements, audio or video, unless incorporated by or included in the documents described above.

We also recognize that at some departments, older records may be stored in different recordkeeping systems that may require more time and effort to retrieve. If this is the case with your agency, we are happy to discuss particular obstacles or concerns and a process for retrieving records as efficiently as possible.

Records Request No. 1: All DECISIONAL DOCUMENTS related to the administrative investigation of any use of force by a peace officer employed by the Department² that resulted in death, from January 1, 1999 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 2: All DECISIONAL DOCUMENTS relating to any incident in which a peace officer employed by the Department was found to have committed an act of dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence, at any time from Jan. 1, 1999, to the present. *See* Penal Code § 832.7(b)(1)(C). Such incidents may also include receipt or solicitation of bribes, loans, favors, or gifts in relation to an investigation; misappropriation of property in an investigation, obstructing an investigation, or influencing a witness.

Records Request No. 3: For any officer about whom a sustained finding of dishonesty is disclosed in response to Records Request No. 2, above, all DECISIONAL DOCUMENTS relating to any sustained finding of dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer, regardless of date.

Records Request No. 4: All DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by a peace officer employed by the Department, which did not result in death, from January 1, 2014 to the present. *See* Penal Code § 832.7(b)(1)(A)(i).

Records Request No. 5: All DECISIONAL DOCUMENTS related to any administrative investigation into a use of force by a peace officer employed by the Department against a person that resulted in great bodily injury, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 6: For any officer who used force resulting in death at any time since January 1, 1999, all DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by that officer that did not result in death, or a use of

² A peace officer is “employed by the Department” for purposes of these requests if that officer has been employed by the Department at any time. The modifying phrase “employed by the Department” does *not* limit the requests only to officers currently employed by the Department, nor does it exclude documents within the position of the Department that concern the incidents that occurred while the peace officer was employed by another agency.

force by that officer against a person that resulted great bodily injury but not death, regardless of date.

Records Request No. 7: All DECISIONAL DOCUMENTS relating to any incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer employed by the Department engaged in sexual assault involving a member of the public, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(B). For purposes of this request, “sexual assault” refers to the commission or attempted initiation of a sexual act with a member of the public by means of force, threat coercion, extortion, offer of leniency or other official favor, or under the color of authority, including unwanted or gratuitous sexual contact such as touching or groping. *See id.* § 832.7(b)(1)(B)(ii).

Records Request No. 8: For any officer about whom a sustained finding of sexual assault is disclosed in response to Records Request No. 7, above, all DECISIONAL DOCUMENTS relating to any sustained finding of sexual assault, regardless of date.

II. Request for Preservation, or in the Alternative, Request for Documents

While we have asked for a limited selection of documents that are newly available pursuant to S.B. 1421, review of those documents will very likely reveal some incidents in which requestors or other members of the public would like additional detail, such as records of investigation, audio, video, expert reports and other documents excluded from the present request. We therefore request that you provide assurances that you will preserve all such documents, at least for a reasonable time after complying with the present set of document requests, to allow targeted requests for additional information on specific cases.

III. Prioritization of Requests

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. To help make sure your response serves the public interest in disclosure of these important records as efficiently as possible, we ask that you prioritize in the following order:

First, *please prioritize requests from other requestors who are family members of those killed by police seeking information on how their loved ones died.* We recognize that the change in law in many instances may allow these family members access to this information for the first time, and for the first time provide answers about their losses, and urge you prioritize these disclosures.

Second, for our requests, prioritize in the order of requests, 1 through 8.

Third, if for any reason some categories of documents responsive to a request are more readily disclosable and others more difficult — for example, if older records are in archival storage or stored in a different and harder-to-use system, or documents responsive to one request are not as easily categorized for disclosure and would require more time-intensive searching than another — please contact us to discuss the obstacles to prompt disclosure so that we can work out a

timeline, process, or refined selection criteria for documents that are more difficult to find or produce.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If you would like to discuss these requests, please feel free to call Hermelinda Calderon or Casey Kasher at (213) 977-5265. Otherwise, please send any correspondence or documents in electronic format via email to prarequest@aclusocal.org, or correspondence or documents on CD-ROM or USB drive to:

SB 1421 Records
ATTN: Casey Kasher
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

Because this request is made on behalf of a number of nonprofit public interest organizations, with the intent to make this material easily accessible to the public as promptly as possible, we request that you waive any fees. *North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code §6253(e). However, should you be unable to do so, ACLU SoCal will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Best,



Peter Bibring
Director of Police Practices
ACLU of Southern California

ATTACHMENT

B

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Cecilia Iglesias
David Penaloza
Roman Reyna
Vicente Sarmiento
Jose Solorio



CITY MANAGER
Raul Godinez II
CITY ATTORNEY
Sonia R. Carvalho
ACTING CLERK OF THE COUNCIL
Norma Mitre-Ramirez

CITY OF SANTA ANA
SANTA ANA POLICE DEPARTMENT
60 Civic Center Plaza • P.O. Box 1981
Santa Ana, California 92702
www.santa-ana.org

OFFICE OF THE CHIEF POLICE

January 24, 2019

VIA E-MAIL TO
prarequest@aclusocal.org

Casey Kasher
American Civil Liberties Union of Southern California

RE: Public Records Act Request Received – January 1, 2019

Dear Casey Kasher,

This letter responds to your Public Records Act Request dated January 1, 2019, requesting records in connection with Senate Bill 1421. A copy of your request is attached for reference.

The records you requested have been identified and will be produced. The Department is in the process of redacting the following information:

- Confidential medical information or information prohibited by federal law;
- information to preserve the anonymity of witnesses and complainant;
- Information that would cause an unwarranted invasion of privacy that clearly outweighs the public interest in disclosure

The Department intends to make these files available for review and/or production. The Department will contact you to advise when the records are available. We anticipate the redaction process will take approximately 90 days.

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Cecilia Iglesias
David Penalzoa
Roman Reyna
Vicente Sarmiento
Jose Solorio



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Santa Ana, California 92702
www.santa-ana.org

The Department has also identified records involving officer involved shootings and uses of force resulting in great bodily injury that are disclosable, however, are the subject of an active and pending administrative investigation. The Department is in the process of evaluating whether there are incidents involving an officer involved shooting or uses of force resulting in great bodily injury that may be the subject of a criminal investigation or prosecution.

The Department intends to routinely review those incidents identified above to determine if by the date listed above, the Department intends to produce the records or delay disclosure.

In the event the Department intends to delay disclosure of any records, the Department will send you correspondence regarding the records that will be delayed from disclosure and the specific basis for the Department's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure.

Please contact me directly if you have any questions.

Respectfully,

Jose Gonzalez, Commander
Professional Standards Unit



January 1, 2019

Santa Ana Police Department
Clerk of the Council Office
20 Civic Center Plaza, Room 809
P.O. Box 1988, M-30
Santa Ana, CA 92702

Fax: (714) 647-6956

Via Fax and U.S. Mail

RE: Request for Public Records Regarding Any Incident Involving a Sustained Finding of Sexual Assault

To Whom It May Concern:

I write to respectfully request records related to the investigation and discipline of peace officers employed by the Santa Ana Police Department (the "Department") under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution, as set forth below.

Last fall, the California legislature passed, and Governor Brown enacted, SB 1421 (Skinner), which amends California Penal Code section 832.7 to provide the public a right of access to records related to investigations into investigations and discipline of peace officers for shootings and serious uses of force, as well as sustained findings of dishonesty related to the investigation, reporting, and prosecution of a crime or police misconduct. We now respectfully request the records newly available under SB 1421. We make this request as the American Civil Liberties Union of Southern California, as requestor, on behalf of a wide array of civil rights, government transparency, and criminal defense groups, including Youth Justice Coalition, Justice Teams Network, Anti Police-Terror Project, California Faculty Association, PolicyLink, STOP Coalition, California Public Defender Association, and National Association of Criminal Defense Lawyers.

We have coordinated this request, and will share all records obtained, with this group of organizations, and further commit to making those records available to the public by posting on the Internet and other means, to help facilitate access to the records you produce.

I. Requests for Records

EXECUTIVE DIRECTOR Hector O. Villagra

PRESIDENT Connie Tchong **VICE PRESIDENT** David Cruz **SECRETARY** T.J. Hill **CFO** Michelle White
AFFIRMATIVE ACTION OFFICER Isabelle Gunning **NATIONAL BOARD REPRESENTATIVE** Sharon Kyle

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. We have endeavored to tailor our request to a limited selection of the most important documents and most relevant timeframe for incidents.

As set forth below, for purposes Requests 1 through 7, we do not seek all records relating to the underlying incident, but only a limited set of “Decisional Documents” relating to the administrative investigation of the incident. For purposes of these requests, “Decisional Documents” means all documents⁶³⁵ reflecting or setting forth:

- The Department’s decision, prior to any administrative appeal, that an officer’s conduct did (or did not) violate the law or agency policy, and any reasons for that decision;
- The final investigative report (prior to any administrative appeal) of the Department, or any division of the Department, or any document setting out factual findings of, or recommended factual findings for, the person or body charged with deciding whether the officer’s conduct was within policy and/or warranted discipline or other corrective action;
- The punishment imposed or corrective action taken as the result of an administrative investigation, including letters of intent to impose discipline or other documents reflecting discipline imposed, changes in rank or assignment, training required, or changes to or examinations of Department policy, training or practice;
- A decision on appeal from the Department’s factual finding, or the discipline or corrective action imposed, including review by a superior or arbitration, including any statement of reasoning by an appeal body and any revised discipline or corrective action imposed, or any documents reflecting modifications of discipline due to the *Skelly* or grievance process,
- Any agreement to resolve an administrative investigation, including any agreement (or lack of agreement) as to the facts of what happened in the incident, or discipline or corrective action to be imposed;
- The final investigative report, factual findings, legal conclusions, or recommendations on discipline, policy, procedures or training, by the district attorney, independent civilian oversight body, or outside law enforcement agency brought on to conduct an investigation into an incident;
- The final imposition of discipline or implementation of corrective action.

For purposes of this request, records include, but are not limited to all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with

⁶³⁵ The term “records” as used in this request is defined as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Cal. Govt. Code § 6252, subsection (e). “Writing” is defined as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” Cal. Govt. Code § 6252 (g).

an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Cal. Penal Code §832.7(b)(2).

For purposes of these requests, "Decisional Documents" does not include underlying evidence, expert reports, witness statements, audio or video, unless incorporated by or included in the documents described above.

We also recognize that at some departments, older records may be stored in different recordkeeping systems that may require more time and effort to retrieve. If this is the case with your agency, we are happy to discuss particular obstacles or concerns and a process for retrieving records as efficiently as possible.

Records Request No. 1: All DECISIONAL DOCUMENTS related to the administrative investigation of any use of force by a peace officer employed by the Department⁶³⁶ that resulted in death, from January 1, 1999 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 2: All DECISIONAL DOCUMENTS relating to any incident in which a peace officer employed by the Department was found to have committed an act of dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence, at any time from Jan. 1, 1999, to the present. *See* Penal Code § 832.7(b)(1)(C). Such incidents may also include receipt or solicitation of bribes, loans, favors, or gifts in relation to an investigation; misappropriation of property in an investigation, obstructing an investigation, or influencing a witness.

Records Request No. 3: For any officer about whom a sustained finding of dishonesty is disclosed in response to Records Request No. 2, above, all DECISIONAL DOCUMENTS relating to any sustained finding of dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer, regardless of date.

Records Request No. 4: All DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by a peace officer employed by the

⁶³⁶ A peace officer is "employed by the Department" for purposes of these requests if that officer has been employed by the Department at any time. The modifying phrase "employed by the Department" does *not* limit the requests only to officers currently employed by the Department, nor does it exclude documents within the position of the Department that concern the incidents that occurred while the peace officer was employed by another agency.

Department, which did not result in death, from January 1, 2014 to the present. *See* Penal Code § 832.7(b)(1)(A)(i).

Records Request No. 5: All DECISIONAL DOCUMENTS related to any administrative investigation into a use of force by a peace officer employed by the Department against a person that resulted great bodily injury, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 6: For any officer who used force resulting in death at any time since January 1, 1999, all DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by that officer that did not result in death, or a use of force by that officer against a person that resulted great bodily injury but not death, regardless of date.

Records Request No. 7: All DECISIONAL DOCUMENTS relating to any incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer employed by the Department engaged in sexual assault involving a member of the public, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(B). For purposes of this request, “sexual assault” refers to the commission or attempted initiation of a sexual act with a member of the public by means of force, threat coercion, extortion, offer of leniency or other official favor, or under the color of authority, including unwanted or gratuitous sexual contact such as touching or groping. *See id.* § 832.7(b)(1)(B)(ii).

Records Request No. 8: For any officer about whom a sustained finding of sexual assault is disclosed in response to Records Request No. 7, above, all DECISIONAL DOCUMENTS relating to any sustained finding of sexual assault, regardless of date.

II. Request for Preservation, or in the Alternative, Request for Documents

While we have asked for a limited selection of documents that are newly available pursuant to S.B. 1421, review of those documents will very likely reveal some incidents in which requestors or other members of the public would like additional detail, such as records of investigation, audio, video, expert reports and other documents excluded from the present request. We therefore request that you provide assurances that you will preserve all such documents, at least for a reasonable time after complying with the present set of document requests, to allow targeted requests for additional information on specific cases.

III. Prioritization of Requests

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. To help make sure your response serves the public interest in disclosure of these important records as efficiently as possible, we ask that you prioritize in the following order:

First, *please prioritize requests from other requestors who are family members of those killed by police seeking information on how their loved ones died.* We recognize that the change in law in many instances may allow these family members access to this information for the first time, and for the first time provide answers about their losses, and urge you prioritize these disclosures.

Second, for our requests, prioritize in the order of requests, 1 through 8.

Third, if for any reason some categories of documents responsive to a request are more readily disclosable and others more difficult — for example, if older records are in archival storage or stored in a different and harder-to-use system, or documents responsive to one request are not as easily categorized for disclosure and would require more time-intensive searching than another — please contact us to discuss the obstacles to prompt disclosure so that we can work out a timeline, process, or refined selection criteria for documents that are more difficult to find or produce.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If you would like to discuss these requests, please feel free to call Hermelinda Calderon or Casey Kasher at (213) 977-5265. Otherwise, please send any correspondence or documents in electronic format via email to prarequest@aclusocal.org, or correspondence or documents on CD-ROM or USB drive to:

SB 1421 Records
ATTN: Casey Kasher
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

Because this request is made on behalf of a number of nonprofit public interest organizations, with the intent to make this material easily accessible to the public as promptly as possible, we request that you waive any fees. *North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code §6253(e). However, should you be unable to do so, ACLU SoCal

will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Best,

A handwritten signature in black ink, appearing to read "Peter Bibring". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Bibring
Director of Police Practices
ACLU of Southern California



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Southern California

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Los Angeles, CA 90017



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12/28/2018

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ZIP 90017
011D11648663

Santa Ana Police Department
ATTN: Public Records Request
60 Civic Center Plaza
Santa Ana, CA 92701



