

# SB 1421 The Right to Know Act

In 2018, the California Legislature passed SB 1421, **The Right to Know Act**, which gives the public the right to see certain records relating to police misconduct and serious uses of force. You can now request these records under the Public Records Act (“PRA”)—a law that gives the public the right to see the non-confidential documents of our state and local government agencies.

The ACLU of Southern California, along with other organizations, is in the process of requesting and publishing the records for all incidents that have now been made public from the 400+ law enforcement agencies within California. In the meantime, if you have a specific incident or officer that you would more information on, you can file your own Public Records Act request.

## What type of records can I now get access to?

SB 1421 gives the public the right to access **three categories of records** related to investigation and discipline of peace officers:

- Records related to any incident where a law enforcement officer **fired a gun at a person** (regardless of whether someone was hit), or **used force that resulted in serious injury or death**. You can get these records whether the department found the officer acted properly or not.<sup>1</sup>
- Records related to incidents where the agency found that an officer **committed sexual assault against a member of the public**—which includes attempts to coerce sex or proposition sex while on duty.<sup>2</sup>
- Records related to incidents where the agency found that an officer **engaged in dishonesty in the investigation, reporting, or prosecution of crime or police misconduct**. This kind of dishonesty could include filing a false report, testifying untruthfully, or planting evidence.<sup>3</sup>

You are entitled to any documents still in an agency’s possession, no matter how old they are.

<sup>1</sup> Cal. Penal Code §832.7(b)(1)(A)(i)-(ii).

<sup>2</sup> Cal. Penal Code §832.7(b)(1)(B)(i)-(ii).

<sup>3</sup> Cal. Penal Code §832.7(b)(1)(C).

<sup>4</sup> Cal. Penal Code §832.7(b)(8); 832.8(b).

<sup>5</sup> Cal. Penal Code §832.7(b)(5)-(6).

<sup>6</sup> See Cal. Penal Code §832.7(b)(2) for the full list of example documents that you can access under this law.

<sup>7</sup> Cal. Gov’t Code §6253.1(a).

## What type of records do I still not have access to?

The only records of police misconduct that you can access are those that fall under the three categories listed above: serious uses of force, sexual assault, and dishonesty related to investigations. Records of other types of police misconduct are still secret. Also, while you can access the records of investigation for serious uses of force regardless of whether the agency found that the use of force was wrong, for allegations of sexual assault and job-related dishonesty, you can only access those records if the agency determined that the officer was guilty of misconduct in violation of policy, and the time to appeal that determination has passed.<sup>4</sup>

In addition, the agency has the right to redact or withhold certain confidential information, like the names of witnesses, or the home address of the officer involved.<sup>5</sup>

## What type of documents will the agency produce?

The term “record” should include all documents related to the incident, including any reports created by the agency, the records of its investigations, photographic and video evidence, and the agency’s disciplinary decisions.<sup>6</sup> If you are only interested in certain types of records—like a disciplinary decision or an autopsy report—you can request the specific type of record you want, and that may actually help you get a response to your request more quickly. Agencies also have an obligation to work with you to identify the documents that are responsive to your request.<sup>7</sup>

## How do I submit a request for information?

To submit a request send the request via mail, fax, or email to the agency. Some agencies list specific departments or people whose job it is to respond to PRA requests, so check their websites or call them for further info. Always keep a copy of your request so that you can show what you submitted and when. We also have templates for sample requests on our website that you can use, and the First Amendment Coalition also has some useful information to help explain the PRA process.

## Does it cost money to make a request?

An agency is only allowed to charge for the “direct costs” of duplicating the records, or the cost to create certain documents if you are asking it to create a document—like a list—that it does not already have.<sup>8</sup> You should always ask the agency to waive costs in your initial request, but they are not required to do so. You also have the option to inspect the records by looking at them at the agency during its regular business hours, which you can do for free. You can always inspect documents for free, and then request copying only of those that you want.

## Find templates for PRA requests on our website:

[www.aclusocal.org/SB1421](http://www.aclusocal.org/SB1421)

## When should I expect a response?

The law requires that an agency respond to any Public Record Act request in 10 days, acknowledging the request, giving a timeline for a full response and informing the requestor if they are claiming any exemptions.<sup>9</sup> An agency can ask for a 14-day extension to respond to the request. The more extensive the request, or if it may require a lot of redactions to keep certain information confidential, the longer it may take to respond. While agencies are supposed to respond promptly, many agencies often take a long time. If you haven't heard from them, follow-up reminding them that you are still awaiting a response, and document every contact with the agency.

Also, if you are seeking information about a relatively-recent serious use of force, an agency has the right—but is not required—to temporarily withhold the relevant documents if there is an ongoing criminal or administrative investigation that could be harmed by the release of these documents.<sup>10</sup> How long the agency can withhold depends on whether investigation is criminal or just administrative, but in most cases it cannot withhold longer than 18 months after the incident occurred. If criminal charges are filed, the material can be withheld until the criminal case has ended.<sup>11</sup>

## What do I do if the law enforcement agency does not respond?

Every agency is required by law to respond and produce relevant, non-confidential documents that they do not otherwise have the right to withhold. If they have records that they need to disclose and do not, they are in violation of the law. You should first follow-up with the agency in writing and continue to request the documents. If they still do not respond, you can enforce your right to this information by bringing a lawsuit in Superior Court. If you win your challenge the agency can be required to pay your attorneys' fees.<sup>12</sup> So, you may be able to find a lawyer to represent you on contingency, who will get paid only if you collect the fees from your lawsuit.

<sup>8</sup> Cal. Gov't Code §6253.9(a)(2), (b).

<sup>9</sup> Cal. Gov't Code §6253(c).

<sup>10</sup> Cal. Gov't Code §832.7(b)(7).

<sup>11</sup> Cal. Gov't Code §832.7(b)(7)(B).

<sup>12</sup> Cal. Gov't Code §6259(d).