

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between “the Parties”: Plaintiffs-Petitioners Ali Winston, ACLU of Southern California, Kelly Hernandez, and Shawn Nee (collectively, “Petitioners”), and the City of Los Angeles and the Los Angeles Police Department (“LAPD”) (collectively, “the City”).

WHEREAS, on April 24, 2017, Petitioners filed a Corrected Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief alleging violations by LAPD of the California Public Records Act (“CPRA”) and the California Constitution, Cal. Const. art. I § 3, in the Superior Court of the State of California, County of Los Angeles, Case No. BS 169474 (“Litigation”);

WHEREAS, the City denies the allegations made by Petitioners in the Litigation;

WHEREAS, the Parties have agreed to settle the matters raised in the Litigation;

WHEREAS, by this Agreement, the Parties intend to settle any and all of Petitioners’ claims or causes of action, including those for injunctive relief, against the City, as well as claims for monetary relief, damages, attorneys’ fees, expert witness fees and expenses, and all other expenses and costs that have been or will be incurred, in connection with the allegations raised in the Litigation.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions contained herein, the Parties hereby agree as follows:

1. Public Records Access Policy. LAPD will adopt, maintain, and enforce an administrative policy, procedure and protocol regarding LAPD’s compliance with CPRA. The policy, procedure and protocol will be set forth in an LAPD Order, as attached in Exhibit A (“Order”). Within one month of execution of this agreement by all Parties (as further defined in Paragraph 18 below), LAPD will issue a written notice to all LAPD employees advising them of the Order. LAPD reserves the right to revise the Order so long as the revisions are consistent with the prevailing law and this Agreement. The City will make the Order available to the public online.
2. CPRA Unit. LAPD will adopt an LAPD CPRA Unit Manual (Manual) that it is fully consistent with the Order. LAPD reserves the right to revise the Manual so long as the revisions are consistent with the prevailing law and this Agreement. LAPD will make the Manual available to the public online. The procedures and protocols set forth in the Manual and relevant training will instruct LAPD staff of their legal obligations under CPRA and the relevant timeframes for responding to CPRA requests, as described more fully below.
 - a. To reflect the current law, the Manual will:
 - i. Unequivocally instruct LAPD staff on their legal obligations to respond to requests within 10 days, or 24 days in unusual circumstances, with the following information: (i) whether the information requested exists; (ii) whether LAPD will

- release any of the information, and if so, when and how; and (iii) the legal reasons for withholding any requested information;
- ii. Instruct staff that an extension of the 10-day response period is permitted only in unusual circumstances defined as follows: (i) the request requires the search and collection of records from multiple physical locations separate from the offices of the CPRA Unit and Department headquarters; (ii) the request requires the collection of voluminous records separate and distinct from each other; (iii) the request requires consultation with another agency that has a substantial interest in the processing of the request; or (iv) the request requires computer programming;
- iii. Instruct LAPD staff on their legal obligations to notify the requestor before extending the 10-day response period and to give the reason(s) for the extension and the date on which a determination is expected, not to exceed an additional 14 days;
- iv. Instruct LAPD staff on their legal obligations to produce requested records promptly; and
- v. Instruct LAPD staff on their legal duties to identify records and information responsive to the purpose of the request.
- b. The Manual will also:
 - i. Instruct LAPD staff that they may withhold records only if authorized by CPRA or other state or federal laws;
 - ii. Clarify the difference between CPRA's discretionary and mandatory exemptions and state that LAPD staff shall consult with a supervisor for further instruction when discretionary disclosure of a record appears appropriate in light of the public interest in disclosure and the absence of countervailing privacy and public safety concerns; and
 - iii. Instruct LAPD staff to disclose the record holding division if a requestor asks for such information in the course of communications about a CPRA request.
- c. Relevant training and/or instruction will include guidance about relevant aspects of LAPD's information technology and the physical locations of various types of records, and assistance with overcoming any logistical or practical barriers in obtaining records.
- 3. Online Public Records Portal. The City will maintain an online public records portal that enables members of the public to do the following as it relates to CPRA Requests to LAPD:
 - a. Submit public records requests online;
 - b. Browse, search and sort public records requests;
 - c. View the following information about all public records requests submitted to LAPD:
 - i. Date the request was received;
 - ii. Text of request (subject to redactions to protect privacy);
 - iii. CPRA Unit staff point of contact for request;

- iv. A timeline of activity that shows the date the request was opened, the date the request was closed, and correspondence between the requestor and LAPD staff about the request.
 - v. Date documents were produced;
 - vi. Documents produced in response to the request; and
 - vii. Date request was closed;
 - d. Download public records that LAPD produces in response to requests; and
 - e. Browse, sort, and search by subject matter for records available for download.
4. Proactive Disclosure. The City will institute and maintain processes for routine proactive disclosure of LAPD records and information in the public interest, and will make such documents available online for download. The City will:
- a. Post online, in a reasonably conspicuous or easily searchable manner, LAPD's current special orders and entire policy manual;
 - b. Indicate online the date it last confirmed that the special orders and policy manual available online reflect the most updated versions;
 - c. Make available to the public online all statistical data that LAPD reports to the California Department of Justice or the Bureau of Justice Statistics;
 - d. Continue to publish online, archive, and keep current the arrest incident data, crime incident data, drug possession arrest incident data, and vehicle and pedestrian stop data it currently maintains on the Los Angeles Open Data website; and
 - e. Publish online, archive, and keep current a dataset reflecting LAPD's jail booking data, including the following information about each booking: booking number or Release from Custody ("RFC") number, booking date and time, race of person booked, sex of person booked, date of birth or age of person booked, charge for which person was booked, location of booking, and disposition.
5. Responses to Petitioner Kelly Hernandez's Public Records Act Requests. By no later than May 1, 2019, the City will complete the following with respect to the records responsive to Petitioner Kelly Hernandez's public records request currently held at the City Records Center ("CRC"):
- i. Determine whether the records are exempt from disclosure under CPRA;
 - ii. Determine whether LAPD will disclose the records or any reasonably segregable portions of them;
 - iii. Digitize all responsive Officer Involved Shooting files; redact the names and address of victims and witnesses from the files; and disclose to Petitioner Kelly Hernandez the redacted copies of the files which shall include the officers' names; and
 - iv. Provide all other disclosable records or reasonably segregable portions of records to the University of California, Los Angeles to be digitized.
6. Historical Records Preservation. The City will make all reasonable efforts to preserve as "historical" both existing and future documents that fall into the following categories:

- a. Statistical Digest (Year)
- b. LAPD Annual Reports
- c. LAPD End of Year Reports
- d. LAPD Use of Force Year End Reviews
- e. Chief of Police General Staff Meeting Agendas
- f. Chief of Police Speeches, Press Releases, and Correspondence
- g. Department Manuals, Procedures Manuals, Tactical Manuals, and Division Manuals
- h. LAPD City COMPSTAT Profiles
- i. LAPD Citywide COMPSTAT Profiles
- j. RD Maps, Geographic Area Maps
- k. Awards and Decorations – Spreadsheet/Covers and Ceremony Programs
- l. The Beat Magazine
- m. LAPD Organization Charts
- n. OCOP (Office of the Chief of Police) Notices
- o. OCOS (Office of the Chief of Staff) Notices
- p. Administrative Orders
- q. Operations Orders
- r. Special Orders
- s. Uniform Committee Notices
- t. Photographs of key LAPD events, e.g. graduation photos, various ceremonies, facilities
- u. Police Commission Agenda Packages
- v. Police Commission Meeting Minutes
- w. Police Commission Agenda Packages - Confidential
- x. Categorical Use of Force Investigation, Review, and Adjudication Records and Officer-Involved Shooting Files
- y. OIG Audits, Investigations, and Reports
- z. Settlement Agreements

The City reserves the right to assert appropriate exemptions and/or privileges as to any documents it has designated “historical.” The City also reserves the right, at its discretion, to identify and preserve as “historical” other categories of documents not listed above.

7. Monitoring. The City will include a CPRA Inspection in LAPD’s annual audit plan for a term of five years following the execution of this agreement by all Parties (as described in

Paragraph 20 below). The CPRA Inspection will evaluate and report on the LAPD's compliance with both the CPRA and this Settlement Agreement, including the response and production times for public records requests submitted to LAPD, the frequency and propriety of 14-day extensions invoked pursuant to Gov't Code § 6253(c), the accuracy and thoroughness of LAPD's determination of whether it has responsive disclosable records, and the responsiveness of record holding divisions to requests for records from the CPRA Unit. The City will publish each CPRA Inspection report online. On an annual basis for a term of five years following the execution of this agreement, the City will present the results of that year's CPRA Inspection to the Los Angeles Board of Police Commissioners at a public meeting and allow for public comment on its presentation.

8. Payment Terms. Within ninety days of the execution of the agreement by all Parties (as described in Paragraph 20 below), the City shall deliver to counsel for Petitioners a check in the amount of \$57,500 payable to ACLU Foundation of Southern California in full and complete satisfaction of any and all claims for costs, expenses, disbursements, and attorney fees that the attorneys for Petitioners may have concerning any aspect of this litigation and their representation of Petitioners in this Action.
9. Dismissal with Prejudice. Petitioners agree within ten days of its receipt of payment of the funds described in paragraph 8 herein, they will file a Dismissal with Prejudice of the entire Action entitled *Ali Winston et al. v. Los Angeles Police Department*, Case No. BS 169474. Each Party hereby irrevocably authorizes and directs its attorneys of record to execute and deliver to the court the Dismissals with Prejudice, so that the same may be filed with the Court in accordance with this Agreement.
10. Each Party Responsible for Own Attorneys' Fees and Costs. Subject to the terms of paragraph 8 above, the Parties each shall be responsible for the payment of their own costs, attorneys' fees, and all other expenses in connection with the matters referred to in this Settlement Agreement.
11. Binding Agreement. This Settlement Agreement, and each and every item, covenant and condition hereof shall be binding upon and shall inure to the benefit of the respective heirs, successors, insurers, representatives, officers, directors, shareholders, and assigns of the respective Parties.
12. Meet and Confer. In the event that Plaintiffs allege that the City is not conforming with paragraphs 1-8 of this Agreement, Plaintiffs shall, within ten court days of discovering the alleged noncompliance, meet and confer with the City in order to set forth the nature and basis of their concerns, and shall give the City a reasonable opportunity to respond by explaining why they are in compliance with this Agreement or by taking corrective measures to come into compliance. If the Parties are unable to resolve the objections within thirty days of the parties' meeting, Plaintiffs may seek intervention of the Court via a motion for contempt or other relief, after providing the City ten days' notice of its intent to file such a motion.
13. Choice of Law. Each of the Parties hereto agrees that this Settlement Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the internal laws of the State of California.
14. No Modifications Unless in Writing, Signed by all Parties. No modification of this Settlement Agreement shall be effective unless made in a writing signed by all Parties.

15. Section 1123(b) Admissibility and Retention of Jurisdiction. Pursuant to California Evidence Code § 1123(b), the Parties agree and intend that this Settlement Agreement is fully enforceable and binding, and admissible in any court proceeding to enforce its terms under Code of Civil Procedure § 664.6. The Parties agree that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement pursuant to Code of Civil Procedure § 664.6.

16. Entire Agreement. This Settlement Agreement represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral.

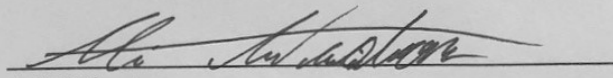
17. Invalidity; Severability. In case any one or more of the provisions of this Settlement Agreement shall be deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

18. Construction. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

19. Multiple Copies. This Settlement Agreement may be executed in any number of counterparts and multiple copies, and may be transmitted by fax or e-mail, each of which is to be considered as if it were original, but all of which together will constitute one and the same Agreement which shall be fully effective against all persons executing.

20. Council Approval. The Parties understand and agree that this Agreement is subject to final approval by City officers and or officials, including, but not limited to, the City Council ("Official Approval"). The execution of this Agreement is subject to and conditioned upon the granting of Official Approval to make this Agreement final and binding. Within 14 days of the signing of this Agreement by all parties, the person signing this Agreement on behalf of the City will submit a written recommendation that this Agreement be approved.

Date: 4/24/19


Ali Winston

Date: _____

ACLU of Southern California

Date: _____

Shawn Nee

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Date: _____

Ali Winston

Date: 5/21/19


ACLU of Southern California

Date: _____

Shawn Nee

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Date: _____

Ali Winston

Date: _____

ACLU of Southern California

Date: 4/10/19


Shawn Nee

Date: 3-12-19



Kelly Hernandez

Date: _____

Los Angeles Police Department
City of Los Angeles, by and through its counsel, A.
Patricia Ursea, Los Angeles City Attorney's Office

EXHIBIT A

OFFICE OF THE CHIEF OF POLICE

ADMINISTRATIVE ORDER NO.

SUBJECT: CALIFORNIA PUBLIC RECORDS ACT – ESTABLISHED; AND, REQUESTS BY THE PUBLIC FOR INFORMATION CONTAINED IN POLICE RECORDS – REVISED

PURPOSE: The California Public Records Act (CPRA), Government Code Sections 6250 – 6257, establishes the right of the public to access public records. Department records are subject to public disclosure unless a specific legal exemption exists. The purpose of this Order is to revise and establish various Department Manual Sections pertaining to the CPRA and other information release procedures.

This Order supersedes Office of the Chief of Police Notice, *Guidelines for Handling Requests for Department Statistics or Crime Data*, dated June 12, 2012.

PROCEDURE:

- I. CALIFORNIA PUBLIC RECORDS ACT – ESTABLISHED.** Department Manual Section 3/406.30, *California Public Records Act*, has been established and is attached.
- II. REQUESTS BY THE PUBLIC FOR INFORMATION CONTAINED IN POLICE RECORDS – REVISED.** Department Manual Section 3/406.20, *Requests by the Public for Information Contained in Police Records*, has been revised. Attached is the revised Department Manual section with the revisions indicated in italics.

AMENDMENTS: This Order adds Section 3/406.30, and amends Section 3/406.20 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION “D”

**DEPARTMENT MANUAL
VOLUME III
Revised by Administrative Order No. , 2019**

406.20 REQUESTS BY THE PUBLIC FOR INFORMATION CONTAINED IN POLICE RECORDS.

Routine Requests. Routine requests for copies of, or information contained in, crime, arrest, or traffic reports shall be forwarded to the Commanding Officer, Records and Identification (R&I) Division. Community members requesting such information may be directed to <http://lapdonline.org/faqs> for specific instructions.

Exception: News releases and information about newsworthy incidents shall be handled in accordance with Section 3/406.10 of the Department Manual.

Requests for Master Arrest Blotter Information. Requests for Master Arrest Blotter Information *shall* be submitted in writing to:

The Commanding Officer, *Legal Affairs* Division
200 N. Main Street, 7th Floor
Los Angeles, CA 90012

Exception: Requests for Blotter information for incidents less than 24 hours old may be made verbally to either the Commanding Officer, R&I Division, for Department-wide arrest information, or to the watch commander of the Department jail facility for arrests occurring within the Area(s) serviced by the jail.

406.30 CALIFORNIA PUBLIC RECORDS ACT. *The Department is committed to upholding the right of the public to access records and information concerning the conduct of the people's business consistent with the Constitution of the State of California and the California Public Records Act (CPRA). The Department recognizes its obligation to comply with the CPRA, to facilitate public records access, and to promote a culture of transparency and accountability. Pursuant to the CPRA, Government Code Sections 6250 – 6257, all Department records are public records and shall be disclosed to the public, upon request, unless there is a specific legal basis not to do so. The CPRA contains exemptions from disclosure and there are additional laws outside the CPRA that create exemptions from disclosure. The CPRA requires that, within 10 calendar days from receiving a request, the Department notify the requestor in writing whether the Department is in possession of the requested public records and any exemptions asserted by Department. When unusual circumstances exist, as defined by the CPRA, the Department may extend this time to respond by an additional 14 calendar days. The Department must then promptly provide the requestor access to or copies of the responsive and non-exempt records.*

Method of Accepting Requests. The Department accepts CPRA requests in person, by phone, in writing, or online at lapdonline.org.

Responsibilities of the California Public Records Act Unit. The CPRA Unit, Discovery Section, Legal Affairs Division, has primary responsibility for accepting, processing, and responding to CPRA requests for the Department. The CPRA Unit shall log, process, and respond to every public record request it receives, in accordance with the CPRA.

DEPARTMENT MANUAL
VOLUME III
Revised by Administrative Order No. , 2019

The CPRA Unit employees shall assist requestors by helping to identify records and information applicable to the request, describing the information technology and physical location in which the records exist, and providing suggestions for expediting the production of records.

Responsibilities of Department Employees. *The duties of Department employees in response to a request for assistance from the CPRA Unit include, but are not limited to:*

- *Reviewing and responding to a request for assistance from the CPRA Unit;*
- *Describing categories of potentially applicable documents and identifying locations where responsive documents may be located within the unit for which the Department employee is responsible;*
- *Identifying other Department employees with knowledge of possible responsive documents and/or their locations;*
- *Searching for requested documents; and,*
- *Reviewing documents and assisting the CPRA Unit to identify information that requires withholding and/or redaction.*

A Department employee responding to a request for records from the CPRA Unit shall provide all requested records to the CPRA Unit. If a Department employee believes that some or all the information in a record is protected from public disclosure, they should provide the record to the CPRA Unit and recommend to the CPRA Unit what information should be withheld and why. If for any reason a Department employee cannot respond to a request for assistance from the CPRA Unit within the time requested by the CPRA Unit, the employee shall notify the CPRA Unit promptly that he or she cannot comply with the request.

Any Department employee not assigned to the CPRA Unit who receives a public records request from a member of the public shall promptly notify his or her supervisor of the request.

Responsibilities of Department Supervisors. *A supervisor who receives a public records request, shall attempt to determine if the requested records are readily available for public release. Many frequently requested Department records are readily available online at lapdonline.org or from other Department resources. It is not necessary to refer such requests to the CPRA Unit. If the requested records are readily available for public release, the supervisor shall provide the records to the requestor. Supervisors may call the CPRA Unit for advice regarding such requests. If the requested records are not readily available for public release, or if the requestor is not satisfied by the records provided, the requestor should be advised to submit a CPRA request to the CPRA Unit. The supervisor may also accept the request, and forward it to the CPRA Unit no more than one calendar day after receipt of the request.*

Employee Accountability. *Any Department employee may be assigned to assist in the work of responding to a public records request and/or preparing records for disclosure. A Department employee who willfully withholds Department records or information relating to a CPRA request or willfully violates any other obligation under this policy may be subject to discipline.*