

THE RIGHT TO KNOW

How to Fulfill the Public's
Right of Access to Police Records

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATIONS

California



INTRODUCTION

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

– California Public Records Act, Gov't Code § 6250

Democracy depends on the public's right to know what its government is doing, so it can hold officials accountable. California voters recognized the fundamental importance of public access to documents by enshrining the right of access in the state constitution.¹ But the right of access does not always work smoothly in practice. Too often, people who request records from their local police departments receive responses stating that due to a “backlog of records requests” or “shortage of personnel,” their requests will not be promptly addressed as required by law. Others receive no response at all. Such violations of the right of access generate costly litigation in the forms of both individual California Public Records Act (“CPRA”) enforcement actions and pattern and practice suits challenging systemic failures to provide access.²

Both the California Constitution and the CPRA mandate that agencies provide the public access to records, and neither law relieves a government agency of the obligation to respond to public records requests because it so poorly handled past requests that it developed a backlog. If agencies lack the staffing, technology, or training to ensure timely public access to their records, state and local governments have a duty to allocate resources for that purpose. In most cases, however, agencies will be able to fulfill the public's right of access with existing resources by removing information bottlenecks that require them to spend unnecessary time and expense on responding to records requests.

Agencies can take three straightforward steps to meet their legal and democratic duties to ensure public access. *First*, they can proactively publish records of public interest, reducing the need for them to respond to redundant individual records requests. *Second*, they can streamline public records processing by adopting policies that maximize access while avoiding unnecessary disputes with members of the public. *Third*, they can implement accountability mechanisms to identify and address any systemic problems, staff, or agency subdivisions that interfere with responding to records requests.

This guide focuses on the ways that law enforcement agencies unnecessarily obstruct the flow of public information – and the steps they can take to dismantle the barriers to public access they put up. But California agencies of all kinds can take similar steps to conduct “the people's business” in an open and accountable way.

In **Winston v. Los Angeles Police Department**, the ACLU Foundation of Southern California brought suit on behalf of a journalist, an academic researcher, and an activist—all of whom frequently use records requests to inform and educate the public about LAPD. The lawsuit challenged LAPD's systemic failure to respond to requests in accordance with the California Public Records Act. In August 2019, the parties reached a settlement with the City of Los Angeles, which agreed to adopt many of the structural changes described here in order to eliminate its request backlog and better respond to members of the public seeking information about the police.

STEP 1. PROACTIVELY DISCLOSE RECORDS TO THE PUBLIC

Having members of the public file specific requests for information and wait for weeks for government employees to review and respond to each request is inefficient for both the government and the public. Government agencies can avoid the burden of responding to common requests and conserve their resources to respond promptly to records requests that really do require individualized attention by proactively publishing records of public interest. When the public can easily find the information they seek themselves, they will not submit as many records requests. Agency staff will not have to spend time locating and disclosing to requestors the same records over and over again; they can simply refer requestors to the webpage or data portal where the agency has already posted the requested information.³ Indeed, the federal government and organizations like the Sunlight Foundation have found that proactive disclosure of public information is key to efficient records request processing and the prevention and elimination of request backlogs.⁴

There are a number of ways that agencies can proactively make information readily accessible to the public:

- **Publish documents of significant public interest on agency websites as soon as they are available.**⁵

The public interest in certain police records can be presumed. Reports about serious uses of force like police shootings and significant misconduct by law enforcement are the focus of substantial public concern. The California Legislature recognized this when it passed the Right to Know Act, SB 1421, which requires disclosure of such records. Accordingly, all California law enforcement agencies should proactively publish online their records subject to disclosure under SB 1421. (See Appendix A: Model Publication Ordinance.) By doing so, they can reduce and better manage the influx of requests for this important information.

Law enforcement agencies can also reduce administrative burdens and ensure compliance with recently enacted state law by conspicuously posting online and regularly updating their full policy and training manuals (including Special Orders, training bulletins and tactical directives).⁶ When agencies do not publish their policies online and update them with sufficient frequency, they force members of the public to submit duplicative records requests for documents essential for police accountability.⁷

- **Utilize online public records portals to process records requests and make records disclosed in response to past requests searchable and available for download by members of the public.**

Public records portals can make request processing more efficient and reduce the number of redundant requests. In order for these benefits to be realized, however, a portal must have certain important capabilities. The portal must enable requestors to submit requests electronically and determine the status of their requests, including the date the agency estimates it will be producing responsive records.⁸ The portal must also enable potential requestors to determine whether the agency has already collected and produced to others the records they seek—and if so, to access those records without submitting a duplicative request.⁹ Members of the public must be able to search and browse the portal for previously disclosed records without a registration requirement; the barrier of a registration requirement will dissuade many from using the system.

- **Use open data portals to publish data sets that enhance police accountability.**

Law enforcement agencies collect data that form disclosable public records, such as vehicle and pedestrian stop data, arrest data, booking data, and use of force data that can enhance public oversight of policing.¹⁰ For example, state law requires law enforcement agencies to report information pursuant to AB 953, the Racial Identity Profiling Act, and AB 71, California’s police use of force data reporting law. Agencies should make this kind of data available to the public promptly through data portals, such as the Open Justice portal maintained by California Department of Justice, which allows the public to download a wide variety of criminal justice data in basic database format, or to create charts using basic analysis tools.¹¹ Data should be published in an open format that facilitates analysis by scholars and journalists, and should not include any personal information about members of the public.¹²

- **Collaborate with universities and other academic or research institutions to make records of historical significance publicly accessible.**

In many places in California, municipal law provides for historically significant records to be transmitted to and maintained by an entity like the city clerk or archive.¹³ These entities can reduce the labor required to respond to individual requests for such records by proactively posting the records in organized, searchable online archives. If the local clerk or archive does not have capacity to provide such robust public access, they should consider transferring historically significant records to an outside institution that does (such as a library or university)—subject to an agreement that the institution will not destroy the records, will maintain them according to commonly accepted archival standards, and will make them available to the public.¹⁴

Many municipal records retention schedules allow for premature destruction of records of significant public interest and research value, such as files on officer-involved shootings and serious misconduct investigations. To avoid infringing the public’s strong interest in access to such records, law enforcement agencies should take care to preserve them and recommend that the local retention schedule designate the records “historical” or otherwise provide for an extended retention period. (See Appendix B: Model Ordinance to Amend Records Retention Schedule).

The **Winston** settlement requires LAPD to proactively publish:

- Its current special orders and entire policy manual
- Data on arrests, vehicle and pedestrian stops, and jail booking
- All statistical data LAPD reports to the state Department of Justice or Bureau of Justice Statistics
- Records requested & produced through the city’s online public records portal

STEP 2. IMPLEMENT POLICIES THAT STREAMLINE PUBLIC ACCESS TO RECORDS

Government agencies frequently turn the presumption of public access on its head by refusing to disclose records if any argument can be made for withholding, a stance that not only contradicts California's constitutional commitment to open government, but also leads to costly and time-consuming disputes over access. Agencies can streamline public access to records by eliminating practices that make the records request process unnecessarily contentious and cumbersome, and by adopting policies that establish a presumption of access.

State law allows agencies to deny requests for certain categories of records, often referred to as "CPRA exemptions."¹⁵ Most CPRA exemptions are permissive, in that they legally permit agencies to withhold certain records but do not prohibit disclosure. Too often, agencies default to claiming permissive exemptions, even in cases where releasing the records in question would be in the public interest.

For example, many law enforcement agencies claim that the CPRA exemption for records of law enforcement investigations applies whenever they receive a request related to policing activity. Agencies often use boilerplate response letters to assert broad claims exemption of exemption and deny access to categories of documents. These shortsighted practices run contrary to the California Constitution's declaration that limitations on the people's right of access must be narrowly construed, deny the public important information about law enforcement practices, and create the impression that the agency wants to keep its activities from public scrutiny.¹⁶

Claiming the investigatory exemption on a blanket basis generates complicated, time-consuming arguments between requestors and agency staff about the scope of the exemption, which can in turn lead to costly and even more time-consuming litigation. Not every record of police functions is an exempt record of investigation.¹⁷ And some records of investigation, or parts of them, *must* be disclosed to requestors.¹⁸ Unnecessarily claiming exemptions may force agency staff to perform pointless but burdensome document review or redaction—such as in response to requests for records about police activities completed many years ago.

Law enforcement agencies should instead implement a presumption of public access to their records. The presumption can take the form of internal agency policy (See Appendix C: Model CPRA Policy) or a local "sunshine ordinance."¹⁹ In either case, the policy should establish that the agency will disclose records requested by a member of the public except where doing so is prohibited by law or where the public interest in non-disclosure outweighs the public interest in release, such as when disclosure would create a threat to public safety or the rights of another person.²⁰ The CPRA approves the adoption of such policies, stating: "[A] state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth [in the Act]."²¹ Adopting a policy of waiving permissive exemptions when disclosure is in the public interest will indeed make access to records greater, faster, and more efficient, by sparing agencies and members of the public from having to debate exemptions in many cases.

STEP 3. ADOPT ACCOUNTABILITY MEASURES

Policies that commit to meaningful public access are crucial, but policies aren't always followed in practice. Accountability measures ensure that government agencies live up to their responsibilities to provide the public with prompt access to records. Without accountability structures, systemic problems (like an agency's consistent failure to respond to public records requests within the timeframes required by law) may go unnoticed or unremedied. Accountability measures are also important to address individuals or agency subdivisions who create information bottlenecks by failing to do their part.

On the agency level, accountability can take the form of periodic audits by an independent inspector or civilian watchdog, or a requirement for the agency to report performance metrics to the public and to oversight bodies.²² Audits can easily examine relevant metrics such as the total number of public records requests submitted in a given period; the total number of requests completed; the average time the agency took to respond; and the average time it took to produce records.²³ Public records portals can report such metrics on a real-time basis, enabling the public to hold agencies to account when they fall behind.

Agency policy and protocol can institute the structures for individual accountability. Agencies should establish clear performance expectations for the staff responsible for responding to public records requests. Agency guidelines should require staff to meet the legal requirement to respond to records requests within 10 days consistently, and they should inform staff of the duty to "promptly" produce responsive records.²⁴ Any failure to meet a deadline set by internal protocols should trigger supervisory review. Agency policy should authorize discipline of any employee who willfully obstructs or neglects the duty to provide the public with access to records. The policy should declare ensuring public access to agency records the responsibility of every individual staff member. (See Appendix C: Model CPRA policy).

The **Winston** settlement requires the following accountability measures:

- **Annual audits of LAPD's compliance with the CPRA, evaluating:**
 - Response and production times for public records requests
 - Frequency and propriety of 14-day extensions invoked pursuant to Gov't Code § 6253(c)
 - Accuracy and thoroughness of LAPD's determination of whether it has responsive disclosable records
 - Responsiveness of record-holding divisions to requests for records
- **Public presentation of CPRA audit at Board of Police Commissioners meeting and opportunity for public comment**
- **Department CPRA policy stating:**
 - LAPD employees will log, process, and respond to every public records request in accordance with the CPRA
 - Any LAPD employee may be assigned work related to responding to a public records request
 - An LAPD employee's willful withholding of records or violation of Department CPRA policy is subject to discipline.

APPENDICES

- Appendix A: Model Publication Ordinance
- Appendix B: Model Ordinance to Amend Records Retention Schedule
- Appendix C: Model CPRA Policy

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- ¹ Cal. Const., Art. I, sec. 3(b)(1) (“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”).
- ² See, e.g., *Winston v. L.A. Police Dept.*, No. BS169474 (L.A. Sup. Ct., filed Apr. 25, 2017); Jack Dolan, “L.A. County has repeatedly violated state open records laws, L.A. Times lawsuit alleges,” L.A. Times (Mar. 21, 2018), available at <https://www.latimes.com/local/lanow/la-me-ln-county-records-lawsuit-20180321-story.html>.
- ³ The CPRA specifically approves referring requestors to records posted online to facilitate access. Cal. Gov’t Code § 6253(f).
- ⁴ Att’y Gen. Holder’s Memo. for Heads of Exec. Depts. and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 51879 (2009), available at <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf> (noting that posting more information online reduces the need for individual information requests and may help reduce agency backlogs); FOIA Post, “OIP Guidance: President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines - Creating a New Era of Open Government” (posted 4/17/09) (advising that “the more information that is made available on agency websites, the greater the potential to reduce the number of individual requests for records”); FOIA Update, Vol. XVI, No. 1, at 1-2 (discussing affirmative information disclosure as a means to meet public demand); Sunlight Foundation, Open Data Policy Guidelines, 2 (March 2014), available at <https://sunlightfoundation.com/opendataguidelines/>.
- ⁵ Under federal law, agencies are required to post records that are likely to become the subject of a public records request, as well as records that have already been the subject of three or more public records requests. 5 U.S.C. § 552(a)(2)(D). To meet this requirement, many federal agencies have created “online reading rooms” where they post records of public interest. Some cities have created their own “reading rooms” to serve the same purpose. See, e.g., District of Columbia Government’s Freedom of Information Act Public Access Website, FOIA Reading Room, <https://foia-dc.gov/app/readingroom.aspx>.
- ⁶ SB 978 (signed into law Sep. 30, 2018) (finding that “[m]aking regulations of law enforcement agencies easily accessible to the public helps educate the public about law enforcement policies, practices, and procedures, increases communication and community trust, and enhances transparency, while saving costs and labor associated with responding to individual requests for this information”).
- ⁷ The Los Angeles Office of the Inspector General (“OIG”) found that posting policies and directives online for public scrutiny is a national best practice for police departments. OIG, Review of National Best Practices (May 2, 2017), 48. Cf. 5 U.S.C. § 552(a)(2)(C) (requiring federal agencies to proactively disclose in electronic format “instructions to staff that affect a member of the public”).
- ⁸ The CPRA, Cal. Gov’t Code § 6253(c), entitles members of the public to receive information about whether and when the agency will disclose records responsive to their public records requests.
- ⁹ As noted, federal law requires agencies to publish records that have been the subject of three or more public records requests. 5 U.S.C. § 552(a)(2)(D). California agencies should consider adopting a similar policy.
- ¹⁰ The CPRA specifically recognizes the “scholarly, journalistic, [and] political” value of such data. Cal. Gov’t Code § 6253(f)(3).
- ¹¹ See Open Justice, California Department of Justice, at <https://openjustice.doj.ca.gov/>.
- ¹² See, e.g., Cal. Gov’t Code § 12525.5(d) (barring the publication of the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure).
- ¹³ For example, the Los Angeles Administrative Code already requires LAPD to preserve historical records and transmit them to the City Archive to be maintained by the City Clerk. L.A. Admin. Code § 12.2. The City Clerk, in turn, is required

to “develop and maintain a City historical records program, including a City Archive,” and to “classify, index and store in the City Archives, where applicable, all records . . . deemed . . . to have historical value”; and to “cause historical records to be suitably protected and preserved.” *Id.*

¹⁴ There is precedent for this kind of arrangement. The CPRA provides that records held by the Governor must not be destroyed after the expiration of the two-year mandatory retention period for public records, but rather must be transferred to the State Archives or an educational or research institution in California. Cal. Gov’t Code § 6268. The California State Archives currently maintains some local county records. The City of Los Angeles’s administrative code provides that the records of the mayor or city council members may be transferred to “a public or private academic institution having suitable library facilities.” L.A. Admin. Code § 12.2(a)(4). The UCLA Library serves as the archive for former Los Angeles Mayor Tom Bradley’s administrative papers—which include some material from Bradley’s service in the Los Angeles Police Department—and the Los Angeles Unified School District Board of Education records, 1875-2012. Pursuant to the Winston settlement, the UCLA Library will also take possession of certain LAPD records in order to digitize them.

¹⁵ See Cal. Gov’t Code § 6254.

¹⁶ Cal. Const. Art. 1, sec. 3(b)(2) (“A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”).

¹⁷ See e.g., *ACLU of Southern Cal. v. Super. Ct. of L.A. (County of L.A. et. al. Real Parties)*, 3 Cal. 5th 1032 (2017) (rejecting argument that raw Automated License Plate Reader data are exempt records of investigation).

¹⁸ Cal. Gov’t Code § 6254(f)(1)-(4).

¹⁹ See, e.g., *Oakland Muni. Code § 2.20.220*; *S.F. Admin. Code § 67.24*.

²⁰ For example, Oakland and San Francisco have Sunshine Ordinances that provide for disclosure of records of closed investigations, with the exception of the following information: (a) names of juvenile witnesses or suspects; (b) personal or otherwise private information where disclosure would constitute an unwarranted invasion of privacy; (c) the identity of a confidential source; (d) secret investigative techniques or procedures; (e) information where disclosure would endanger law enforcement personnel, a witness, or a party; (f) information where disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely. *Oakland Muni. Code § 2.20.220(D)*; *S.F. Admin. Code § 67.24(d)*.

²¹ Cal. Gov’t Code § 6253(e).

²² For a law enforcement agency, relevant oversight bodies may include any civilian oversight commission in addition to the city council or board of supervisors.

²³ Other potential metrics include the number of CPRA litigation matters filed, the number of 14-day extensions invoked, and information about the oldest records requests not yet been fulfilled. The federal Freedom of Information Act (“FOIA”) requires agencies to submit detailed annual reports with performance metrics, along with a list of their ten oldest requests and an account of what the agency has done to resolve them. 5 U.S.C. § 552(e). Similarly, the Civil Justice Reform Act (CJRA) requires the preparation of semiannual reports showing, by U.S. district judge and magistrate judge, all motions, submitted trials, and bankruptcy appeals pending more than six months, as well as all civil cases pending more than three years. 28 U.S.C. § 476. Per the U.S. Courts website: “The reporting requirements under the CJRA are designed to help reduce both costs and delays in civil litigation in the district courts. The information also may be used to evaluate demands on the district courts’ resources.” In other words, CJRA reports are designed to hold judges accountable for timely resolving matters pending on their dockets, while allowing for detection of broader resource constraints. California agencies can adopt similar accountability measures.

²⁴ Cal. Gov’t Code § 6253(c).

APPENDIX A Model Publication Ordinance

MODEL ORDINANCE FOR PROACTIVE PUBLICATION OF SB 1421 RECORDS

Section 1. Findings

The People of [City/County] find and declare:

- (a) The people of [City/County] have vested its law enforcement officers with extraordinary authority, including the powers to detain, search, arrest, and use deadly force. The misuse of that authority not only harms individual targets of officer misconduct, but also the public's trust in the ability of law enforcement to contribute to community safety.
- (b) The public has a fundamental right to know what happened when an officer kills or seriously injures someone, sexually assaults someone, or otherwise engages in serious misconduct. The public has a legal right to access records relating to such incidents, described in Cal. Penal Code § 832.7(b). These records are crucial for the public to understand how officers interact with the communities they police and how law enforcement agencies respond to the most serious allegations of misconduct.
- (c) There is significant public interest in these records. Members of the public, including those directly impacted by police use of force, media organizations, and police accountability organizations, have filed requests under the California Public Records Act seeking such records. Some of the requests are duplicative. While fulfilling requests in a complete and timely manner is both mandated by law and of utmost importance, doing so poses costs to the [City/County]. Moreover, while individual requestors may work to make all or some of the requested records available to the general public, [City/County] cannot solely rely on them to facilitate public access or to satisfy its legal obligation to respond to every request.
- (d) The California Public Records Act authorizes local jurisdictions to adopt policies that allow for faster or more efficient access to public records than specifically required under the Act. It also allows an agency to comply with its requirements under the Act by posting records on a website and directing individuals to that site.
- (e) Proactive online publication of records that must be disclosed to the public pursuant to Cal. Penal Code § 832.7(b) is the most efficient way to maximize the public's access to important information and to satisfy the [City/County's] obligations under the California Public Records Act. A policy of proactive publication also reflects [City's/County's] commitment to transparency in policing and the crucial role that information access plays in keeping law enforcement agencies accountable to the public they serve.

Section 2. Purpose

The purpose of this [Article/Chapter] is to create a process by which records designated as public under the California Public Records Act and California Penal Code Section 832.7(b) are routinely published online so that the public may gain access to them in the most immediate and efficient manner. Publication shall include records related to incidents occurring both before and after January 1, 2019.

Section 3. Definitions

For the purposes of this [Article/Chapter] the following definitions shall apply:

- (a) "Agency" means an agency operating within [City/County] that employs peace officers and is subject to the provisions of the California Public Records Act, Cal. Gov. Code Sec. 6250, et seq.
- (b) "Peace officer" has the same meaning as in paragraph (1) of subdivision (g) of Section 12525.5 of the California Government Code.
- (c) "Public records" has the same meaning as in California Government Code Section 6252(e).
- (d) "Personnel record" means any file maintained under a peace officer's name by his or her employing agency as

defined by California Penal Code Section 832.8(a).

- (e) "Serious use of force" means any incident involving the discharge of a firearm at a person or an incident in which the use of force resulted in great bodily injury, as defined by California Penal Code Section 832.7(b)(1)(A).
- (f) "Sexual assault" means the commission or attempted initiation of a sexual act as defined by California Penal Code Section 832.7(b)(1)(B).
- (g) "Official dishonesty" means a finding of dishonesty relating to the reporting, investigation, or prosecution of a crime, as defined by California Penal Code Section 832.7(b)(1)(C).
- (h) "Sustained" means a final determination by an investigating agency as defined by California Penal Code Section 832.8(b).

Section 4. Publication of Public Records

- (a) An agency shall publish on its website all public records relating to the report, investigation, or findings of any the following involving a peace officer or custodial officer employed by that agency:
 - (1) An incident involving a serious use of force;
 - (2) A sustained finding that an officer committed sexual assault; or
 - (3) A sustained finding that a peace officer committed official dishonesty.
- (b) Agencies shall publish public records pursuant to the following timelines:
 - (1) All public records that relate to an incident occurring after [EFFECTIVE DATE OF ORDINANCE], shall be published on the official website of the agency within thirty (30) days of creation unless withheld or delayed as specified in this section. All public records withheld or delayed as specified in this section shall be published on the official website of the agency within thirty (30) days of disclosure. For purposes of this provision, a public record is created when the following occurs:
 - (A) If the record relates to a serious use of force, the record is created at the time that it is prepared, owned, used or retained by the local agency.
 - (B) If the record relates to a sustained finding of sexual assault or dishonesty:
 - (i) A public record that is also a personnel record is created when the incident that renders Cal. Penal Code Section 832.7(b)(1)(B)-(C) applicable is sustained and the time to appeal has expired or the officer has separated from the agency and thereby waived any further appeal.
 - (ii) A public record that is not a personnel record is created at the time that it is first prepared, owned, used or retained by the local agency.
 - (2) Any public record that relates to an incident that occurred prior to [EFFECTIVE DATE OF ORDINANCE] shall be published on the official website of the agency within thirty (30) days after it is identified as a public record responsive to a request made under the California Public Records Act. An agency may also search for and locate public records in its possession that have not been requested pursuant to the Public Records Act for publication.
- (c) The public records shall be organized on the agency's website to display the following information for each incident:
 - (1) The date of the incident;
 - (2) The name of the officer(s) involved in the incident;
 - (3) If the incident is a use of force disclosable under California Penal Code Section 832.7(b)(1)(A), the name of the subject(s) of the use of force;
 - (4) If the incident relates to sexual assault or official dishonesty disclosable under California Penal Code Section 832.7(b)(1)(B)-(C), the department policy violated;
 - (5) If an agency is claiming a basis for withholding any records or portion of any record pursuant to an

applicable exemption specified in California Penal Code Section 832.7(b)(5)-(7), the above information and the grounds for withholding; and

(6) Any additional information about the incident the agency chooses to publish.

- (d) At the time of publication on the agency's website, the public records should reflect all redactions required pursuant to California Penal Code Section 832.7(b)(5).
- (e) An agency may not withhold or delay production of any record relating to serious uses of force, official dishonesty, or sexual assault on the basis of any statutory grounds for withholding records in response to a California Public Records Act Request other than those specified in California Penal Code Section 832.7(b)(5)-(7).
- (f) An agency may not delay production of records relating to a serious use of force pursuant to any provision of California Penal Code Section 832.7(b)(5)-(7) beyond 60 days after the use of force, unless it publishes a particularized statement of reasons why the interest in delaying disclosure clearly outweighs the public interest in disclosure for that specific incident.
- (g) Nothing in this [Article/Chapter] shall preclude an agency from providing greater access to public records, nor preclude an agency from waiving any applicable exemptions to the records disclosed under this ordinance or any other records in the agency's possession.

APPENDIX B Model Motion to Amend Retention Schedule

MOTION

[DATE]

The people of [City/County] have vested its law enforcement officers with extraordinary authority, including the powers to detain, search, arrest, and use deadly force. The misuse of that authority not only harms individual targets of officer misconduct, but also the public's trust in the ability of law enforcement to contribute to community safety. Law enforcement shootings, sexual misconduct, and dishonesty understandably have been subjects of widespread public concern.

For decades, the law kept secret records of law enforcement departments' investigations into their officers' uses of deadly force, and records of investigations in which officers were found by their own departments to have violated the public's trust in the most egregious ways, including by committing sexual assaults against members of the public or lying in law enforcement reports or on the stand when an individual's freedom hung in the balance. This changed in 2018, when the California Legislature enacted SB 1421 (Skinner), which made records of such investigations accessible to the public through the California Public Records Act, Gov. Code § 6250 et seq. The public now has a legal right to access records, described in Cal. Penal Code § 832.7(b), which are crucial to understanding how officers have interacted with the communities they police and how law enforcement agencies have responded to the most serious allegations of misconduct.

Such records contain information used by policymakers and administrators to make decisions and develop policies regarding public safety on behalf of [City/County]. Retention of these records guarantees the public's right to know and demonstrates [City's/County's] commitment to the crucial role that transparency plays in keeping law enforcement agencies accountable to the public it serves. The records thus have historical and archival value because they contain information of continuing and enduring value to the [City/County], provide valuable research data, and document the history and development of the [City/County] and its departments.

I, THEREFORE, MOVE that the [Council/Board of Supervisors] approve the revised [City/County] Records Retention Schedule and the Records Retention Schedule for the [Police Department/Sheriff] to retain the records identified as available for public inspection in Cal. Penal Code § 832.7(b), and to adopt a resolution directing [City/County] Departments/agencies, including the [Police Department/Sheriff], to use these Records Retention Schedules.

APPENDIX B.1 Model Retention Schedule

RECORD NO.	RECORD TITLE	DEPARTMENT(S)	RETENTION PERIOD	RECORD TYPE
###-###	Officer-involved shooting files	Police/Sheriff; Office of the Inspector General; Civilian Oversight Commission; District Attorney	PE (Permanent)	H (Historical)
###-###	Officer use of force reports, investigation files, case packages, and related documentation	Police/Sheriff; Office of the Inspector General; Civilian Oversight Commission; District Attorney	PE (Permanent): Cal. Gov't Code § 832.7(b) records 5 years: all others	H (Historical)
###-###	Complaint & complaint investigation files (complaints, investigation reports, findings, related records)	Police/Sheriff; Office of the Inspector General; Civilian Oversight Commission	PE (Permanent): Cal. Gov't Code § 832.7(b) records 5 years: all others	H (Historical): Cal. Gov't Code § 832.7(b) records C (Confidential): all others
###-###	Internal affairs investigation case files; discipline reports	Police/Sheriff; Office of the Inspector General; Civilian Oversight Commission	PE (Permanent): Cal. Gov't Code § 832.7(b) records 5 years: all others	H (Historical): Cal. Gov't Code § 832.7(b) records C (Confidential): all others
###-###	Pitchess motions - requests and files	Police/Sheriff; Office of the Inspector General	PE (Permanent): Cal. Gov't Code § 832.7(b) records 5 years: all others	H (Historical): Cal. Gov't Code § 832.7(b) records C (Confidential): all others
###-###	Workpapers and audio tapes for audits & investigations	Office of the Inspector General; Civilian Oversight Commission	PE (Permanent): Cal. Gov't Code § 832.7(b) records 5 years: all others	H (Historical)

APPENDIX C Model CPRA Policy

SUBJECT: PUBLIC RECORDS ACCESS

PURPOSE:

The purposes of this order are to revise the Department's records policy to reflect the obligations of all Department members under state law to facilitate public records access, and to promote a culture of transparency and accountability.

PREAMBLE:

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. In keeping with the California Constitution and the California Public Records Act (CPRA), Government Code Sections 6250-6257, all Department members shall cooperate with members of the public making requests for public records to facilitate access. Timely, unobstructed access to public records is not only required by law, but also a precondition for building trust and accountability with the community.

POLICY:

It is the policy of the Department to accept all requests for records maintained by the Department and to respond to requests within the timelines required by CPRA. The Department shall promptly make public records available to the public to the maximum extent allowed by law, consistent with public safety and the right to privacy.

Presumption of Disclosure

The Department will apply a presumption of disclosure to public records requests. All Department records are subject to public disclosure unless there is a specific legal basis for withholding.

Notwithstanding the Department's discretion to withhold certain law enforcement information under CPRA, the Department shall disclose to the public records pertaining to any investigation, arrest or other law enforcement activity once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- a. The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- b. Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- c. The identity of a confidential source;
- d. Secret investigative techniques or procedures;
- e. Information whose disclosure would endanger law enforcement personnel; or
- f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

The Department shall not fail to disclose information merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.

Responsibilities of [CPRA/Records/Legal Division]

The [CPRA/Records/Legal Division] shall promptly log, process, and produce records in response to every public records request it receives, in accordance with the Public Records Act.

Within 10 days from the date the Department receives a request, the [CPRA/Records/Legal Division] shall provide the requestor with a determination including the following information:

1. Whether the information requested exists;
2. Whether the Department will release any of the information, and if so, when and how; and
3. The statutory reasons for withholding any requested information.

The 10-day period may be extended up to 14 calendar days if additional time is needed to make a determination regarding the release of information. An extension of time is only permitted under the following circumstances:

4. The request requires the search and collection of records from multiple physical locations separate from the offices of the [CPRA/Records/Legal Division] and Department headquarters;
5. The request requires the collection of voluminous records that are separate and distinct from each other;
6. The request requires consultation with another agency that has a substantial interest in the processing of the request; or
7. The request requires computer programming.

Before extending the 10-day period, the [CPRA/Records/Legal Division] shall notify the requestor, stating the reason(s) for the extension and the date on which a determination is expected, not to exceed the 14-day time period allowed by law.

The [CPRA/Records/Legal Division] shall assist requestors by helping to identify records and information responsive to the request or to the purpose of the request; describing the information technology and physical location in which the records exist; and providing suggestions for expediting the production of records and/or overcoming any practical basis for denying access to the records or information sought.

Responsibilities of Other Department Members

Any Department member that receives a public records request shall promptly bring it to the attention of their unit commanding officer who will ensure that the request is immediately forwarded to the [CPRA/Records/Legal Division]. All requests must be forwarded to the [CPRA/Records/Legal Division] no more than one business day after receipt.

A Department member receiving a request for action from the [CPRA/Records/Legal Division] shall provide all information or records requested by the due date identified by the [CPRA/Records/Legal Division].

The duties of Department members in response to a request for action from the [CPRA/Records/Legal Division] may include, but are not limited to: (1) reviewing any request for action from the [CPRA/Records/Legal Division] by the end of their next shift; (2) describing categories of potentially responsive documents or identifying locations where responsive documents may be located within the unit for which the Department member is responsible; (3) identifying other Department members with knowledge of possible responsive documents and/or their locations; (4) searching for responsive documents; (5) reviewing documents and assisting the [CPRA/Records/Legal Division] to identify information that requires withholding and/or redaction; and (6) providing records.

A Department member responding to a request for records from the [CPRA/Records/Legal Division] shall provide all relevant records. If a Department member believes that some or all of the information in the record is protected from public disclosure, they should provide the record to the [CPRA/Records/Legal Division] with a recommendation as to what information should be withheld and why.

If for any reason a Department member cannot respond to a request for action from the [CPRA/Records/Legal Division] within the time specified by the [CPRA/Records/Legal Division], the member shall respond to the [CPRA/Records/Legal Division] promptly, and in no event longer than the time specified, to identify the portions of the request with which the member cannot comply, the reasons the member cannot comply, a time within which the member can comply, and any Department members better situated to comply with the request.

Employee Accountability

The work of responding to a public records request and preparing records for disclosure, as set forth above, shall be considered part of the regular work duties of any Department member. A Department member who willfully withholds Department records that relate to a public records request or violates any other obligation under this policy is subject to discipline.

The Right to Know: How to Fulfill the Public's Right of Access to Public Records

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