

GENERAL OFFICE MEMORANDUM 18-175

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOSEPH P. ESPOSITO 
Chief Deputy District Attorney

SUBJECT: SENATE BILL 1421 - CALIFORNIA PUBLIC RECORDS ACT; PEACE OFFICER PERSONNEL RECORDS

DATE: DECEMBER 27, 2018

On September 30, 2018, Governor Brown approved Senate Bill (SB) 1421, which amended Sections 832.7 and 832.8 of the Penal Code relating to peace officer records. The California Public Records Act requires a state or local agency to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records and any records maintained by any state or local agency relating to complaints against peace officers or custodial officers to be confidential and prohibits the disclosure of those records, except by discovery.

Effective January 1, 2019, SB 1421 requires a state or local agency to make available for public inspection all records pertaining to an incident involving:

- Discharge of a firearm by a peace officer or custodial officer;
- An incident in which the use of force by a peace officer or custodial officer resulted in death or great bodily injury;
- An incident where a sustained finding was made by a law enforcement agency or oversight agency regarding sexual assault by a peace officer or custodial officer involving a member of the public;
- An incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer relating to the reporting, investigation, or prosecution of a crime.

SB 1421 requires a state or local agency to make the public records available for inspection even if the acts mentioned predate the passage of the bill. There is a companion bill, Assembly Bill (AB) 748, which amends Government Code section 6254 and narrows the law enforcement investigatory files exemption by permitting the production of audio and video recordings related to a critical incident. AB 748 is not effective until July 1, 2019. Further direction will be provided in a future GOM.

If any Los Angeles County District Attorney personnel receives a Public Records Act request pursuant to SB 1421, please contact Special Assistant Ruth Low at (213) 257-3004. The Discovery Compliance Unit will work in conjunction with Ms. Low in handling such requests.

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23.03.03 [REDACTED]

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23.03.04 PROCESSING – LAW ENFORCEMENT PERSONNEL RECORDS & RECORDS OF INCIDENTS

Personnel records of peace officers and custodial officers and related investigatory reports involving the following incidents are disclosable records: (1) the discharge of a firearm at a person, (2) the use of force against a person resulting in death or in great bodily injury, (3) a *sustained* finding by any law enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, or (4) a *sustained* finding by any law enforcement agency or oversight agency of dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of, misconduct of another peace officer. (PC § 832.7, subd. (b)(1).)

All responsive records in the possession of the Office, regardless whether the records pertain to officers employed by the Office or another public agency and regardless whether the Office or another public agency created the records, shall be disclosed. (See *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 934.) All applicable exemptions and privileges shall be asserted.

If the Head Deputy, Deputy-in-Charge, or Captain determines that law enforcement records requested under Penal Code §§ 832.7 and 832.8 and Government Code § 6254, subdivision (f)(4) exist and are not subject to any exemptions from disclosure, he or she shall promptly disclose the records within the statutory time limits:

- (a) Records that are not the subject of an active criminal or administrative investigation shall be disclosed within 10 calendar days with an extension of up to 14 additional calendar days in unusual circumstances;
- (b) Records that are subject of an active criminal or administrative investigation shall be disclosed within 60 days of the incident involving categories (1) and (2) referenced above. Disclosure may be delayed for a maximum period of 18 months if disclosure would interfere with a criminal enforcement proceeding. Notice to the requester with an explanation of why disclosure could reasonably interfere with a criminal enforcement proceeding shall be given at each 180-day intervals. If criminal charges are filed relating to the use of force, disclosure may be delayed until a plea of guilty is entered or a verdict is returned; and

(c) Video and audio recordings for incidents in categories (1) and (2) referenced above that are related to an active criminal investigation may be *delayed* for up to 45 days after the Office knew or reasonably should have known about the incident if disclosure would substantially interfere with the investigation. If there is “clear and convincing evidence” that disclosure would substantially interfere with the investigation and the public interest in disclosure is outweighed by the necessity for delay, disclosure may be delayed beyond one year. (See Gov. Code § 6254, subd. (f)(4)(A)(i) & (ii).)

In addition to the procedures set forth in GOM 19-142, if the PRA is for records in an *open* case, the handling deputy shall (1) note the PRA request in the case file, (2) upload a copy of the request to efolder, and (3) retain a copy of the disclosed records in the case file. Any deputy receiving a PRA request seeking law enforcement personnel records shall forward a copy of the request to the Special Assistant for Administration.

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- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]



23.07 **REQUESTING LAW ENFORCEMENT INFORMATION PURSUANT TO SENATE BILL 1421 AND THE PUBLIC RECORDS ACT**

Pursuant to Senate Bill (SB) 1421, as codified in Penal Code § 832.7(b), and as guided by Penal Code § 832.8, certain peace officer and custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving these officers are available for public inspection. Records of complaints and investigations related to the following four categories of incidents are *no* longer confidential and are subject to disclosure pursuant to a PRA request:

1. Discharge of a firearm at a person;
2. Use of force against a person that resulted in death or great bodily injury;
3. A *sustained* finding by a law enforcement agency or oversight agency of having engaged in sexual assault involving a member of the public;
4. A *sustained* finding of dishonesty 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.

Effective immediately, deputies have the discretion to make a PRA request via the SB 1421 PRA Request Application to obtain disclosable SB 1421 information from the personnel file of a peace officer or custodial officer on pending cases which the deputy is handling.

SB 1421 PRA Request Application

The SB 1421 PRA Request Application enables deputies to: (1) search to determine whether there was a prior PRA request made on a particular officer; (2) generate PRA requests for disclosable information from the personnel file of a particular officer on a pending case that the deputy is handling; (3) track the status of pending PRA requests for a particular officer, whether issued by the individual deputy or by another deputy; and (4) review responsive PRA documents produced by law enforcement agencies for a particular officer.

Deputies may access the SB 1421 PRA Request Application through the “MyApps” icon in the Network Applications Folder on their computer workstation, or by copying and pasting the following link into an internet browser: <https://myapps.da.lacounty.gov>. Deputies are the only Office personnel authorized to access the SB 1421 PRA Request Application and may do so only as necessary to perform their official duties. A security log is built into the application which tracks all inquiries. Misuse of the application may subject an employee to disciplinary action.

DCU Responsibilities with SB 1421 Information

The issued PRA request instructs the law enforcement agency to send responsive information to the Discovery Compliance Unit (DCU) rather than directly to the individual deputy who generated the request. This is to ensure that any fees assessed by the law enforcement agency for the requested information are paid by the Office through the DCU. However, if the responding agency submits PRA information directly to the individual deputy rather than to the DCU, the individual deputy shall forward the information to DCUPRA@da.lacounty.gov or via county mail to: [LADA - DCU, 320 W. Temple Street, Suite 540, Los Angeles, CA 90012](#).

Additionally, the DCU has and will routinely submit comprehensive PRA requests to agencies seeking SB 1421 information. Upon receipt of responsive information from either a PRA request generated by the DCU or an individual deputy, the information will be manually uploaded into (1) the SB 1421 PRA Request Application and, if appropriate, (2) the Discovery Compliance System (DCS). Deputies will not be able to generate a PRA request seeking the production of SB 1421 records that were previously provided to our Office by a law enforcement agency, pursuant to either the terms of a prior PRA request or Memorandum of Understanding.

The DCS Manual has been updated to explain the processing of information pursuant to a SB 1421 PRA request issued by a deputy. It has been uploaded to LADAnet under Library>Office Manuals>DCS Manual. Step-by-step instructions explaining how to use the application have been uploaded to LADAnet under [Library>Office Manuals>MyApps>SB 1421 PRA Request Application User Guide](#). An instructional video will soon be available to assist in accessing and utilizing the application. Any questions shall be directed to the DCU.