

SPECIAL DIRECTIVE 20-04

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: DISCLOSURE OF LAW ENFORCEMENT RECORDS PURSUANT TO  
PENAL CODE § 832.7 AND THE CALIFORNIA PUBLIC RECORDS  
ACT

DATE: MAY 22, 2020

GOM 19-142 directed deputies in response to a California Public Records Act (PRA) request for law enforcement personnel records under Senate Bill (SB) 1421 and Assembly Bill (AB) 748, as codified in Government Code §§ 6250 *et seq.* and Penal Code §§ 832.7 and 832.8, to only disclose personnel records of peace officers employed by the Office's Bureau of Investigations (BOI) or records of incidents or investigative records created by the BOI.

This Special Directive amends GOM 19-142 as it relates to the disclosure of police personnel records. Effective immediately, 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, must be disclosed, subject to applicable exemptions under the PRA.

Applicable Law

*Becerra v. Superior Court* (2020) 44 Cal.App.5<sup>th</sup> 897, 934 (*Becerra*) held that a PRA request made under Penal Code § 832.7 “generally requires disclosure of all responsive records in the possession of the Department, regardless whether the records pertain to officers employed by the Department or by another public agency and regardless whether the Department or another public agency created the records.” *Becerra* also affirmed the applicability of the “catchall exemption” in response to PRA requests. (See Gov. Code § 6255, subd. (a).) The catchall exemption permits non-disclosure when “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Effective immediately, when responding to a PRA request for law enforcement records<sup>1</sup> pursuant to SB 1421 and/or AB 748, deputies shall provide or make available responsive documents in the

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<sup>1</sup> Records of peace officers and custodial officers related to the following incidents are disclosable: (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

Office's possession subject to applicable exemptions under the PRA. Deputies shall review and redact all confidential information and assert all applicable exemptions. (See Gov. Code §§ 6253, 6254, subd. (f)(4), 6255, PC § 832.7, and the Office's PRA Manual §§ 5.00, 6.00, & 7.00.)

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.

The Legal Policies Manual is amended to add section 23.03.04 as follows:

#### **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.5<sup>th</sup> 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

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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).)

- (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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