



San Diego County Sheriff
Training Bulletin
William D. Gore, Sheriff
December 2018



SB 1421: RELEASE OF PEACE OFFICERS RECORDS

AB 748: DISCLOSURE OF PEACE OFFICERS VIDEO AND AUDIO RECORDINGS

On September 30, 2018, Governor Brown signed two new bills that impact the San Diego County Sheriff's Department and California peace officers. Pursuant to Senate Bill 1421 (SB 1421), beginning on January 1, 2019, the Sheriff's Department must make "available for public inspection," the reports, investigations, and findings of specific incidents involving peace officers. Assembly Bill 748 (AB 748) provides that, beginning on July 1, 2019, the Sheriff's Department must release the body worn camera footage that relates to a critical incident within 45 days of the incident. This training bulletin is meant to provide you with information about the new law. The new laws can be found at the following links:

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748

The Sheriff's Department is working to implement the changes in an efficient and timely manner.

SB 1421 Overview

SB 1421 amended California Penal Code sections 832.7 and 832.8. Generally, peace officer personnel records are confidential and only disclosable pursuant to a *Pitches* motion filed in Superior Court. Based on the above legislative changes, the following peace officer personnel records will no longer be considered **confidential**, and **are required to be made available for public inspection** pursuant to the California Public Records Act (CPRA):

- 1) Records relating to the report, investigation, or findings of:
 - a. the discharge of a firearm at a person by a deputy;
 - b. the use of force by a deputy against a person resulting in:
 - i. death; or
 - ii. great bodily injury;
 1. The Sheriff's Department uses a slightly modified version of California Government Code section 12525.2 to define great bodily injury:

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- a. A bodily injury that involves a substantial risk of death, prolonged unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.
- 2) Any records relating to an incident in which an agency made a ***sustained finding*** that a deputy engaged in:
- a. sexual assault involving a member of the public; or
 - b. dishonesty directly relating to:
 - i. the reporting, investigation, or prosecution of a crime; or
 - ii. the reporting of, or investigation of misconduct by, another deputy.

"*Sustained*" means a final determination by the agency following an investigation and opportunity for an administrative appeal, that the actions of the peace officer were found to violate law or department policy. A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, *shall not* be released pursuant to this section if the complaint is frivolous or unfounded. "*Unfounded*" means that an investigation clearly establishes that the allegation is not true. "*Frivolous*" means totally and completely without merit or for the sole purpose of harassing an opposing party.

The CPRA provides that the requestor may "inspect" or obtain "a copy of records... upon payment of fees."

This legislation overrides the previous statutory system that regarded all peace officer personnel records as confidential. A Pitchess motion is still required for all peace officer personnel records that do not fall within the enumerated categories.

San Diego Sheriff's Department's Procedure

In response to this legislation, the Sheriff's Department has determined that the records related to the above enumerated categories are primarily held by Records, Homicide, and Internal Affairs. The Department is developing a process to comply with the new legislation. Effective immediately, when the Sheriff's Department receives a CPRA request related to records sought pursuant to SB 1421 or AB 748, the request will be sent to the Legal Affairs Unit. The Legal Affairs Unit will review the request to determine if the records are disclosable at that time. If the request applies to one of the above enumerated categories, it will be handled by designated employees who will work with the Homicide, Internal Affairs, Records, Division of Inspectional Services, and Legal Affairs Units. These designated employees will prepare all required disclosable materials for release under the new statutes.

Record Disclosure

The statutes include specific timelines for release of the documents. Although the Department may withhold a record of an incident that is the subject of an active criminal or administrative investigation, the Department *is required* to release to the complaining party a copy of his or her own statements at the time the complaint is filed. Additionally, the Department will have to

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eventually release all of the required records pursuant to the disclosure requirements listed in Penal Code section 832.7(b)(7).

Pursuant to a CPRA request, the Department must release the following documents related to the above enumerated categories: 1) investigative reports; 2) photographs, audio, and video; 3) interview transcripts or recordings; 4) autopsy reports; 5) materials compiled and presented for review to the person determining whether to file criminal charges against an officer in connection with the incident, or whether the officer's action requires discipline or administrative action, or what discipline or corrective action to impose; 6) findings or recommended findings; and 7) disciplinary records related to the incident.

Redaction

Prior to disclosure of the required records, the Department ***is required to*** redact a disclosed record: 1) to remove personal data or information; 2) to preserve the anonymity of complainants and witnesses; 3) to protect confidential medical, financial, or other information specifically prohibited from release by federal law or that would cause an unwarranted invasion of personal privacy; and 4) where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

The Department ***is not allowed to*** redact the names and work-related information of peace and custodial officers.

Costs

SB 1421 and AB 748 will impose significant time and labor expenses on the Department. The redaction of BWC video and electronic reports is time consuming and involves specialized computer programs and training. As such, it is the Department's intent to charge for the redaction of records requested under these sections.

Conclusion

SB 1421 and AB 748 were designed to increase transparency and provide the public with increased information regarding critical incidents and peace officer misconduct. Deputies are reminded that their statements and actions captured on BWC or in Department reports may become public at any time.

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