



FULLERTON POLICE DEPARTMENT

TRAINING BULLETIN

ROBERT DUNN, CHIEF OF POLICE

OCTOBER 2018, TB # 18-02

RECORDS OF OFFICER INVOLVED SHOOTINGS, USES OF FORCE RESULTING IN GREAT BODILY INJURY OR DEATH, AND SUSTAINED INCIDENTS OF SEXUAL ASSAULT AND DISHONESTY ARE SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT

Courtesy of James R. Touchstone, Esq. & Gregory P. Palmer, Esq.

Governor Brown recently signed into law Senate Bill 1421 ("SB 1421") which changed the confidential status of certain records contained in peace officer personnel files. SB 1421 effects a significant change with respect to the disclosure of certain categories of peace officer personnel files by way of the California Public Records Act. Beginning **January 1, 2019**, the following records are now subject to public disclosure under the Public Records Act:

1. Records of officer involved shootings;
2. Records of officer uses of force that result in death or great bodily injury;
3. Records of sustained incidents involving sexual assault against a member of the public; and
4. Records of sustained incidents of dishonesty.

SB 1421 amends Penal Code section 832.7 to explicitly provide that these four categories of records are subject to disclosure under the Public Records Act. Specific records relating to any of these categories that must be disclosed include investigative reports, photos, audio/video files, interview transcripts/recordings, autopsy reports, all materials presented to the district attorney, and administrative disciplinary records.

When an incident involves multiple officers, records of sustained findings of sexual assault and dishonesty are not disclosable unless the record relates to a sustained finding against that officer. However, factual information about that officer is disclosable if it is relevant to a sustained finding against another officer.

Redacting Information

SB 1421 does allow agencies to redact certain information from these four categories of records. Information that may be redacted includes:

- Personal information including home addresses, phone numbers, identities of family members;
- Information to preserve the anonymity of complainants and witnesses;
- Medical, financial or other information that is protected by law or that would cause an invasion of privacy that clearly outweighs the public interest in disclosure; and

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- Information where there is a specific, articulable, and particularized reason to believe that disclosure of the records would pose a significant danger to someone.

Pending Criminal Or Administrative Investigations

Agencies may also withhold records in these four categories when there is an active criminal or administrative investigation in accordance with several requirements:

- Disclosure may be delayed up to **60 days** from the date of the incident or until the district attorney determines whether to file criminal charges, whichever is sooner, so long as the agency indicates in writing that the interest in delaying disclosure clearly outweighs the public interest in disclosure and includes the estimated date for disclosure;
- Disclosure can be delayed beyond these **60 days up to 18 months** if disclosure can reasonably be expected to interfere with a criminal enforcement proceeding against the officer that used the force and the agency provides updates at 180-day intervals on why disclosure would continue to interfere with the proceedings and includes an estimated date for disclosure. These same rules apply when the criminal proceeding is against someone other than the officer who used the force except that the agency must show by clear and convincing evidence that the interest in preventing prejudice to the criminal proceeding outweighs the interest in prompt disclosure;
- If criminal charges are ultimately filed, **disclosure may be delayed until a verdict or plea is entered;**
- For administrative investigations into officer involved shootings and uses of force that result in serious bodily injury or death, disclosure may be delayed until the agency determines whether the shooting or use of force violated law or policy, **up to 180 days after the incident/allegation of misconduct or 30 days after the close of any criminal investigation, whichever is later.**

SB 1421 also makes clear that it has no effect on the procedures governing discovery of information from peace officer personnel files via *Pitchess* motions.

HOW THIS AFFECTS YOUR AGENCY

SB 1421 affects a significant change to the disclosure of certain types of peace officer personnel records. However, SB 1421 only applied to these four categories subject to disclosure and does not affect other categories of records. Records of other types of alleged misconduct are not disclosable under the Public Records Act. Police department employees and city clerks should be aware of this new law because police departments will need to carefully identify disclosable and redactable information and city clerks will need to comply with the appropriate timeframes for notices, updates and disclosures. The ultimate effects of this legislation remains to be seen with respect to its interplay with POBRA statutes.



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As always, if you wish to discuss this matter in greater detail, please feel free to contact us at (714) 446 – 1400 or via email at jrt@jones-mayer.com [for James Touchstone] or gpp@jones-mayer.com [for Greg Palmer].

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